

# HB0078S01 compared with HB0078

~~{Omitted text}~~ shows text that was in HB0078 but was omitted in HB0078S01

inserted text shows text that was not in HB0078 but was inserted into HB0078S01

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## Criminal Offenses Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

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### 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

- ~~{repeals a statute allowing probation for certain offenses committed against children; and}~~

- makes technical and conforming changes.

#### Money Appropriated in this Bill:

None

None

#### AMENDS:

HB0078

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

21 **76-5-406.5 , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws  
of Utah 2022, Chapter 181**

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22 **77-2-2.3** , as last amended by Laws of Utah 2024, Chapter 234 , as last amended by Laws of Utah  
2024, Chapter 234

23 **77-18-107** , as enacted by Laws of Utah 2021, Chapter 260 , as enacted by Laws of Utah 2021,  
Chapter 260

24 REPEALS AND REENACTS:

25 **76-3-406** , as last amended by Laws of Utah 2024, Chapter 96 , as last amended by Laws of Utah  
2024, Chapter 96

. REPEALS:

26 ~~**76-5-406.5 , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws  
of Utah 2022, Chapter 181**~~

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

28 Section **76-3-406** is repealed and re-enacted to read:

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

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

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

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

36 (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 execution or  
imposition of a sentence, enter a judgment for a lower category of offense, or order hospitalization,  
if the effect of which would in any way shorten the prison sentence for an actor who commits a  
capital felony or a first degree felony, or attempts 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;

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- 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)  
56 ~~+(3)+~~ (a) ~~Except for an attempted child rape offense~~ as provided in Subsection (3)(b), a court may  
suspend the execution or imposition of a prison sentence for an actor who is convicted of an attempt  
to commit a felony described in Subsection (2) if the court:  
59 ~~+(a)+~~ (i)(i) makes a finding on the record that:  
60 ~~+(i)+~~ (A) details why it is in the interests of justice not to execute or impose the prison sentence; and  
62 ~~+(ii) the actor does not pose a significant safety risk to:~~  
63 ~~+(A) the victim of the attempted crime; or}~~  
64 (B) the actor does not pose a significant safety risk to the victim of the attempted crime or general  
public; and the actor does not pose a significant safety risk to the victim of the attempted crime or  
general public; and  
65 ~~+(b)+~~ (ii)(ii) orders the actor to complete the terms and conditions of probation that is supervised by the  
Department of Corrections.  
66 (b) If a court suspends a sentence for an attempted child sexual offense the court shall follow the  
provisions described in Section 76-5-406.5.  
67 (4) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the  
provisions of this section do not apply if the sentencing court finds that the actor:  
70 (a) was under 18 years old at the time of the offense; and

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- 71 (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of  
72 the information.
- 73 (5) Except as provided in Subsection 77-16a-103(6) or (7), a court may not grant probation, suspend the  
74 execution or imposition of a sentence, enter a judgment for a lower category of offenseunder Section  
75 76-3-402, or order hospitalization under Section 76-3-201 or 77-18-105 or Title 77, Chapter 16a,  
76 Commitment and Treatment of Individuals with a Mental Condition, if the court is prohibited from  
77 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.**
- 80 (1)
- 81 . (a) As used in this section:
- 81 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 82 (ii) "Serious physical injury" means the same as that term is defined in Section 76-5-109.
- 84 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 85 (2) An actor commits aggravated child abuse if the actor:
- 86 (a) inflicts upon a child serious physical injury; or
- 87 (b) having the care or custody of such child, causes or permits another to inflict serious physical injury  
88 upon a child.
- 89 (3)
- 90 . (a) A violation of Subsection (2) is a [~~second~~] first degree felony if done intentionally or knowingly.
- 91 (b) A violation of Subsection (2) is a third degree felony if done recklessly.
- 92 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal negligence.
- 94 (4)
- 95 . (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through  
96 prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established  
97 church or religious denomination of which the parent or legal guardian is a member or adherent may  
98 not, for that reason alone, be considered to have committed an offense under this section.
- 99 (b) A parent or guardian of a child does not violate this section by selecting a treatment option for the  
100 medical condition of the child, if the treatment option is one that a reasonable parent or guardian  
101 would believe to be in the best interest of the child.
- 102 (c) An actor is not guilty of an offense under this section for conduct that constitutes:

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- 103 (i) conduct described in Section 76-2-401; or  
104 (ii) the use of reasonable and necessary physical restraint or force on a child:  
105 (A) in self-defense;  
106 (B) in defense of others;  
107 (C) to protect the child; or  
108 (D) to remove a weapon in the possession of a child for any of the reasons 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 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, rape of a child[;] , Section 76-5-402.3, object rape of a child[;] , Section 76-5-403.1, sodomy on a child[; ~~or any attempt to commit a felony under those sections or a conviction for a violation of~~] , or Section 76-5-404.3, aggravated sexual abuse of a child, the court may suspend the execution of the sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in [its] the court's discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds 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 threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;
- 128 (b) the defendant did not cause bodily injury to the child victim during or as a result of 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 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, against more than one child victim or victim, at the same time, or during the same 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 photographs or tape recordings in the course of the offense;

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- 137 (f) the defendant did not act in concert with another offender during the offense or knowingly commit  
the offense in the presence of a person other than the victim or 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 sexual act by  
the child victim with any other person or sexual performance by the child victim before any other  
person;
- 143 (h) the defendant admits the offense of which he has been convicted and has been accepted for mental  
health treatment in a residential sexual abuse treatment center 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 provided by a  
treatment professional who has been approved by the Department of 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 evaluation  
conducted by a professional approved by the Department of Corrections and:
- 152 (i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an  
immediate and present danger to the community if released on 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 of the child  
victim, the defendant shall, in addition to establishing all other conditions of this section, establish  
it is in the child victim's best interest that the defendant not 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 whole; or
- 162 (ii) has assessed the child victim for purposes of treatment as ordered by the court 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 a home where  
children younger than 18 years old reside for at least one year beginning with the commencement of  
treatment, and may not again take up residency in a home where children younger than 18 years old  
reside during the period of probation until allowed to do so by order of the court.

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- (2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of 10 years.
- 173 (3)
- . (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.
- 177 (b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.
- 180 (4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the 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 public and specifically to children.
- 190 (5) The defendant has the burden to establish by a preponderance of evidence eligibility 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 succeed in treatment or violates probation to any substantial degree, the sentence 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 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 offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

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

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- 203           **77-2-2.3. Reducing the level of an offense.**
- 112       (1) [~~Notwithstanding~~] Subject to Subsection (2) and notwithstanding~~{+}~~ any other provision of law,  
[a] if a prosecuting attorney determines that it is in the interests of justice, the prosecuting attorney  
may:
- 115       (a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)  
(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense  
at one degree lower than the classification that is provided in [~~statute if the prosecuting attorney~~  
~~believes that the sentence would be disproportionate to the offense because there are special~~  
~~circumstances relating to the offense~~] the applicable section; or
- 121       (b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an  
individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or  
Section 76-3-104 with a classification of the offense at one degree lower than the classification that  
is provided in [~~statute~~] the applicable section.
- 126       (2) If the offense the prosecuting attorney is seeking to lower by one degree, either by information or  
plea agreement under Subsection (1)(a) or (b), is an offense listed in Subsection 76-3-406(2), the  
prosecuting attorney shall, on the record {in a manner and time determined by the court, explain  
the special circumstances that has led the prosecuting attorney to determine }-, state that it is in the  
flowering } interests of justice to lower the offense by one degree {is in the interests of justice}.
- 132       [(2)] (3) A court may:
- 133       (a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than  
classified in [~~statute~~] the applicable section; and
- 135       (b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in  
[~~statute~~] the applicable section.
- 137       [(3)] (4) A conviction of an offense at one degree lower than classified in [~~statute~~] the applicable section  
under Subsection [(2)] (3) does not affect the requirements for registration of the offense under Title  
77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, if the elements of the offense for  
which the defendant is convicted are the same as the elements of an offense described in Section  
77-41-102.
- 142       [(4)] (5) This section does not preclude an individual from obtaining and being granted an expungement  
for the individual's record in accordance with Title 77, Chapter 40a, Expungement of Criminal  
Records.



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

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

- 147 (1) The court may order home confinement as a condition of probation under the supervision of the  
department, except as provided in [Sections] Section 76-3-406[~~and 76-5-406.5~~].
- 150 (2) The department shall establish procedures and standards for home confinement for all defendants  
supervised by the department for home confinement.
- 152 (3) If the court places the defendant on probation and orders the defendant to participate in home  
confinement under Subsection (1), the court may order the defendant to participate in home  
confinement through the use of electronic monitoring until further order of the court.
- 156 (4) The electronic monitoring of a defendant shall alert the department and the appropriate law  
enforcement agency of the defendant's whereabouts.
- 158 (5) An electronic monitoring device shall be used under conditions that require:
- 159 (a) the defendant to wear an electronic monitoring device at all times; and
- 160 (b) the device be placed in the home of the defendant to monitor the defendant's compliance with the  
court's order.
- 162 (6) If a court orders a defendant to participate in home confinement through electronic monitoring as a  
condition of probation under Subsection (3), the court shall:
- 164 (a) place the defendant on probation under the supervision of the department;
- 165 (b) order the department to place an electronic monitoring device on the defendant and install electronic  
monitoring equipment in the residence of the defendant; and
- 167 (c) order the defendant to pay the costs associated with home confinement to the department or the  
program provider.
- 169 (7) The department shall pay the costs of home confinement through electronic monitoring only for an  
individual who is determined to be indigent by the court.
- 171 (8) The department may provide the electronic monitoring described in this section directly or by  
contract with a private provider.

263 Section 6. **Effective date.**

This bill takes effect on May 7, 2025.

Section 7. **Repealer.**

This Bill Repeals:

175 Section **76-5-406.5, Circumstances required for probation or suspension of sentence for**

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176 **certain sex offenses against a child.**

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