

Keeping Serious Cases in the Juvenile System: Litigating the Principal Actor Requirement

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Objectives

- Understand the importance of keeping youth in the juvenile system.
 - Understand the threshold issues the State needs to prove during the probable cause and retention hearings.
 - Understand what is a “qualifying offense” and what “principal actor” really means.
 - Understand when to file a motion asserting your client was not the principal actor.
 - Sample motion.
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What We Ask From You

- Use the Chat box
 - Keep your cameras on if possible!
 - Ask Questions!
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**What does the Research
Say About Keeping
Youth in the Juvenile
System?**



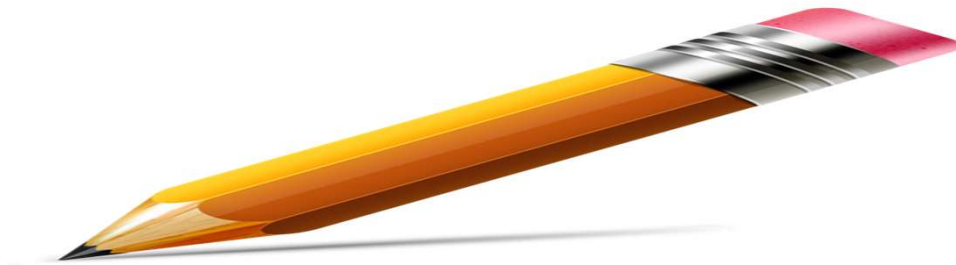
- The juvenile brain is not fully developed by age 18; it continues to develop until age 25.



- Youth transferred to the adult system are more likely to become entrenched in gang life out of **self-preservation**.



Youth will not receive age-appropriate treatment or education in the adult system-- even when they do, it will likely not be until the end of their sentence.



- For youth in adult facilities, suicide rates were 5 times higher than for those not in custody.
 - Transfer to the adult system should be reserved for only the “worst of the worst”:
 - Chronic violent adolescents
 - Only youth who pose the greatest possible threat to public safety
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Transfer to adult court is counterproductive and not in the interest of public safety:

- Juveniles who are transferred are more likely to reoffend and reoffend more quickly and more often than those in juvenile court.



Serious Youth Offender Transfer Statute

Utah Code § 80-6-503, et. seq.
May 2020

Poll Question

Who bears the burden in transfer cases?

Remember:

— The State Bears the Burden to Establish that the
Minor Should NOT be Retained in Juvenile
Court. —

The State has an Uphill Battle Because Transfer is Contrary to All of the Research!



Utah Code § 80-6-503: Criminal Information for Minor in Juvenile Court

- Minor charged with felony
- Prosecuting attorney may file a criminal information
- If minor was **PRINCIPAL ACTOR** and information alleges a **QUALIFYING OFFENSE**.



What is a Qualifying Offense?

16 & 17 years old

- Aggravated assault resulting in serious bodily injury
 - Attempted aggravated murder
 - Attempted murder
 - Aggravated kidnapping
 - Aggravated sexual assault
 - Aggravated arson
 - Aggravated burglary
 - Aggravated robbery
 - Discharge of a firearm
 - An offense other than 1-9 involving the use of a dangerous weapon
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14 and 15 years old

- Aggravated Murder or Attempted Aggravated Murder
 - Murder or Attempted Murder
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Principal Actor: What does it Mean?



Hypothetical

- 15-year-old Maria hangs out frequently with Joseph, 19 and Daniel, 21.
 - One night, the three decide to lure rival gang members to a parking lot and rob them at gun point.
 - Joseph and Daniel ask Maria to get the guns to use for the robbery.
 - Maria steals two guns from her father's bedroom.
 - Maria calls and arranges to have the other gang members meet them for the fake “drug deal” in a vacant parking lot.
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Continued...

- Maria drives them to the location.
 - Once there, Joseph, and Daniel rush the car to rob the rivals.
 - Things go awry and Joseph and Daniel shoot into the car, killing the driver.
 - Maria drives the three of them away from the scene.
 - The State files an information to transfer Maria to the adult system for aggravated murder.
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Poll Question:

Is Maria a principal actor for the Aggravated Murder charge for the purpose of the transfer statute?

Legislative History is Helpful to the Interpretation

- Several actions on part of the Utah Legislature suggest that, regardless of an accomplice's *liability* to an offense as being equal to that of a principal actor, the Legislature did not intend to sweep 'accomplice' within the definition of 'principal actor' for purposes of Utah Code section 80-6-503(1).
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- “Principal Actor” language first appeared in the 2015 Juvenile Offense Amendments, Senate Bill 167
 - “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~~ **may** be by criminal information and filed in the juvenile court if the **minor was a principal actor in the offense . . .**”
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Floor Statements

- Senator Osmond prefaced each presentation of SB 167 with reference to the Cooper Van Huizen case.
- This case inspired many of the changes to the SYO statutes.
- One of the main concerns was that Cooper was not the “primary offender” or “principal actor” of the offense.
 - *Juvenile Offender Amendments: Hearing on S.B. 167 Before Senate Judiciary, Law Enforcement, and Criminal Justice Comm., 61 st Leg., at 00:11:00 (Feb.12, 2015) (statement of Sen. Aaron Osmond, Utah Senate)*

- Utah Legislature has amended serious youth offender statutes numerous times over the years.
 - Each time they did so, they have narrowed the definition of who falls within the category of principal actor.
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- Reading ‘principal actor’ as including juveniles who are accomplices of a crime, rather than the primary actor, broadens the term and potentially goes against the Utah Legislature’s intentions given its current trend of narrowing eligibility.
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- The Legislature has also placed an emphasis on looking at the juvenile's specific role in an offense when we look at prior versions and amendments of the SYOA.
 - This adds to the argument that the Legislature intended to exclude transfer of juveniles who did not have the **primary, active** role in an offense.
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CASE LAW

No Clear Definition

- Utah courts and the Utah Legislature have not provided a clear definition of ‘principal actor’.
- But, looking at Utah and Tenth Circuit case law, if we combine language from various cases, a principal actor could be:
 - A person whose conduct shows they are the “initiator or driving force” behind the criminal offense; [State v. Lara](#), 2003 UT App 318, ¶ 27.
 - OR
 - Whose “direct” or “personal” commission of the offense was the “principal cause of harm.”
 - [State in Int. of D.B.](#), 2012 UT 65, ¶ 23.
 - [State v. Leech](#), 2020 UT App 116, ¶ 57, *cert. denied*, 481 P.3d 1039 (Utah 2021)
 - [Ex rel. M.E.P.](#), 2005 UT App 227, ¶ 11; *see also* [State in Int. of Z.R.S.](#), 951 P.2d 1114 (Utah Ct. App. 1998).

- In short, it seems that the difference that Utah courts draw out between a principal actor, and any other actor, is that the principal actor must be the one who ‘actually,’ ‘personally,’ or ‘directly’ commits the crime.
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- Focus should be placed on looking at **conduct** when determining whether one is a principal actor.



Utah Case Law: Conduct of a “Principal Actor”

- Difference between conduct that is:
 - Actual, direct commission of the offense
 - **Principal conduct**
 - Intentional aid directly *connected* to the commission of an offense
 - **Accomplice liability**
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- “A person is liable as the principal if he acts with the requisite mental state and *directly commits* an offense.”
 - In re D.B., 2012 UT 65
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Principal Actor v. Accomplice Liability

- Utah courts, as well as other jurisdictions, often only refer to principal actors in the context of accomplice liability.
 - A look at how courts distinguish between the two, as well as various loose references to ‘accomplices’ and ‘principals,’ aid in the formation of an understanding.
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- A person is “liable as a **principal** if he acts with the requisite mental state and *directly commits an offense.*” [In re D.B.](#), 2012 UT 65, ¶ 23 (emphasis added).

- A person is liable as an **accomplice** if he “solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense[.]” Utah Code [§ 76-2-202](#).

To Prove that a Defendant is Liable as an Accomplice to Murder

- The State must “prove that [the juvenile] intentionally aided [the principal actor] to commit the murder and that [the juvenile] so acted with the intent or knowledge that the murder would be committed.” [State v. Grunwald](#), 2020 UT 40, ¶ 60.
 - Because “principal and accomplice liability are theories of guilt, not distinct crimes,” someone can still be guilty of the substantive crime, under accomplice liability, “even if someone else directly commits the offense.” [Taylor v. Powell](#), 7 F.4th 920, 934 (10th Cir. 2021).
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- Principal liability and accomplice liability are “two *means* of committing the same substantive crime,” with the crucially important distinction that accomplice liability “requires conduct *different* from *direct commission* of an offense,” which is the conduct required of a principal actor.
 - [Taylor v. Powell](#), 7 F.4th 920, 934 (10th Cir. 2021).
 - [United States v. Cooley](#), 1 F.3d 985, 997 (10th Cir. 1993) (“In theory [accomplice liability requires] a special form of conduct different from a primary actor who must also be involved.”).
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- **Conduct that is the principal cause of harm is also likely the conduct of a PRINCIPAL ACTOR**
- **State v. Grunwold, 2020 UT 40.**
- **In re M.E.P., 2005 UT App 227.**
- **Directing someone else, at gunpoint, to fire the weapon could also be PRINCIPAL ACTOR conduct.**
- **State v. Leech, 2020 UT App 116**

- **Actual personal possession of the drugs is PRINCIPAL ACTOR conduct.**
- **State v. Briggs, 2008 UT 75.**
- **Conduct that is not principal actor is LESS DIRECT, HARMFUL, VIOLENT, or AGGRESSIVE**
- **State v. I.R.C., 2010 UT 41**

HOW TO CHALLENGE PRINCIPAL ACTOR:

Motion to Convert Information to Juvenile Petition

- MARIA moves this court to convert the information filed on April 1, 2022 to a juvenile delinquency petition in accordance with Juvenile Rule 17(a) on the grounds that the State has failed to allege in that charging document any fact or conclusion that MARIA was a principal actor in a crime of murder, aggravated murder, or an attempt to commit either of those offenses.
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- Since proof of principal actor status as to a qualifying offense is the sole basis for a juvenile court judge to act as a magistrate for a preliminary hearing under 80-6-504, this failure to allege and prove principal actor status in a qualifying offense is jurisdictional in nature.
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- Given such failure by the State to allege and prove an element of magisterial jurisdiction to hear a preliminary hearing, the juvenile court must amend the charging document to a petition as described in 80-6-504(9), and proceed on it under the original jurisdiction of the juvenile court involving delinquency petitions.
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WHEN: THREE POSSIBILITIES

- 10 days prior to Probable Cause hearing
 - Agree not to press for ruling as State can simply amend information
 - At the close of the Probable Cause portion of the Preliminary Hearing
 - State may argue they still can put on evidence during the retention portion
 - At the close of the Retention portion of the Preliminary Hearing
 - Prior to juvenile court ruling on whether to retain or transfer
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Questions?

Please reach out if we can help

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