

The Impact of the Serious Youth Offender Law

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Introduction

Background: Juvenile Justice in Utah Utah's juvenile code was originally written in 1964. At that time, all youth offenders were sent to the State Industrial School in Ogden, Utah. During the mid-1970s, Utah deinstitutionalized its youth corrections system. The Division of Youth Corrections was created (1981), the State Industrial School, later to be named the Youth Development Center was closed and the juvenile code was changed (1983). Two secure facilities in Ogden and Salt Lake City (30 beds each) were built to replace the institution. Utah moved toward a community based alternatives approach to treatment and rehabilitation of its youthful offenders. Incarceration was to be used only for the most serious and violent offenders for whom there was little hope for reform and because of severity and chronicity of their offending, required more secure custody for a longer period of time than the former Ogden institution could provide.

In the late 1980s offending patterns of Utah's youth changed dramatically. Youth gangs became prevalent, violent offending increased and the demand on the secure beds became overwhelming. In the past five years, Utah has increased the number of secure beds, including those in detention centers, in response to that demand. It was recognized that a need existed for a different system that could separate the most serious, chronic, and violent offenders from the less serious incarcerated offenders.

The Utah Commission on Criminal and Juvenile Justice (CCJJ), after studying how several other states were handling their most serious cases, developed its own "hybrid of different laws aimed at dealing with the state's most violent and chronically delinquent youths." The Serious Youth Offender Law (SYOL) was partially the result of Utah's goal to "get tough on the most violent teenage criminals."

Catalysts of the Serious Youth Offender Law

The SYOL took effect on July 1, 1995 after several catalysts prompted its creation. Juveniles had committed serious, violent crimes in increased proportions. For example, Utah's violent crime rate has been on a steady increase since 1988.¹ In fact, there was a 28.6 percent increase in reported violent crime between 1988 and 1995 (CCJJ, Annual Report, 1998). However, the population in Utah during those years grew only 15.9 percent (Utah Census, Governor's Office of Planning and Budget).

¹ Utah, however, has a comparatively low violent crime rate. Utah's rate is nearly half of the national rate. It is, nonetheless, violent crime which makes the community feel most "un-safe."

From 1989 to 1992, the juvenile arrest rate for these violent crimes increased dramatically – approximately 83 percent.² Yet, the increase in juvenile crime can not be attributed to a growth in youth population because that population stayed relatively static during that period.³

In 1989, Utah had fewer than 700 identified gang members, but by the end of 1996, more than 7,000 gang members had been identified. The increase in juvenile crime has been partially credited to the increase in gang activity. Gangs foster an environment where violent crimes are not only a prerequisite to gang membership, but have become commonplace. Aside from victimizing the community, gang members are at a much higher risk than the average person of injury or death as a result of gang violence, traffic accidents, drug overdoses, and the unsafe handling of firearms (Utah Gang Update, 1998, pg. 9).

In October of 1992, there were two highly-visible, gang-related shootings in Salt Lake City – one at the State Fair grounds and one at the Delta Center. Because these took place in public settings, they served as a panic alarm to the community and to policy makers. Governor Michael Leavitt advocated taking an active response to the threat of public safety. In his view, public safety was top priority. He wanted to deal quickly and firmly with violent juveniles who defy the laws. Leavitt was adamant about removing the serious, violent offenders from the streets. During his speech to the legislature, he proposed four ways to decrease violent juvenile crime:

- 1) to get the guns out of the hands of juveniles;
- 2) to develop more jail space for juvenile offenders;
- 3) to accelerate the speed of justice; and
- 4) to prevent crime by changing the way potential gang members view life.

Leavitt's ardent position created enough political support to produce a change in the juvenile justice system, through the subsequent passage of the SYOL.

The 1992 shooting at the Delta Center also resulted in a case that reached the Utah Supreme Court. State v. Mohi, 901 P.2d 991 (1995). Asipeli Mohi, a seventeen-year-old, shot and killed another juvenile. At the time of the shooting, Mohi was only four months short of the age of majority. Pursuant to the direct-file provisions of Utah Code Ann. § 78-3a-25(6)(b), a criminal information was

² However, since 1992, there has been a consistent decrease in the arrest rate of juveniles for violent crime.

³ In fact, the Utah Census shows that juveniles, ages 5 to 17, comprised 26.5 percent of the total population in Utah in 1989, and only 25.9 percent in 1992. Utah Census.

filed against Mohi in District Court rather than Juvenile Court. Mohi was bound over to stand trial in the adult system. In December of 1993, he filed amended motions asking the court to rule the direct-file provision unconstitutional pursuant to article I, sections 7 (due process) and 24 (uniform operation of laws) of the Utah Constitution.⁴

The direct-file statute allowed prosecutors the discretion to determine whether or not to try sixteen- to seventeen-year-olds accused of capital or first-degree felonies as juveniles, under Juvenile Court jurisdiction, or as adults, under District or Circuit Court jurisdiction. The Utah Supreme Court ruled the provision unconstitutional under article I, section 24 of the Utah Constitution as amounting to unequal treatment.⁵ Prosecutors were granted totally unguided discretion, resulting in a law that operated disparately and non-uniformly on similarly situated juveniles. “[The statute permits two identically situated juveniles, even co-conspirators or co-participants in the same crime, to face radically different penalties and consequences without any statutory guidelines for distinguishing between them.”⁶

Although the direct-file statute was ruled unconstitutional, there still existed an avenue through which serious youth offenders, ages fourteen through seventeen, could be transferred to the adult system. This process, called **certification**, still exists in the Utah Code today. Judicial Code § 78-3a-603. The Juvenile Court, in determining the best interests of the juvenile or of the public, can, by a preponderance of the evidence, waive its jurisdiction and certify the juvenile to the District Court after considering eleven factors during a preliminary hearing.⁷ However, because no hearing was

⁴ The Utah Supreme Court did not reach the defendants’ state and/or federal due process challenges and expressed no opinion on the merits of those contentions.

⁵ Article I, section 24, Utah’s uniform operation of laws provision, requires that “for a law to be constitutional under [the provision], it is not enough that it be uniform on its face. What is critical is that the operation of the law be uniform. A law does not operate uniformly if ‘persons similarly situated’ are not ‘treated similarly’ . . .”

⁶ The Utah Supreme Court found that the state’s purpose to “promote public safety and individual accountability” was not reasonably related to the means adopted because the prosecutor was given no guidelines. It distinguished the process of certification, § 78-3a-25(3)(a)-(j), which contains several factors that a court must consider in order to certify a juvenile into the adult system.

⁷ The Mohi court found it “ironic” that the code set out detailed factors to be considered when certifying a juvenile to the adult court, but contained no guidelines for a prosecutor who may choose for any reason or no reason at all to place a juvenile into the adult system.

required for a direct-file, it was used as a more expeditious process than certification. Due to the Mohi case and the demise of the direct-file statute, policy makers began to develop a different process to help aid in expediting the trial and sentencing of serious youth offenders committing serious violent crimes. Eventually, the SYOL became the constitutional replacement for the direct-file statute.

The increase in juvenile crime, the rapid rise in violent gang activity, the overcrowding of the secure facilities, the governor's position on the need for more secure beds and a more expeditious way to deal with serious, violent juvenile offenders, and the Mohi case, all served as catalysts to the development of the SYOL.

What is the SYOL and How Does it Work?

The SYOL is aimed at the serious, violent youth offenders ages sixteen and seventeen. It was intended to provide “more severe” sanctions for the more serious, chronic juvenile offenders and to remove these offenders from costly juvenile programs that appeared to be having little or no impact on this group (see Appendix I). The new law transfers jurisdiction of these serious juvenile offenders from Juvenile Court to the adult system in one of two ways.

ways.⁸ (See Appendix II)

First, under (601), if the juvenile is charged with murder or aggravated murder, or if the juvenile has been sentenced to a secure facility and subsequently commits a felony, he is immediately bound over to District Court to be tried as an adult.⁹ Judicial Code § 78-3a-601 (granting exclusive jurisdiction to the adult system).

Second, under (602), a presumption of transferring jurisdiction to the adult system is created if a juvenile commits one of the ten “deadly sins” designated in the law. The ten “deadly sins,” are as follows: Judicial Code § 78-3a-602

- 1) aggravated arson;
- 2) aggravated assault (intentionally causing serious bodily injury);
- 3) aggravated kidnaping;
- 4) aggravated burglary;
- 5) aggravated robbery;
- 6) aggravated sexual assault;
- 7) discharge of a firearm from a vehicle;
- 8) attempted aggravated murder;
- 9) attempted murder; and
- 10) any other felonious offense involving the use of a dangerous weapon where the juvenile has been previously adjudicated or convicted of a felonious offense involving a dangerous weapon.

⁸ The juveniles are charged by filing a criminal information, not a petition as in the juvenile system. Utah Code Ann. § 78-3a-601.

⁹ The serious youth offenders are often referred to as “he” because nearly 94 percent of offenders prosecuted under the SYOL are males. CCJJ, Annual Report 1998.

In such a situation, the juvenile receives a hearing in Juvenile Court first. If the prosecution can establish “probable cause” that the crime was committed by the defendant,¹⁰ then it is presumed that jurisdiction will transfer to the adult system. A juvenile may rebut the presumption of his transfer by “clear and convincing evidence” only if *all three* of the following criteria are met:

- 1) the minor has not previously been adjudicated delinquent for a felony offense involving the use of a dangerous weapon;
- 2) if the offense was committed with one or more persons, the minor appears to have a lesser degree of culpability than the codefendants; and
- 3) the minor’s role in the offense was not committed in a violent, aggressive or premeditated manner.

These criteria were designed to create a very difficult burden on the juvenile. However, if they were satisfied, the Juvenile Court judge would be compelled to treat the criminal information filed against the defendant as a juvenile petition and the juvenile would be held for trial as a juvenile.

It is interesting to remember there still exists a previous avenue through which serious youth offenders, ages fourteen through seventeen, can be transferred to the adult system. This process, called **certification**, still exists in the Judicial Code today as § 78-3a-603. As mentioned above, the juvenile court, in determining the best interests of the juvenile or of the public, can, by a preponderance of the evidence, waive its jurisdiction and certify the juvenile to the District Court after considering eleven factors during a preliminary hearing. Thus the SYOL (601 and 602) adds to the already existing certification process (603).

SYOL Study

Many states have enacted similar laws to the SYOL, attempting to remove the exclusive jurisdiction from the Juvenile Courts for certain offenses by statute. The practices of the SYOL are, therefore, seemingly accepted among many jurisdictions for those violent, chronic juvenile offenders. The law is intended to focus on those juveniles for which there is little hope for reform. For those offenders, the primary goal would be **public safety** – removing the violent offenders from the streets. This is in accordance with professor Marvin E. Wolfgang’s theory that about 6 to 7 percent of juvenile offenders are chronic. In a longitudinal study of delinquency in two birth cohorts, Wolfgang

¹⁰ If proceeding under the tenth “deadly sin” (any felonious offense involving the use of a dangerous weapon), the state has the additional burden of proving by a “preponderance of the evidence” that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(1985) and his colleagues found that 6 percent of juveniles committed 63 percent of the Index offenses, 71 percent of the homicides, 73 percent of the rapes, 82 percent of the robberies, and 69 percent of the aggravated assaults.¹¹

The creation of the SYOL assists the state in identifying the 6 – 7 percent who are responsible for the vast majority of the violent crimes. The adult system, then, seems much more acceptable – even suitable – for those chronic offenders less capable of reform. This study attempts to understand the changes that have taken place in the juvenile system since the original enactment of the law in July 1995. Specifically, the study attempts to answer whether the statute is used the way it was intended to be used by the legislature, or perhaps more aptly if the statute, can be used the way the legislature intended it to be used. The new law has been confusing and often misinterpreted, making implementation difficult.

For example, the SYOL grants exclusive adult jurisdiction to juveniles who qualify under (601). Therefore, law enforcement agents were, in some cases, taking the juvenile directly to an adult jail facility. Data suggests that approximately 17.9% of all SYO qualifiers were taken directly to the adult system¹². In these cases, no data were entered into the Juvenile Information System and the juveniles were not tracked as SYOL offenders. However, this is incorrect procedure because if for some reason, like lack of sufficient evidence, the juvenile is released, he has been illegally detained in an adult facility. Such misunderstandings have not only made the SYOL difficult to implement correctly, but have also made data collection arduous and inaccurate (see data collection methods). While many of the misconceptions have been resolved, there still exist many gray areas in the SYOL today.

Interviewing

The purpose of this phase of the study was to explain the data taken from the courts and elaborate on some of the blatant problems. That is, we attempted to interview criminal justice officials around the state to gauge how different procedural protocol might affect the various stages of the SYO process: from filing to sentence. Juvenile and District Court judges, attorneys, clerks, and probation officers were interviewed in Districts around the State. The interviews are not given equal

¹¹ Similar results were found in Wolfgang's 1958 study.

¹² This is inferred from the fact that 104 individuals appeared in the adult data system (CORIS), but not in the juvenile system (JIS).

weight, because there are several officials who have only a few case experiences. Instead, more weight is given to those interviews where the judge, prosecutor, or defense attorney had dealt with SYO process on a more frequent basis. Therefore the 3rd, 2nd, and 4th Districts (those along the Wasatch Front) received closer scrutiny based on the sheer volume of their case load versus other Districts¹³. Yet, even in these Districts often the case load has been so small that experience is not uniform.

Interviews were scheduled with those officials who responded to our phone calls or mailed solicitations and was strictly on a volunteer basis. An informed consent was signed by each participant and their anonymity was secured by assigning a subject number, rather than by the use of their name. Over 80 officials were interviewed in all. Also, to ensure accuracy the interviews were tape-recorded and subsequently transcribed. Questions were open-ended and based on addressing how the law is being implemented. The information is organized by *common theme* and attempts to summarize pertinent procedural and implementation problems.

Method

The data for the study was gathered and analyzed in two groups: data from the juvenile information system (JIS), and data from the adult court system (CORIS). Both data sets provide useful and interesting information, and answer important questions about the law. The following sections will explain statistical characteristics of the two groups, and their possible implications.

JIS data was downloaded from the main system by the CCJJ, and includes 413 offenders ages 16 and 17 who committed murder, aggravated murder, a felony (or what would be a felony if committed by an adult) after secure facility placement, or one of the specified ten deadly sins. Data included all individuals matching above criteria between July 1995 (the inception of the SYOL), and December 1998.

CORIS data was downloaded by information systems personnel at the Administrative office of the courts. Initially, all offenders who may have been under 18 any time between July 1995 and December 1998, and had committed felonies were selected. Subsequently, initial data was parsed down to identify only offenders whose violation data occurred prior to an 18th birthday. This included 103 individuals, thirteen of which also appeared in JIS data. Their respective dockets were printed,

¹³ The second, third, and fourth districts combined had a total of at least 81.9% of all SYO cases, having 17.6%, 53.6%, and 10.7% respectively. These figures do not account for the 17.2% of cases which did not have district coded.

and researchers entered information directly from dockets into databases used for final analysis. Information relevant to offender status of the 103 individuals identified through CORIS at the time of this report was obtained by searching the F-TRACK data base from the Department of Corrections.

Due to circumstances beyond research control, the statistical significance of the data is highly limited. Consequently, any implications made by the data are not conclusive statements concerning the actual impact of the law; rather, they are merely informed guesses based on available information.

One of the statistical limitations results from the sample population being studied. In an effort to understand the law from all angles, the largest possible sample from the juvenile and adult systems were taken; however, because of the dynamic nature of the law, and the sample, the population cannot be considered as representative nor can it be easily generalized. For example, data and interviews suggest that the procedures used within the courts has changed over the four years since its inception. Procedural changes are accompanied by a changing population. In other words, the offenders of 1995 are presumably different than those of 1998. Because of this, statistical conclusions may not be completely accurate.

Another limitation stems from the lack of an experimental control group. Because youth could not be randomly assigned to courts, districts, etc., there is a large degree of sample bias that must be considered when interpreting the data. For example, low numbers of offenders within certain districts may not indicate anything about the Serious Youth Offender Law in particular; instead, it is to be expected given the general population of the district, and overall crime rate.

Finally, there are multiple confounds due to several factors including, low number of offenders for certain categories (e.g. different counties, districts, dispositions), missing data in certain fields (e.g. some counties did not have any dismissals given for dispositions), and data entry disparities. Data entry disparities are found throughout the system, and are the result of coding a large amount of data across multiple sites. These disparities include the fact that in some courts, when an information is filed in Juvenile Court, it is coded as a "PT2", or short petition for clerical reasons only. Other examples include difficulties coding multiple dispositions for single charges. Lastly, there likely exist confounds within the data that these researchers have not recognized, but could skew analysis results.

Juvenile Data

Juvenile statistics were gathered from the JIS database using SAS software and specialized queries. 413 youth were identified as having been charged with a crime that should have qualified

them for serious youth offender status. These include any youth between the ages of 16 and 18 during the time of offense within three qualifying groups: those charged with murder or aggravated murder, those charged with committing a felony (or what would be considered a felony if the offender were an adult) after commitment to a secure facility, and those who committed one of the ten specified offenses within the law (commonly termed the “ten deadly sins”). These three groups differ in a number of ways.

First of all, the first two (murder/agg. murder and felony after secure facility) are to be directly filed in district court (see Appendix D). The third group (10 deadly sins) is to have a preliminary hearing in Juvenile Court to assess probable cause, and to review the three retention conditions. Information about these SYO’s would be entered into the (JIS) while juveniles are being held in a secure facility or detention center awaiting charges to be filed.

Race

The racial breakdown of these groups is primarily white, but also disproportionate to the population. For those charged with murder, two are white, and three are “other” (because of the low number of cases, percentages are not used); for secure facility and the ten deadly sins offenders (groups 2 & 3), approximately 49% are white, 30% are “Chicano” or “Spanish”, and all the other categories have less than 10%.

Age

In order to qualify for SYO status, youth must be between the ages of 16 and 18 at the time of offense. Within this data set, the mean ages were: 17.04 for murder/agg. murder, 16.28 for NYC secure, and 16.84 for ten deadly. Because of the low number of qualifiers for murder/agg. murder, this mean may not suggest anything significant; however, the mean age of those charged with felonies after secure facility placement are surprisingly young. The young mean age here may indicate that younger offenders charged with felonies after secure placement are given a preliminary hearing in Juvenile Court, while older ones are direct filed. This is difficult to determine from the data alone, but may suggest a need to review SYO procedure involving felonies after secure facility placement.

Disposition

A number of dispositions were coded within the JIS system for SYO qualifiers. The database allows for up to six dispositions per charge. Due to the difficulty in combining and analyzing dispositions within different fields, this analysis focused primarily on those dispositions entered in the first three fields. A determination was made as to the relative ordering of the disposition fields, and the most restrictive disposition for any given individual and case was utilized. This may confound the

statistical significance of the data. Another possible confound arises because of multiple charges given to separate individuals. For this analysis, only the first charge coded was included. This may cause a disproportionate number of “dismissed” dispositions to appear due to plea bargaining. For statistics on other fields, refer to the appendices.

For the twenty females in JIS data, only one was coded as “BOD”, or bound over. For males, 33.3% were bound over, while 46% were dismissed, 38% were given alternative sanctions. The large percentage of dismissed charges may be due to plea negotiating; however, only 13 (3.3%) were coded as “dismissed by plea negotiating”. This is most likely a coding disparity, and interviews suggest that a large number of the 21% dismissed other ways is in fact a result of plea negotiating.

Youth who were bound over were mostly filed as informations (87%), the next highest percentage, short petition or “PT2” (7%) is used to code informations in certain counties (according to interviews). For those dismissed, the majority were also filed as informations or short petitions (45% and 23% respectively). This data makes important implications about plea negotiating. If the majority of charges given dispositions of “dismissed” were initially filed as informations (short petition is assumed to be an information), this may suggest that prosecutors are filing SYO charges in some cases simply to have greater negotiating freedom during plea negotiation. However, this could be a statistical artifact due to the relatively large total percentage of informations and short petitions filed. Plea negotiating seems to be the most logical conclusion after considering interview data, and considering the large percentage of other intake decisions listed for other dispositions¹⁴.

More surprising may be the breakdown of dispositions among the various intake decisions. For example, according to the law, and according to interviews (see *Judge Discretion* and *Plea Bargaining* sections of Interview Data below), it is almost impossible for a youth filed as an SYO to be retained in Juvenile Court; however, 37.5% of them are retained. 24% of charges filed as informations are dismissed. 10.6% are given alternative sanctions. 3.9% are either fined, or given miscellaneous charges. Again, this data is confounded because of the multiple charges given each individual. For purposes of this analysis, only the first charge for each youth was considered. Nevertheless, these figures at the least should suggest the need for more detailed analysis.

Dispositions across counties and districts was also examined; however, again the statistical significance is confounded because a large percentage of SYO cases within this population come from

¹⁴ For those given alternative sanctions, fines, or short-term detention, the majority (47%, 36% & 50% respectively) were filed as long petitions. *Note, there were only four cases of short-term detention out of the total 222 individuals.*

a select few counties (Salt Lake, 51.1%; Weber, 12.4%; Utah 6.8%; Davis 5.6%).

In summary, statistical analyses revealed some interesting possibilities regarding the SYOL; however, multiple factors including disparity across counties and districts, changes in procedure over years, low number of offenders in certain categories, and others aforementioned may skew results. Accordingly, in the remainder of the report, statistical data and interview data will be examined simultaneously in order to more fully validate conclusions.

Joint Analysis

Filing Stage

When a potential Serious Youth Offender case comes in, prosecutors usually find out at the initial detention hearing. They're then given 72 hours to screen the case, which means they look at it and determine what charges will be filed, and within 72 hours the case has what's called a first appearance before a judge. At the first appearance the prosecutor will either file the *criminal information*, or determine that a *petition* should be filed and the case kept in the juvenile court system. Also, at the first appearance the legal defender's office is supposed to be in attendance, unless the offender has hired a private defense attorney.

According to the SYOL, the prosecutor is to exercise no discretion in deciding whether to file a case as a petition or an information. For instance, if one of the deadly sins is filed, then it *shall* (must) be by *criminal information* according to the (602) statute (Appendix I). Interviews with prosecutors attempted to discern what was taken into consideration at the filing stage. It was thought that if prosecutors were taking input from probation or intake, attempting to ascertain whether secure facility placement was available, or taking into account what District Court sentencing might entail, then this influence needed to be noted as it may affect the way the law was being enacted.

Overwhelmingly county attorneys are aware of the limits to prosecutorial discretion in the filing process and the overall impression given by prosecutors was an awareness of the limitations on discretion outlines in the statute, but they tended to use a little bit of discretion anyway deciding what to charge. However, this to them was not a blatant disregard of the statute. It was instead an attempt by prosecutors to proceed forth on cases depending on 1) age, 2) the facts of the case, 3) the strength of the evidence, and 4) a chance of reasonable success at trial. The filing stage thus consists of deciding with police whether or not the facts of the case warrant filing under the SYOL. The prosecutors do not have a choice when the elements of the crime fit the charge as outlined in the statute. Yet, if the case is "borderline" or there is reason to believe the case will not hold up in court

some prosecutors will use more restraint than others in looking at where the juvenile may end up or the nature of the crime as it would appear to a jury.

In some counties, where juvenile prosecutors work the case until it is bound over to the adult system and then pass it to an adult prosecutor, there may be a meeting before filing to decide how the case will hold up in the adult system based on the police statements and available evidence. Behavior in this regard varies from county to county as well as prosecutor to prosecutor.

After filing, the strength of the case often deteriorates with time. Prosecutors are well aware of this, they often have a goal of getting the juvenile bound over and so try to charge the highest charge possible without abridging the law. Thus, there is evidence of overcharging at the filing stage. An example of this would be a case where the crime is reported as a 3rd degree felony aggravated assault and it is screened as a 3rd degree shooting a firearm from a vehicle. Also, perhaps a crime appears as a Class A assault or just a simple assault, but is charged as an aggravated assault with serious bodily injury so that it will fall under the SYOL. The logic behind this behavior being that the higher charge you start with, the higher disposition you will end up getting for sentencing. However, differences in prosecutor exposure to severity of crimes has caused some crimes to be overcharged in the juvenile system and bound over, only to be perceived as less serious in the realm of the adult system. This ultimately affects sentencing and may well lead to milder adult sentences than juvenile prosecutors, or legislators for that matter, might expect.

Plea Negotiation

It has been estimated that between 90-95% of criminal cases are ultimately settled by way of a plea negotiation. The SYOL was drafted in anticipation of this. For instance, a draft of a report given to legislators voting in 1994 on the Act stated:

Under the proposed Law, what a youth is charged with more directly impacts both the forum and the burden of proof in the Juvenile Court. We will probably see much more plea negotiation. This could result in a reduction of the number of deadly sin charges filed as prosecutors get juveniles to plea to a lesser felony under threat that they will file the deadly sin and get it transferred to adult court.

In most cases, we see prosecutors filing by the facts of the case (as discussed above) and then plea negotiating after the file has been made. However, all counties still plea negotiate at the filing stage, even though it appears from interviews that this is done more in rural counties, or counties with less case volume.

After the prosecutor files a case as an information to be bound over to District Court there is

an initial appearance in front of the judge to schedule a Preliminary Hearing and appoint defense counsel to the defendant.

A plea agreement can be reached before the Preliminary Hearing, and then a hearing would not be held. In these cases a juvenile would waive the Juvenile Court jurisdiction and agree to plead to a lesser charge in the adult court or waive with the understanding that prosecutors would not seek to move them to the adult court. Also, if you're in the Preliminary Hearing, it may become apparent that there's not evidence for keeping the charge as a Serious Youth Offender, so an agreement can be initiated at this point to keep the case in the juvenile system on lesser charges. For example, rape is not a Serious Youth Offender crime, but aggravated sexual assault is. If the prosecutor does not have evidence for whatever the aggravating factor was, the juvenile can stay in the juvenile system on rape, rather than on a first degree felony in the adult system.

Defense attorneys are trying to plea for the juvenile by stipulating secure facility placement if the juvenile is kept in the juvenile system on reduced charges, or as a condition that the prosecutor will recommend probation if the juvenile is bound over as an SYO. Also, the defense will try to trade a clients testimony for reduced charges and allow the youth to remain in the juvenile system in a situation where there are codefendants. This scenario is more likely to be played out if the client represented by the defense has less of a juvenile record than the involved codefendants.

If it is a group crime, prosecutors will want to use one of the defendants to testify against the others. They may use this as leverage to get the juvenile bound over, but on the stipulation that they will recommend probation instead of prison once they get into District Court. Perhaps the main reason a prosecutor would plea bargain, besides saving time and resources, would be because of an evidentiary problem. Something may come to light after the initial charge is filed that suggest a lesser chance of success at trial. Prosecutors are generally looking at plea outcomes based on what they will get in the adult system. There are many cases in which the prosecutors will not make an offer. Perhaps the only time an offer to keep the juvenile in Juvenile Court is made is when the juvenile does not have a substantial prior record, or doesn't have a prior offense involving the use of a firearm or a weapon, or as mentioned before, when the evidence does not appear that it will hold up at trial. So those factors that they may not consider at the time they're filing they may consider with regard to later plea negotiating.

Some counties have policies that, schedule permitting, prosecutors should follow the case all the way through from juvenile to the adult system. Other counties hand the case off. Yet, when it comes to plea negotiating, several cases are bound over on the condition that the charges will be

reduced once in District Court. This presents somewhat of a problem as the prosecutors that worked on a case in Juvenile Court and follow the case to the District Court won't have the same perspective as the prosecutors who work in the District Court.

A juvenile prosecutor following a case through might never agree to a jail sentence and then probation, whereas many of the prosecutors in District Court will agree to something like that for adults with a similar offense, or an with a similar criminal history. The juvenile prosecutor may ask for prison for his bound over juvenile, although if an adult committed the same offense, they would be offered a different plea negotiation and there would be a concession that "if you plead guilty, then we won't ask the judge to send you to prison; we just want admission of guilt and then we'll put you on probation."

Breakdown in communication between adult and juvenile prosecutors has contributed to juvenile prosecutors attempting to get prison sentences for crimes that most adult system prosecutors would seek only a jail and probation sentence. As mentioned in a previous section (*Filing Stage*), juvenile prosecutors, besides trying to charge the highest crime possible, tend to have less experience with serious crimes and thus tend to "overcharge." When the facts come out in the adult system, the crimes seem less egregious in the context of what is seen more commonly in the adult system. This contributes to bound over juveniles receiving less harsh sentences than many prosecutors, or even legislators for that matter, might expect.

Another scenario is that a juvenile is bound over on a deadly sin charge and plea negotiation may take place in District Court. Perhaps a few charges are dismissed for admission of guilt, or testimony at a trial if there are co-defendants. Plea negotiation is the normal order of things in the District Court. Even SYO cases very rarely go to trial.

A very important side effect of plea negotiation on record keeping and courts data is that it causes the appearance of several cases of SYO (ten deadly sins) who appear as if they are filed as a petition. Interviews with juvenile judges show that rarely are the three retention conditions met that would keep an SYO in the juvenile system as a petition. What appears to be happening is that the initial charge gets recorded in the juvenile data either as it appears on a police report or as it is filed by a prosecutor, depending on clerk and county. The actual disposition, appearing as a group of lesser offenses, will appear in the juvenile data as well, without the initial charge being modified. So, several cases in which the juvenile appears to have been kept in the juvenile system by virtue of the three retention conditions, is actually a plea negotiation and a petition due to a change in the charges. This happens frequently and can give the misleading impression that prosecutors are filing cases as

petitions when they are not. The majority of plea negotiation in SYO cases is taking place prior to bind over, though conditions of the agreement will obviously affect District Court sentencing.

As mentioned in a previous section, the legislature as well as many juvenile prosecutors assumed that adult sanctions were more punitive than juvenile sanctions which concentrate more on rehabilitation. Juveniles bound over to the District Court are more likely to receive jail/probation sentences rather than prison sentences. This fact has to do with the law not targeting chronic offenders on the juvenile side, as well as the fact that adult sanctions for similar crimes seem to be affected more by the disposition after plea (as mentioned above). Also, chronicity is considered in sentencing in District Court. So, where the statute did not target this in the law (as it pertains to filing or as consideration in the Preliminary Hearing), previous criminal history is being targeted in adult system plea negotiating and sentencing. The result is less severe sanctions than one would expect from those qualifying as SYO's probably due to low levels of chronicity.

Data from the JIS sample indicates that for youth who receive a preliminary hearing in Juvenile Court (76.3% of SYOs July 1995 to December 1998), the majority (53.6%) have one or no previous felonies. 74.6% have three or less previous felonies. They also do not have many misdemeanors. In fact 50.2% have two or less, and 61.3% have three or less. This suggests that the majority of SYO offenders are not chronic delinquents. As stated above, this may contribute to perceived "soft" sentences in District Court.

Knowledge of sentencing in the adult court has caused defense attorneys to use stipulation for secure facility placement as a viable negotiating tool if they can show that such secure facility placement would actual enhance public safety as opposed to having a juvenile bound over, released on bail, and then given an adult probation sentence. Defense argues that bind over is tantamount to just being "put back on the street." The defense says "Why not put a juvenile in Decker Lake for a longer period of time than they would get in the adult system. Reduce the charges and keep them here." The prosecution's main rebuttal to this is that though many youth are given sentences of probation with a little bit of jail time (days), they often have prison sentences hanging over their heads if they violate probation.

Data seems to confirm prosecutorial reports; however, it also reveals some startling facts about District Court sentences. Data suggests that only 33.1% of offenders are sentenced to prison in District Court. The remaining 55% are sentenced either to probation, jail, or a combination of the

two¹⁵. Of those sentenced to prison, the majority are sentenced for one to five years. Of those sentenced to jail, the majority (52.5%) are sentenced to a year; and for those sentenced to probation, the majority (53.3%) are sentenced to three years. All offenders sentenced to probation were given a suspended sentence “hanging over their heads”. 61.0% of offenders sentenced to jail are given a suspended sentence; however, not all suspended sentences were prison sentences. Therefore, although the majority of offenders sentenced to probation or jail are given suspended sentences, this does not suggest that they have prison hanging over their heads.

Thus it seems that non-chronic SYO cases (which seem to make more than half of all SYO cases) are often bound over and receive probation sentences due to their scant offending history, and their youth. This population is released more often on bail for the same reason. Ironically, this population is the very population that juvenile rehabilitative resources is most likely to help. But, because of the SYOL, after transfer, they are no longer eligible for placement in juvenile programs. They are either in jail, in prison, or on the street with little to no resources for rehabilitation. According to data, since only 35.5% go to prison, the rest are presumably either on adult probation, or soon to be – and without juvenile resources. The services of the juvenile system instead go to the chronic offenders who, just because they have not committed one of the enumerated deadly sins, are still coming in and out of “costly juvenile programs”. The certification is used less often in general now because prosecutor time is taken trying to bind over “serious offenders” as the statute dictates.

Legislative Intent (see Appendix I)

_____ One of the main issues surrounding the law and its implementation is whether criminal justice officials (judges, attorneys etc...) are following the intent of the State Legislature. Of course, to follow the intent of the legislature it is necessary for those working in criminal justice to have a knowledge of the intent. The core of the intent is increasing **public safety**. Besides not wanting to use juvenile rehabilitation resources on offenders who have demonstrated that they are not amenable to treatment, the law sought to get tough on “serious, chronic offenders” by attempting to give more severe sanctions to such youth.

Problems Specific with (602)

Interviews show criminal justice officials to be confused by the intent of the legislature in relation to who the (602) ten deadly sins law is targeting. The confusion does not stem from prosecutorial ignorance of intent. In fact, those interviewed overwhelmingly cited at least one of the

¹⁵11.0% weren't coded for a primary sentence, probably because those cases weren't given formal disposition hearings

catalysts mentioned in the introduction as the reason for the law. The confusion seems to be confined to attempting to reconcile the ten deadly sins with the intent of the legislature of targeting “chronic” offenders. It appears that these chronic offenders are not being targeted by the statute. Assumptions about chronic offenders committing more and more egregious crimes over time do not bear out when one considers those charged under the ten deadly sins. To the surprise of many, those committing the majority of crimes under the ten deadly sins are not “chronic” offenders.

If the legislature was attempting to get at habitual offenders by enacting this statute, it is clear from court data as well as interview attitudes, that most chronic offenders are not being targeted by the law. The offenders that are being targeted by the law are only those who commit one of the enumerated deadly sins. Of course, there already exists a certification (603) to target these chronic offenders as several officials interviewed pointed out. Ironically, since the statute targets “serious” offenders and not “chronic” offenders, those juveniles who are not chronic, but are bound over as SYO’s under the ten deadly sins are not the juveniles who have tried and failed with juvenile programs. In this sense, these juveniles have never had programs and services applied to them in the juvenile system. A positive note is that some serious chronic offenders (those with a lengthy criminal history, who have tried and failed many times in the juvenile system) filed under (602) are being sentenced more severely in District Court. Unfortunately, these account for less than half of all SYO’s filed. This is no fault of the prosecutors, but is due to the way the law targets “seriousness” as opposed to “chronicity.”

Also, though the law has been posted in secure facilities and Juvenile Courts, and shown to juvenile offenders believed by probation officers to be potential SYO’s, the overall perception of those working in the juvenile system is that the statute has not had a deterrent effect on juvenile crime. In fact, problems with (601) show that the law has compromised public safety¹⁶.

Problems Specific with 601 Part 1(b)

It has found that several juveniles in a secure facility will assault a resident or staff in order to qualify under the SYOL and be sent through the adult system.¹⁷ In fact, officials at Youth Corrections have estimated that as many as many as 20% of the secure facility population has been transferred

¹⁶ Because of “softer” sentencing in district court, many youth offenders may be actually more likely to re-offend than if they had been sentenced in juvenile court. Unfortunately, current data does not seem to offer any conclusive statements about re-offense.

¹⁷ Juveniles who commit a felony subsequent to secure confinement are automatically waived to district court. Judicial Code § 78-3a-601.

since the SYOL was implemented in 1995. It is the opinion of many in Youth Corrections that a vast majority of those juveniles committed the felony with the intent to be transferred into the adult system. They have learned that, this way, they will most likely receive an inconsequential sentence and be out on probation later that week. This may be more appealing than completing the time they were sentenced to spend in a secure facility. Even if the District Court judge sentences them to prison, they often receive parole sooner than they would have been released from Youth Corrections secure custody.

When the SYOL was first implemented, the juveniles who were transferred to the adult system would get out on bail and return to the secure facility to pick-up their personal items. This was not sending a good message to the other juveniles detained in places like Decker Lake. In order to solve this problem, Youth Corrections changed their procedure. Now, a juvenile who qualifies under the SYOL is retained in a juvenile secure facility until a criminal information is filed. At this point, a 602 juvenile receives his preliminary SYOL hearing. If he meets his burden, the criminal information is treated as a petition and the juvenile follows the regular Juvenile Court procedures. If the juvenile does not meet his burden, then he is treated as a 601 juvenile over whom the adult court had original jurisdiction. For these juveniles, based upon the criminal information, the District Court judge issues a warrant, and the adult system retrieves them from the secure facility. At this point, the adult system procedures, such as the right to bail, are in place.

However, the Juvenile Court still retains jurisdiction, in case the juvenile is acquitted or there is lack of sufficient evidence to prosecute. The juvenile system requests a notice of bail and, with their concurrent jurisdiction, can place a juvenile out on bail into a juvenile facility to complete the sentence from his previous crime(s). However, believing it is the intent behind the law, Youth Corrections has made it their policy to terminate Juvenile Court jurisdiction only when the juvenile is *convicted* in District Court. Therefore, any subsequent crime committed by the juvenile, no matter how minor, will be prosecuted automatically in adult court. If the District Court places the juvenile on probation or, after serving a prison sentence, puts him on parole, the juvenile court has no right to place him in custody to finish a previous sentence. Although this approach resolves several concerns, it still allows violent offenders to be immediately returned to the streets on probation.

Judge Discretion

_____ Discretion of juvenile judges is completely removed by (601) and severely limited by (602). As described above a (602) juvenile may rebut the presumption of his bind over by “clear and convincing evidence” only if *all three* of the following criteria are met:

- 1) the minor has not previously been adjudicated delinquent for a felony offense involving the use of a dangerous weapon;
- 2) if the offense was committed with one or more persons, the minor appears to have a lesser degree of culpability than the codefendants; and
- 3) the minor's role in the offense was not committed in a violent, aggressive or premeditated manner.

These criteria were designed to create a very difficult burden on the juvenile. The judge considers these factors after he or she has made a decision as to probable cause, and then they look at the retention factors. If they are satisfied, the Juvenile Court judge would treat the criminal information filed against the defendant as a juvenile petition and the juvenile would be held for trial as a juvenile.

The first retention factor is a matter of book keeping. The matter is simply looked up in the criminal history of the juvenile. The second retention factor also can be demonstrated, but is based on a crime committed in a group context. Finally, the third retention condition is nearly impossible to meet. This last retention condition essentially removes any legitimate possibility of a judge retaining a youth in Juvenile Court by petition, except in extremely rare circumstances. Since all three factors must be met, the near impossibility of legitimately meeting the third factor severely limits the discretion of the juvenile judges. As far as the third retention condition is concerned, judges who go by case law definition of what "violent, aggressive, and premeditated" have been used to mean in the past have their hands tied trying to show "aggravated" crimes as not violent or aggressive by *clear and convincing evidence*.

Since it was revealed through the interview process that the retention conditions are seldom met, Juvenile Court data showing initial charges as one of the ten deadly sins, as well as a petition is likely most often due to plea negotiating, where the disposition would be shown without the initial charge being removed. If a plea agreement is reached in the Preliminary Hearing, it appears in the record as if it was actually the retention conditions that have been met, rather than a plea negotiation. Given the nature of the retention conditions, it is almost impossible for a youth filed as an SYO to be retained in Juvenile Court; however, 37.5% of those filed are retained. Why does the court data conflict with interview data? Judges may be "stretching" the conditions in order to retain someone in the Juvenile Court or the plea negotiating process may have altered the charges and the retention was not due to meeting the retention conditions but to the changes in charged offenses. Plea negotiations are not consistently recorded electronically or always available in the hard copy of the file.

Unlike the adult court, the juvenile judge most likely knows the defendant and has seen him or

her before in his court. In some counties, there is a “one child, one judge” policy. This system is designed to help the judge direct the programs and services to the juvenile. The retention conditions essentially take this away from the judges. Often judges feel that if they could take background factors into consideration in the Preliminary Hearing, especially criminal record and previous experience with juvenile services, then those “serious” offenders who may be amenable to rehabilitation could be kept in the juvenile system, and the “chronic, serious” offenders who are known to have worn out “costly juvenile programs” will be targeted for bind over. This would more narrowly tailor the ten deadly sins to those juveniles the legislature wants removed from the juvenile system, and would allow more time for prosecutors to consider chronic juvenile offenders who do not commit one of the enumerated SYO offenses to be considered under certification (603). Public safety would be enhanced as “chronic” offenders would still be more likely to receive prison sentences, and non-chronic serious offenders would more likely be in a secure facility rather than out on probation.

It is clear from the interview data that those asked to suggest a statutory change that would better target “chronicity” sighted amending the retention conditions to take this factor into account and to allow the judge more discretion. A negative effect of taking this discretion away has been the binding over of juveniles with a mild criminal history who have ended up receiving probation in the adult system. This has compromised public safety. Besides being back out on the street, such juveniles are not given aid in obtaining GED status or learning employment skills to the degree that they would in the juvenile system which further contributes to the likelihood that they will re-offend.

Process/Outcome

Those working in the legal system are in agreement that the outcome of the case after it has been filed is determined by the alleged and provable facts of the case. However, for the ultimate disposition or sentencing they look at prior adjudications or prior record, family support, victim input, and the seriousness of the crime. With the juvenile data showing so many juveniles retained in the juvenile system who were first filed as SYO’s, administrators began to wonder if prosecutors were not filing petitions, instead of informations (see *Filing Stage*). This has been cleared up by noting problems with the juvenile data system and by examining plea negotiation. Due to the nature and frequency of plea negotiation, some officials worried that filing a juvenile as a SYO under (602) and having he or she bound over on an agreement of reduced charges would compromise sentencing in the adult system. That is, if a juvenile is bound over on aggravated assault with an agreement that once he is bound over he will plea to simple assault, then sentencing would commence on simple assault and not aggravated assault.

The worry here is that court records would not be tracking SYO's if they showed up with a disposition less than one of the ten deadly sins. It has been found that seldom is a juvenile convicted of an SYO offense in the District Court. Rather, the charge is almost always reduced to a lesser form (e.g. from 2nd degree to 3rd degree felony). Often, adult dockets show "amended" next to a new disposition, but do not reveal which SYO charge the disposition was amended from. Thus, data is confounded in this way. Most D.A. offices do not have anything built in that encourages or allows for collaboration between the adult and the juvenile system. Attorneys can force it to happen by keeping the case or by talking to the person who's going to prosecute it, but they are not required to do so.

Another issue with the SYOL is a noted over-representation of minorities in the population of SYO's. Although race is not coded in adult system data, JIS data indicates that less than half of SYO qualifiers are coded as "white". Therefore, in terms of SYOs, *whites* are the minority. As far as disparities in race/ethnicity versus the general population, prosecutors generally have stated that it is not discussed, or taken into consideration when they screen the case with the police. This study does not attempt to explain the disparity. Youth characteristics that seem to be the most worrisome to judges are size of the juvenile and his ability to defend himself in a prison environment, or in jail. This factor as well as the presence of mental impairment (e.g. lower functioning; lower IQ) in a juvenile have invariably influenced case outcomes.

Through discussions with officials on which deadly sins should be included, it seemed apparent that several times prosecutors felt that the crime was serious enough to warrant inclusion as a deadly sin. Some exercised discretion in charging a crime that did not fit exactly into one of the ten. For instance, the sexual assault category under adult crime excludes all crimes where the victim is under 14 years of age, because there is the assumption that there are higher penalties for those crimes. So, as a 16-year-old you could perpetrate against a 15 or 20-year-old, and be treated as a Serious Youth Offender. Yet, you could perpetrate against a 3-year-old or a 13-year-old, and because your victim is a child, it's not a Serious Youth Offense.

Conclusion

The legislature wanted serious chronic offenders pushed through the system at a faster pace, saving resources for those who could be rehabilitated. In attempting to frame a law that expedited serious chronic offenders into the adult system, the legislature assumed that adult sanctions are tougher than juvenile sanctions and that public safety could be better served by transferring such youth to the adult system. They also assumed that the juveniles committing the enumerated "deadly sins" to be more likely to be chronic offenders. Yet, since the Mohi case, as well as other factors,

limits the discretion of juvenile prosecutors, chronicity is *not* being taken into account when cases are initially filed. The prosecutors are only allowed to take the facts of the case and the available evidence as factors in deciding how to charge the juvenile. However, this process varies from county to county and is often driven by case load volume and time constraints.

Also, in the Preliminary Hearing when the decision is made as to whether the (602) juvenile should be bound over to the adult system, the judges' discretion has been limited to the point of creating a near impossible burden on the juvenile to show that he or she should be kept in the juvenile system (see three retention conditions). So, chronicity is not targeted here either. The end result of taking judicial and prosecutorial discretion out of the process has been that juveniles who may be targeted as amenable to rehabilitation programs are getting bound over to the adult system as Serious Youth Offenders.

Clearly if the law would target "chronicity" instead of just seriousness of the offense then SYO cases would be more likely to get prison sentences (severe sanctions). Serious offenders without a chronic juvenile record could also be considered for "specialized" Youth Corrections placement. Public safety would be enhanced since currently those juveniles bound over to the adult system under the SYOL are being given probation sentences, based in part on their lack of chronic offending patterns. Youth prosecuted in the adult system are often less employable and have less access to rehabilitation programs.

A juvenile with a mild criminal history filed as a Serious Youth Offender will most often negotiate for a lesser charge, or group of lesser charges. This plea sentence will most often consist of probation or probation with jail time. Public safety is not enhanced as the juvenile is out on the street after making bail or after doing limited jail time. Adult Probation is far less intensive than Juvenile Probation. The charge on their adult record cannot be expunged, making them less employable, and perhaps less apt to get further education. These factors contribute to a likelihood of re-offending.

Bound over juveniles are removed from "costly juvenile programs" but the majority of them are out on probation. This is in part due to the statute attempting to target offenders by the seriousness of the charge, rather than, or in addition to, the criminal history of the offender.

Recommendations

One suggested solution to part of this problem has been raised, but also criticized – **concurrent jurisdiction**. It has been suggested that if the adult court and the Juvenile Court had concurrent jurisdiction over the juveniles under the SYOL, then the Juvenile Court could lock-up an offender on probation from the adult court. The question is, if a juvenile serving his original sentence

in a secure facility commits a subsequent felony, is transferred to the adult system and put on probation, can Youth Corrections place him back into the juvenile secure facility to finish his original sentence?

Concurrent jurisdiction would also allow District Court judges to give prison sentences to bound over juveniles in which the first part of the sentence is carried out at a juvenile secure facility until a juvenile reaches a certain age.

The expansion of the juvenile system to accommodate these offenders might also be considered. Currently the Utah youth corrections system can retain youth until age 21. It has been very unusual for youth to continue in the Utah system past age 18. The California Youth Authority has jurisdiction until age 25. A review of expected lengths of stay for serious youthful offenders in the Utah prison system may suggest retention in the youth system.

Another consideration includes addressing issues around management information systems between the juvenile and adult systems. Many of the statistical limitations of this study could be avoided in the future through implementation of a designated marker or indicator that could follow an individual from the juvenile to adult data bases. This seems particularly relevant to the future evaluative and research endeavors that involve The Serious Youth Offender Law.

Initial reviewers of this report have suggested that some attention be given to implementing an exceptional modification to the adult guidelines for the juveniles who meet criteria for SYO status. This is in large part supported by the observation that for purposes of scoring on the adult guidelines, the juvenile criminal record is utilized, but is often discounted on the adult matrix. Also, the plea negotiating process often reduces the offender from an SYO to an offender, who, when the adult court supplies its matrix, is not eligible for prison placement. The adult sentencing guidelines take into account factors around risk and supervisory-history that are only adult related. It is suggested that this issue be assessed by the Juvenile Justice Subcommittee of the Utah Sentencing Commission.

The Constitutionality of the SYOL

The constitutionality of the SYOL was challenged on several grounds and was upheld in the Utah appellate court case, State ex rel. A.B., 936 P.2d 1091 (1997), cert. denied. The court consolidated two cases in which the juveniles had been bound over to District Court to stand trial as adults under the SYOL. The court considered and rejected their constitutional challenges of the ten “deadly sins” section of the SYOL.

First, the juveniles argued that the three retention factors that allow the juvenile to rebut the presumption of transferring jurisdiction to the adult system violated the Uniform Operation of Laws clause, article I, section 24 of the Utah Constitution, and the Equal Protection Clause of the United States Constitution. The juveniles in the Mohi case argued the unconstitutionality of direct-file based on these two constitutional provisions as well. However, the court concluded that the SYOL had remedied the constitutional defects of direct-file because it created a strong presumption of District Court jurisdiction, instead of wholly unguided prosecutorial discretion. Furthermore, the court found that the SYOL serves a legitimate purpose to curtail the increase in violent juvenile crime, and to protect the public and younger, less serious juvenile offenders, still in the juvenile system, from the more violent offenders who are as dangerous as adult criminals.

Second, the juveniles argued that the SYOL violated their constitutional rights against self-incrimination.¹⁸ The defendants focused on the heavy burden of proof placed upon them and the nature of the retention factors, specifically the third factor. In many circumstances, the only evidence available to a juvenile seeking to rebut the presumption would be his own testimony. However, the Juvenile Court Act does not provide immunity to the testimony, which can be used in the defendant's later trial. Utah Code Ann. § 78-3a-515(3). "Thus, the juvenile must make the impermissibly difficult choice between testifying to prove the retention factors, knowing that such testimony may damn him later in a criminal trial, and remaining silent, knowing that silence will most definitely result in transfer to adult court" (Rudof, 1998). The appellate court upheld the statute against the constitutional challenge because the defendants have means other than their testimony to prove the retention factors, and moreover, "the right against self-incrimination protects accused persons from compelled self-incrimination, not from hard choices." State in rel. A.B., 936 P.2d at 1100.

Third, because the right to a Juvenile Court proceeding is not fundamental, the court held that no such right was violated by requiring a juvenile to prove the three retention factors by clear and convincing evidence.¹⁹ The court stated, "The Legislature may at its prerogative determine that the high level of violent juvenile crime justifies the presumption of District Court jurisdiction without

¹⁸ Article I, section 12 of the Utah Constitution states, "The accused shall not be compelled to give evidence against himself . . ." Utah Const. art. I, sec 12.

¹⁹ The Utah Supreme Court, in State v. Bell, held that "a juvenile has no right to treatment in the juvenile system or 'to be specially treated as a juvenile delinquent instead of a criminal offender.'" 785 P.2d 390, 399 (1989).

offending due process principles.”

Fourth, the juveniles argued that the second and third retention factors were void for vagueness. The second retention factor requires the defendant to prove he had a “lesser degree of culpability than the codefendants.” Utah Code Ann. § 78-3a-25.1(3)(b)(ii). The court rejected the defendants’ argument that “lesser degree of culpability” meant a lesser degree of offense. 936 P.2d at 1101. “If the degree of culpability language meant that a juvenile satisfying the second retention factor could reduce the underlying charge, it would effectively eliminate the legislatively created presumption of District Court jurisdiction.” The court also rejected the challenge of vagueness of the third retention factor which requires the defendant to prove that his “role in the offense was not committed in a violent, aggressive or premeditated manner.” Judicial Code § 78-3a-602. The defendants argued that all ten of the “deadly sins” are, by their very nature, violent and aggressive. However, the court held that although the ten “deadly sins” are inherently violent and aggressive, there can be varying levels of violence and aggression, of which a lower level may defeat the presumption of adult court jurisdiction.

The language used by the court in State ex rel. A.B. regarding the third retention factor was the subject of further litigation. In State ex rel. Z.R.S., the juvenile argued that the court must conduct a balancing test to determine the degree of violence and aggression. 951 P.2d 1114 (Utah Ct. App. 1998). The court rejected this argument and stated, “This is not a balancing test, nor does the statute require the trial court to determine whether treatment as an adult is warranted. On the contrary, if the juvenile’s role was violent, aggressive, or premeditated, the Juvenile Court’s retention of the case is not proper. The burden is not the state’s, it is the juvenile’s.”

The Utah Supreme Court has heard only one case on the SYOL to date. In State v. M.L.C., the court found that a category three juvenile awaiting a SYOL hearing was not entitled to bail. 933 P.2d 380 (1997). M.L.C argued that upon the filing of criminal information, he was immediately a “person charged with a crime” and as such, he should be entitled to bail.²⁰ The court, however, held that the criminal information has no legal effect against the juvenile until the Juvenile Court determines that bindover to the adult system is appropriate. If the juvenile establishes the retention factors during the SYOL hearing, then the Juvenile Court would be compelled to treat the information as a juvenile petition and try him as a juvenile. Judicial Code Ann. § 78-31-602. In such a situation,

²⁰ Article I, section 8 of the Utah Constitution provides, with certain exceptions, “All persons charged with a crime shall be bailable . . .” Utah. Const. art. I sec. 8.

the case would proceed as a civil matter and the juvenile would not be entitled to bail.²¹

²¹ Utah Code Ann. § 78-3a-30(10) states, “Provisions of law regarding bail are not applicable to children detained or taken into custody . . .” And § 78-3a-44 states, “Proceedings in children’s cases shall be regarded as civil proceedings, with the court exercising equitable powers.”

Appendix I

Appendix I

78-3a-601. Jurisdiction of district court.

(1) The district court shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with:

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

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101.

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

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

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78-3a-104 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the minor.

Amended by Chapter 78, 1998 General Session

78-3a-602. Serious youth offender -- Procedure.

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

(a) any felony violation of:

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

(ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing serious bodily injury to another;

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

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

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

- (vi) Section 76-5-405, aggravated sexual assault;
- (vii) Section 76-10-508, discharge of a firearm from a vehicle;
- (viii) Section 76-5-202, attempted aggravated murder; or
- (ix) Section 76-5-203, attempted murder; or

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

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

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

(b) If the juvenile court judge finds the state has met its burden under this subsection, the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

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

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

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this subsection as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not

met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

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

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

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

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

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

(10) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the juvenile when there is an acquittal, a finding of not guilty, or dismissal of the charges in the district court.

Enacted by Chapter 1, 1996 General Session

Amended by Chapter 239, 1996 General Session

78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

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

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

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

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

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

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

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

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

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

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

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

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

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

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

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary

with the court.

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

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

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

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

(a) certifying that finding; and

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

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

(9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

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

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

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of the Division of Youth Corrections and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) A minor may be convicted under this section on the charges filed or on any other offense arising out of the same criminal episode.

(14) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of the charges in the district court.

Amended by Chapter 365, 1997 General Session

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