

Matthew H. Gwynn proposes the following substitute bill:

Criminal Offenses Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill addresses sentencing and criminal procedures for certain criminal offenses.

Highlighted Provisions:

This bill:

- requires a prosecutor, when reducing the level of certain crimes in an information or as part of plea deal, to explain on the record why the prosecutor is seeking the reduction;
- requires an indeterminate prison term to be imposed, with exceptions, for certain attempt convictions;
- increases penalties for the crime of aggravated child abuse; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-109.2, as enacted by Laws of Utah 2022, Chapter 181

76-5-406.5, as last amended by Laws of Utah 2022, Chapter 181

77-2-2.3, as last amended by Laws of Utah 2024, Chapter 234

77-18-107, as enacted by Laws of Utah 2021, Chapter 260

REPEALS AND REENACTS:

76-3-406, as last amended by Laws of Utah 2024, Chapter 96

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

Section 1. Section **76-3-406** is repealed and reenacted to read:

29 **76-3-406 . Crimes for which probation, suspension of sentence, lower category of**
30 **offense, or hospitalization may not be granted.**

31 (1) As used in this section, "attempted child sexual offense" means an attempt to commit a
32 felony that is:

33 (a) rape of a child as described in Section 76-5-402.1;

34 (b) object rape of a child as described in Section 76-5-402.3;

35 (c) sodomy on a child as described in Section 76-5-403.1; or

36 (d) aggravated sexual abuse of a child as described in Section 76-5-404.3.

37 (2) Except as provided in Subsection (3), a court may not grant probation, suspend the
38 execution or imposition of a sentence, enter a judgment for a lower category of offense,
39 or order hospitalization, if the effect of which would in any way shorten the prison
40 sentence for an actor who commits a capital felony or a first degree felony, or attempts
41 to commit a capital felony or a first degree felony, that is:

42 (a) aggravated child abuse as described in Section 76-5-109.2;

43 (b) aggravated murder as described in Section 76-5-202;

44 (c) murder as described in Section 76-5-203;

45 (d) child kidnapping as described in Section 76-5-301.1;

46 (e) aggravated kidnapping as described in Subsection 76-5-302(3)(b);

47 (f) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);

48 (g) rape of a child as described in Section 76-5-402.1;

49 (h) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);

50 (i) object rape of a child as described in Section 76-5-402.3;

51 (j) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);

52 (k) sodomy on a child as described in Section 76-5-403.1;

53 (l) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);

54 (m) aggravated sexual abuse of a child as described in Section 76-5-404.3; or

55 (n) aggravated sexual assault as described in Section 76-5-405.

56 (3)(a) Except as provided in Subsection (3)(b), a court may suspend the execution or
57 imposition of a prison sentence for an actor who is convicted of an attempt to commit
58 a felony described in Subsection (2) if the court:

59 (i) makes a finding on the record that:

60 (A) details why it is in the interests of justice not to execute or impose the prison
61 sentence; and

62 (B) the actor does not pose a significant safety risk to the victim of the attempted

- 63 crime or the general public; and
- 64 (ii) orders the actor to complete the terms and conditions of probation that is
- 65 supervised by the Department of Corrections.
- 66 (b) If a court suspends a sentence for an attempted child sexual offense the court shall
- 67 follow the provisions described in Section 76-5-406.5.
- 68 (4) Except for an offense before the district court in accordance with Section 80-6-502 or
- 69 80-6-504, the provisions of this section do not apply if the sentencing court finds that the
- 70 actor:
- 71 (a) was under 18 years old at the time of the offense; and
- 72 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
- 73 delayed filing of the information.
- 74 (5) Except as provided in Subsection 77-16a-103(6) or (7), a court may not grant probation,
- 75 suspend the execution or imposition of a sentence, enter a judgment for a lower category
- 76 of offense under Section 76-3-402, or order hospitalization under Section 76-3-201 or
- 77 77-18-105 or Title 77, Chapter 16a, Commitment and Treatment of Individuals with a
- 78 Mental Condition, if the court is prohibited from doing so by this section.

79 Section 2. Section **76-5-109.2** is amended to read:

80 **76-5-109.2 . Aggravated child abuse.**

- 81 (1)(a) As used in this section:
- 82 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 83 (ii) "Serious physical injury" means the same as that term is defined in Section
- 84 76-5-109.
- 85 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 86 (2) An actor commits aggravated child abuse if the actor:
- 87 (a) inflicts upon a child serious physical injury; or
- 88 (b) having the care or custody of such child, causes or permits another to inflict serious
- 89 physical injury upon a child.
- 90 (3)(a) A violation of Subsection (2) is a [~~second~~] first degree felony if done intentionally
- 91 or knowingly.
- 92 (b) A violation of Subsection (2) is a third degree felony if done recklessly.
- 93 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal
- 94 negligence.
- 95 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means
- 96 alone through prayer, in lieu of medical treatment, in accordance with the tenets and

97 practices of an established church or religious denomination of which the parent or
 98 legal guardian is a member or adherent may not, for that reason alone, be considered
 99 to have committed an offense under this section.

100 (b) A parent or guardian of a child does not violate this section by selecting a treatment
 101 option for the medical condition of the child, if the treatment option is one that a
 102 reasonable parent or guardian would believe to be in the best interest of the child.

103 (c) An actor is not guilty of an offense under this section for conduct that constitutes:

104 (i) conduct described in Section 76-2-401; or

105 (ii) the use of reasonable and necessary physical restraint or force on a child:

106 (A) in self-defense;

107 (B) in defense of others;

108 (C) to protect the child; or

109 (D) to remove a weapon in the possession of a child for any of the reasons

110 described in Subsections (4)(c)(ii)(A) through (C).

111 Section 3. Section **76-5-406.5** is amended to read:

112 **76-5-406.5 . Circumstances required for probation or suspension of sentence for**
 113 **certain sex offenses against a child.**

114 (1) In a case involving a conviction for [a] an attempted violation of Section 76-5-402.1,
 115 rape of a child[;] , Section 76-5-402.3, object rape of a child[;] , Section 76-5-403.1,
 116 sodomy on a child[; ~~or any attempt to commit a felony under those sections or a~~
 117 ~~conviction for a violation of~~] , or Section 76-5-404.3, aggravated sexual abuse of a child,
 118 the court may suspend the execution of the sentence and consider probation to a
 119 residential sexual abuse treatment center only if all of the following circumstances are
 120 found by the court to be present and the court in [its] the court's discretion, considering
 121 the circumstances of the offense, including the nature, frequency, and duration of the
 122 conduct, and considering the best interests of the public and the child victim, finds
 123 probation to a residential sexual abuse treatment center to be proper:

124 (a) the defendant did not use a weapon, force, violence, substantial duress or menace, or
 125 threat of harm, in committing the offense or before or after committing the offense, in
 126 an attempt to frighten the child victim or keep the child victim from reporting the
 127 offense;

128 (b) the defendant did not cause bodily injury to the child victim during or as a result of
 129 the offense and did not cause the child victim severe psychological harm;

130 (c) the defendant, prior to the offense, had not been convicted of any public offense in

- 131 Utah or elsewhere involving sexual misconduct in the commission of the offense;
- 132 (d) the defendant did not commit an offense described in this Part 4, Sexual Offenses,
133 against more than one child victim or victim, at the same time, or during the same
134 course of conduct, or previous to or subsequent to the instant offense;
- 135 (e) the defendant did not use, show, or display pornography or create sexually-related
136 photographs or tape recordings in the course of the offense;
- 137 (f) the defendant did not act in concert with another offender during the offense or
138 knowingly commit the offense in the presence of a person other than the victim or
139 with lewd intent to reveal the offense to another;
- 140 (g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or
141 sexual act by the child victim with any other person or sexual performance by the
142 child victim before any other person;
- 143 (h) the defendant admits the offense of which he has been convicted and has been
144 accepted for mental health treatment in a residential sexual abuse treatment center
145 that has been approved by the Department of Corrections under Subsection (3);
- 146 (i) rehabilitation of the defendant through treatment is probable, based upon evidence
147 provided by a treatment professional who has been approved by the Department of
148 Corrections under Subsection (3) and who has accepted the defendant for treatment;
- 149 (j) prior to being sentenced, the defendant has undergone a complete psychological
150 evaluation conducted by a professional approved by the Department of Corrections
151 and:
- 152 (i) the professional's opinion is that the defendant is not an exclusive pedophile and
153 does not present an immediate and present danger to the community if released on
154 probation and placed in a residential sexual abuse treatment center; and
- 155 (ii) the court accepts the opinion of the professional;
- 156 (k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian
157 of the child victim, the defendant shall, in addition to establishing all other conditions
158 of this section, establish it is in the child victim's best interest that the defendant not
159 be imprisoned, by presenting evidence provided by a treatment professional who:
- 160 (i) is treating the child victim and understands he will be treating the family as a
161 whole; or
- 162 (ii) has assessed the child victim for purposes of treatment as ordered by the court
163 based on a showing of good cause; and
- 164 (l) if probation is imposed, the defendant, as a condition of probation, may not reside in

165 a home where children younger than 18 years old reside for at least one year
166 beginning with the commencement of treatment, and may not again take up residency
167 in a home where children younger than 18 years old reside during the period of
168 probation until allowed to do so by order of the court.

169 (2) A term of incarceration of at least 90 days is to be served prior to treatment and
170 continue until the time when bed space is available at a residential sexual abuse
171 treatment center as provided under Subsection (3) and probation is to be imposed for up
172 to a maximum of 10 years.

173 (3)(a) The Department of Corrections shall develop qualification criteria for the
174 approval of the sexual abuse treatment programs and professionals under this section.
175 The criteria shall include the screening criteria employed by the department for
176 sexual offenders.

177 (b) The sexual abuse treatment program shall be at least one year in duration, shall be
178 residential, and shall specifically address the sexual conduct for which the defendant
179 was convicted.

180 (4) Establishment by the defendant of all the criteria of this section does not mandate the
181 granting under this section of probation or modification of the sentence that would
182 otherwise be imposed by Section 76-3-406 regarding sexual offenses against children.
183 The court has discretion to deny the request based upon its consideration of the
184 circumstances of the offense, including:

185 (a) the nature, frequency, and duration of the conduct;

186 (b) the effects of the conduct on any child victim involved;

187 (c) the best interest of the public and any child victim; and

188 (d) the characteristics of the defendant, including any risk the defendant presents to the
189 public and specifically to children.

190 (5) The defendant has the burden to establish by a preponderance of evidence eligibility
191 under all of the criteria of this section.

192 (6) If the court finds a defendant granted probation under this section fails to cooperate or
193 succeed in treatment or violates probation to any substantial degree, the sentence
194 previously imposed for the offense shall be immediately executed.

195 (7) The court shall enter written findings of fact regarding the conditions established by the
196 defendant that justify the granting of probation under this section.

197 (8) In cases involving conviction of any sexual offense against a child other than those
198 offenses provided in Subsection (1), the court shall consider the circumstances described

199 in Subsection (1) as advisory in determining whether or not execution of sentence
 200 should be suspended and probation granted. The defendant is not required to satisfy all
 201 of those circumstances for eligibility pursuant to this Subsection (8).

202 Section 4. Section **77-2-2.3** is amended to read:

203 **77-2-2.3 . Reducing the level of an offense.**

204 (1) [~~Notwithstanding~~] Subject to Subsection (2) and notwithstanding any other provision of
 205 law, [a] if a prosecuting attorney determines that it is in the interests of justice, the
 206 prosecuting attorney may:

207 (a) present and file an information charging an individual for an offense under
 208 Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104
 209 with a classification of the offense at one degree lower than the classification that is
 210 provided in [~~statute if the prosecuting attorney believes that the sentence would be~~
 211 ~~disproportionate to the offense because there are special circumstances relating to the~~
 212 ~~offense]~~ the applicable section; or

213 (b) subject to the approval of the court, amend an information, as part of a plea
 214 agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b)
 215 through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the
 216 offense at one degree lower than the classification that is provided in [~~statute]~~ the
 217 applicable section.

218 (2) If the offense the prosecuting attorney is seeking to lower by one degree, either by
 219 information or plea agreement under Subsection (1)(a) or (b), is an offense listed in
 220 Subsection 76-3-406(2), the prosecuting attorney shall, on the record, state that it is in
 221 the interests of justice to lower the offense by one degree.

222 [~~(2)~~] (3) A court may:

223 (a) enter a judgment of conviction for an offense filed under Subsection (1) at one
 224 degree lower than classified in [~~statute]~~ the applicable section; and

225 (b) impose a sentence for the offense filed under Subsection (1) at one degree lower than
 226 classified in [~~statute]~~ the applicable section.

227 [~~(3)~~] (4) A conviction of an offense at one degree lower than classified in [~~statute]~~ the
 228 applicable section under Subsection [~~(2)~~] (3) does not affect the requirements for
 229 registration of the offense under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse
 230 Offender Registry, if the elements of the offense for which the defendant is convicted
 231 are the same as the elements of an offense described in Section 77-41-102.

232 [~~(4)~~] (5) This section does not preclude an individual from obtaining and being granted an

233 expungement for the individual's record in accordance with Title 77, Chapter 40a,
 234 Expungement of Criminal Records.

235 Section 5. Section **77-18-107** is amended to read:

236 **77-18-107 . Home confinement -- Electronic monitoring for home confinement.**

- 237 (1) The court may order home confinement as a condition of probation under the
 238 supervision of the department, except as provided in [~~Sections **§**~~ → **Section**
 238a **76-3-406** ← **§** and
 239 ~~76-5-406.5]~~ → **Sections 76-3-406 and 76-5-406.5** ← **§** .
- 240 (2) The department shall establish procedures and standards for home confinement for all
 241 defendants supervised by the department for home confinement.
- 242 (3) If the court places the defendant on probation and orders the defendant to participate in
 243 home confinement under Subsection (1), the court may order the defendant to participate
 244 in home confinement through the use of electronic monitoring until further order of the
 245 court.
- 246 (4) The electronic monitoring of a defendant shall alert the department and the appropriate
 247 law enforcement agency of the defendant's whereabouts.
- 248 (5) An electronic monitoring device shall be used under conditions that require:
 249 (a) the defendant to wear an electronic monitoring device at all times; and
 250 (b) the device be placed in the home of the defendant to monitor the defendant's
 251 compliance with the court's order.
- 252 (6) If a court orders a defendant to participate in home confinement through electronic
 253 monitoring as a condition of probation under Subsection (3), the court shall:
 254 (a) place the defendant on probation under the supervision of the department;
 255 (b) order the department to place an electronic monitoring device on the defendant and
 256 install electronic monitoring equipment in the residence of the defendant; and
 257 (c) order the defendant to pay the costs associated with home confinement to the
 258 department or the program provider.
- 259 (7) The department shall pay the costs of home confinement through electronic monitoring
 260 only for an individual who is determined to be indigent by the court.
- 261 (8) The department may provide the electronic monitoring described in this section directly
 262 or by contract with a private provider.

263 Section 6. **Effective Date.**

264 This bill takes effect on May 7, 2025.