

1 **Rule 23A. Hearing on conditions of Section 78A-6-702; bind over to district**
2 **court.**

3 (a) If a criminal indictment under Section 78A-6-702 alleges the commission of a
4 felony, the court shall, upon the request of the minor, hear evidence and consider the
5 conditions in paragraph (c). ~~determine whether the conditions of paragraph (c) exist.~~

6 (b) If a criminal information under Section 78A-6-702 alleges the commission of a
7 felony, after a finding of probable cause in accordance with Rule 22, the court shall hear
8 evidence and determine whether the conditions of paragraph (c) exist.

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

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

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

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

19 (c)(4) the number and nature of the minor's prior adjudications in the juvenile court;
20 and

21 (c)(5) that public safety is better served by adjudicating the minor in the juvenile
22 court or in the district court.

23 (d) At the conclusion of the minor's case, the state may call witnesses and present
24 evidence on the conditions required by Section 78A-6-702. The minor may cross-
25 examine adverse witnesses.

26 (e) If the court does not find by clear and convincing evidence that it would be
27 contrary to the best interest of the minor and the best interests of the public to bind the
28 minor over to the jurisdiction of the district court, ~~the conditions required by Section 78A-~~
29 ~~6-702 are present,~~ the court shall enter an order directing the minor to answer the
30 charges in district court.

31 (f)(1) Upon entry of an order directing the minor to answer the charges in district
32 court, the court shall comply with the requirements of Title 77, Chapter 20, Bail. By
33 issuance of a warrant of arrest or continuance of an existing warrant, the court may
34 order the minor committed to jail in accordance with Section 62A-7-201. The court shall
35 enter the appropriate written order.

36 (f)(2) Once the minor is bound over to district court, a determination regarding where
37 the minor is held shall be made pursuant to Section 78A-6-702.

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

40 (f)(34) The jurisdiction of the court shall terminate as provided by statute.

41 (g) If the court finds probable cause to believe that a felony has been committed and
42 that the minor committed it and also finds that all of the conditions of Section 78A-6-702
43 are present, the court shall proceed upon the information as if it were a petition. The
44 court may order the minor held in a detention center or released in accordance with
45 Rule 9.