

Calvin R. Musselman proposes the following substitute bill:

Mandatory Jail Sentence Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

House Sponsor: Colin W. Jack

LONG TITLE

General Description:

This bill requires a mandatory jail sentence for certain crimes committed under certain conditions.

Highlighted Provisions:

This bill:

- requires a mandatory jail sentence for certain drug and theft crimes committed under certain conditions and with specified prior criminal convictions;

- provides that a person who receives a mandatory jail sentence under certain conditions may not be turned over to the federal government for deportation until the person has served the entire mandatory jail sentence; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-8, as last amended by Laws of Utah 2024, Chapter 105

76-6-404, as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407

76-6-602, as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407

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

Section 1. Section **58-37-8** is amended to read:

58-37-8 . Prohibited acts -- Penalties.

- 30 (1) Prohibited acts A -- Penalties and reporting:
- 31 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
- 32 intentionally:
- 33 (i) produce, manufacture, or dispense, or to possess with intent to produce,
- 34 manufacture, or dispense, a controlled or counterfeit substance;
- 35 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
- 36 arrange to distribute a controlled or counterfeit substance;
- 37 (iii) possess a controlled or counterfeit substance with intent to distribute; or
- 38 (iv) engage in a continuing criminal enterprise where:
- 39 (A) the person participates, directs, or engages in conduct that results in a
- 40 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter
- 41 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled
- 42 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a
- 43 felony; and
- 44 (B) the violation is a part of a continuing series of two or more violations of this
- 45 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation
- 46 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor
- 47 Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are
- 48 undertaken in concert with five or more persons with respect to whom the
- 49 person occupies a position of organizer, supervisor, or any other position of
- 50 management.
- 51 (b) A person convicted of violating Subsection (1)(a) with respect to:
- 52 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a
- 53 controlled substance analog, or gammahydroxybutyric acid as listed in Schedule
- 54 III is guilty of a second degree felony, punishable by imprisonment for not more
- 55 than 15 years, and upon a second or subsequent conviction is guilty of a first
- 56 degree felony;
- 57 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
- 58 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree
- 59 felony, and upon a second or subsequent conviction is guilty of a second degree
- 60 felony; or
- 61 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
- 62 class A misdemeanor and upon a second or subsequent conviction is guilty of a
- 63 third degree felony.

- 64 (c)(i) Except as provided in Subsection (1)(c)(ii), a person who has been convicted of
65 a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for
66 an indeterminate term as described in Subsection (1)(b) and Title 76, Chapter 3,
67 Punishments.
- 68 (ii) The court shall impose an indeterminate prison term for a person who has been
69 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony
70 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,
71 during the commission or furtherance of the violation, the person intentionally or
72 knowingly:
- 73 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in
74 Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,
75 or coercive manner;
- 76 (B) used a firearm or had a firearm readily accessible for immediate use, as those
77 terms are defined in Section 76-10-501; or
- 78 (C) distributed a firearm, as that term is defined in Section 76-10-501, or
79 possessed a firearm with intent to distribute the firearm.
- 80 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate
81 prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 82 (A) details on the record the reasons why it is in the interests of justice not to
83 impose the indeterminate prison term;
- 84 (B) makes a finding on the record that the person does not pose a significant
85 safety risk to the public; and
- 86 (C) orders the person to complete the terms and conditions of supervised
87 probation provided by the Department of Corrections.
- 88 (d)(i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
89 felony punishable by imprisonment for an indeterminate term of not less than:
- 90 (A) seven years and which may be for life; or
- 91 (B) 15 years and which may be for life if the trier of fact determined that the
92 defendant knew or reasonably should have known that any subordinate under
93 Subsection (1)(a)(iv)(B) was under 18 years old.
- 94 (ii) Imposition or execution of the sentence may not be suspended, and the person is
95 not eligible for probation.
- 96 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
97 offense, was under 18 years old.

98 (e) The Administrative Office of the Courts shall report to the Division of Professional
99 Licensing the name, case number, date of conviction, and if known, the date of birth
100 of each person convicted of violating Subsection (1)(a).

101 (f)(i) A court shall impose the mandatory jail sentence described in Subsection
102 (1)(f)(ii), and may not suspend any portion of the jail sentence or grant early
103 release, if:

104 (A) the court suspends the imposition of a prison sentence for a felony conviction
105 under Subsection (1)(a) or sentences a person for a misdemeanor violation of
106 an offense under Subsection (1)(a);

107 (B)(I) the violation is the person's second or subsequent conviction for any
108 level of offense under Subsection (1)(a); or

109 (II) the person previously has been convicted of a criminal violation in another
110 jurisdiction, including a state or federal court, that is substantially
111 equivalent to the violation of an offense under Subsection (1)(a); and

112 (C) the person previously has been convicted of reentry of a removed alien under
113 8 U.S.C. Sec. 1326.

114 (ii) The mandatory jail sentences referred to in Subsection (1)(f)(i) are:

115 (A) for a felony or a class A misdemeanor, 360 days in jail;

116 (B) for a class B misdemeanor, 180 days in jail; and

117 (C) for a class C misdemeanor, 90 days in jail.

118 (iii) A person who is subject to a mandatory jail sentence under Subsection (1)(f)(i)
119 may not be released to the federal Immigration and Customs Enforcement Agency
120 of the United States Department of Homeland Security for deportation until the
121 person has served the entire jail sentence described in Subsection (1)(f)(ii).

122 (2) Prohibited acts B -- Penalties and reporting:

123 (a) It is unlawful:

124 (i) for a person knowingly and intentionally to possess or use a controlled substance
125 analog or a controlled substance, unless it was obtained under a valid prescription
126 or order, directly from a practitioner while acting in the course of the person's
127 professional practice, or as otherwise authorized by this chapter;

128 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
129 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them
130 to be occupied by persons unlawfully possessing, using, or distributing controlled
131 substances in any of those locations; or

- 132 (iii) for a person knowingly and intentionally to possess an altered or forged
133 prescription or written order for a controlled substance.
- 134 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 135 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree
136 felony; or
- 137 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is
138 guilty of a class A misdemeanor on a first or second conviction, and on a third or
139 subsequent conviction if each prior offense was committed within seven years
140 before the date of the offense upon which the current conviction is based is guilty
141 of a third degree felony.
- 142 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
143 conviction under Subsection (1)(a), that person shall be sentenced to a one degree
144 greater penalty than provided in this Subsection (2).
- 145 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
146 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in
147 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 148 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each
149 prior offense was committed within seven years before the date of the offense
150 upon which the current conviction is based.
- 151 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree
152 felony if each prior offense was committed within seven years before the date of
153 the offense upon which the current conviction is based.
- 154 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
155 boundaries of property occupied by a correctional facility as defined in Section
156 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty
157 one degree greater than provided in Subsection (2)(b), and if the conviction is with
158 respect to controlled substances as listed in:
- 159 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
160 indeterminate term as provided by law, and:
- 161 (A) the court shall additionally sentence the person convicted to a term of one year
162 to run consecutively and not concurrently; and
- 163 (B) the court may additionally sentence the person convicted for an indeterminate
164 term not to exceed five years to run consecutively and not concurrently; and
- 165 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an

166 indeterminate term as provided by law, and the court shall additionally sentence
167 the person convicted to a term of six months to run consecutively and not
168 concurrently.

169 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

170 (i) on a first conviction, guilty of a class B misdemeanor;

171 (ii) on a second conviction, guilty of a class A misdemeanor; and

172 (iii) on a third or subsequent conviction, guilty of a third degree felony.

173 (g) The Administrative Office of the Courts shall report to the Division of Professional
174 Licensing the name, case number, date of conviction, and if known, the date of birth
175 of each person convicted of violating Subsection (2)(a).

176 (3) Prohibited acts C -- Penalties:

177 (a) It is unlawful for a person knowingly and intentionally:

178 (i) to use in the course of the manufacture or distribution of a controlled substance a
179 license number which is fictitious, revoked, suspended, or issued to another
180 person or, for the purpose of obtaining a controlled substance, to assume the title
181 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,
182 dentist, veterinarian, or other authorized person;

183 (ii) to acquire or obtain possession of, to procure or attempt to procure the
184 administration of, to obtain a prescription for, to prescribe or dispense to a person
185 known to be attempting to acquire or obtain possession of, or to procure the
186 administration of a controlled substance by misrepresentation or failure by the
187 person to disclose receiving a controlled substance from another source, fraud,
188 forgery, deception, subterfuge, alteration of a prescription or written order for a
189 controlled substance, or the use of a false name or address;

190 (iii) to make a false or forged prescription or written order for a controlled substance,
191 or to utter the same, or to alter a prescription or written order issued or written
192 under the terms of this chapter; or

193 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed
194 to print, imprint, or reproduce the trademark, trade name, or other identifying
195 mark, imprint, or device of another or any likeness of any of the foregoing upon
196 any drug or container or labeling so as to render a drug a counterfeit controlled
197 substance.

198 (b)(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
199 misdemeanor.

- 200 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
201 degree felony.
- 202 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 203 (4) Prohibited acts D -- Penalties:
- 204 (a) Notwithstanding other provisions of this section, a person not authorized under this
205 chapter who commits any act that is unlawful under Subsection (1)(a) or Section
206 58-37b-4 is upon conviction subject to the penalties and classifications under this
207 Subsection (4) if the trier of fact finds the act is committed:
- 208 (i) in a public or private elementary or secondary school or on the grounds of any of
209 those schools during the hours of 6 a.m. through 10 p.m.;
- 210 (ii) in a public or private vocational school or postsecondary institution or on the
211 grounds of any of those schools or institutions during the hours of 6 a.m. through
212 10 p.m.;
- 213 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
214 facility's hours of operation;
- 215 (iv) in a public park, amusement park, arcade, or recreation center when the public or
216 amusement park, arcade, or recreation center is open to the public;
- 217 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 218 (vi) in or on the grounds of a library when the library is open to the public;
- 219 (vii) within an area that is within 100 feet of any structure, facility, or grounds
220 included in Subsections (4)(a)(i) through (vi);
- 221 (viii) in the presence of a person younger than 18 years old, regardless of where the
222 act occurs; or
- 223 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
224 distribution of a substance in violation of this section to an inmate or on the
225 grounds of a correctional facility as defined in Section 76-8-311.3.
- 226 (b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony
227 and shall be imprisoned for a term of not less than five years if the penalty that
228 would otherwise have been established but for this Subsection (4) would have
229 been a first degree felony.
- 230 (ii) Imposition or execution of the sentence may not be suspended, and the person is
231 not eligible for probation.
- 232 (c) If the classification that would otherwise have been established would have been less
233 than a first degree felony but for this Subsection (4), a person convicted under this

234 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for
235 that offense.

236 (d)(i) If the violation is of Subsection (4)(a)(ix):

237 (A) the person may be sentenced to imprisonment for an indeterminate term as
238 provided by law, and the court shall additionally sentence the person convicted
239 for a term of one year to run consecutively and not concurrently; and

240 (B) the court may additionally sentence the person convicted for an indeterminate
241 term not to exceed five years to run consecutively and not concurrently; and

242 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
243 the mental state required for the commission of an offense, directly or indirectly
244 solicits, requests, commands, coerces, encourages, or intentionally aids another
245 person to commit a violation of Subsection (4)(a)(ix).

246 (e) It is not a defense to a prosecution under this Subsection (4) that:

247 (i) the actor mistakenly believed the individual to be 18 years old or older at the time
248 of the offense or was unaware of the individual's true age; or

249 (ii) the actor mistakenly believed that the location where the act occurred was not as
250 described in Subsection (4)(a) or was unaware that the location where the act
251 occurred was as described in Subsection (4)(a).

252 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.

253 (6)(a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
254 guilty or no contest to a violation or attempted violation of this section or a plea
255 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the
256 equivalent of a conviction, even if the charge has been subsequently reduced or
257 dismissed in accordance with the plea in abeyance agreement.

258 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
259 conviction that is:

260 (i) from a separate criminal episode than the current charge; and

261 (ii) from a conviction that is separate from any other conviction used to enhance the
262 current charge.

263 (7) A person may be charged and sentenced for a violation of this section, notwithstanding
264 a charge and sentence for a violation of any other section of this chapter.

265 (8)(a) A penalty imposed for violation of this section is in addition to, and not in lieu of,
266 a civil or administrative penalty or sanction authorized by law.

267 (b) When a violation of this chapter violates a federal law or the law of another state,

268 conviction or acquittal under federal law or the law of another state for the same act
269 is a bar to prosecution in this state.

270 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person
271 or persons produced, manufactured, possessed, distributed, or dispensed a controlled
272 substance or substances, is prima facie evidence that the person or persons did so with
273 knowledge of the character of the substance or substances.

274 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
275 veterinarian's professional practice only and not for humans, from prescribing,
276 dispensing, or administering controlled substances or from causing the substances to be
277 administered by an assistant or orderly under the veterinarian's direction and supervision.

278 (11) Civil or criminal liability may not be imposed under this section on:

279 (a) a person registered under this chapter who manufactures, distributes, or possesses an
280 imitation controlled substance for use as a placebo or investigational new drug by a
281 registered practitioner in the ordinary course of professional practice or research;

282 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
283 employment; or

284 (c) a healthcare facility, substance use harm reduction services program, or drug
285 addiction treatment facility that temporarily possesses a controlled or counterfeit
286 substance to conduct a test or analysis on the controlled or counterfeit substance to
287 identify or analyze the strength, effectiveness, or purity of the substance for a public
288 health or safety reason.

289 (12)(a) Civil or criminal liability may not be imposed under this section on any Indian,
290 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
291 traditional ceremonial purposes in connection with the practice of a traditional Indian
292 religion as defined in Section 58-37-2.

293 (b) In a prosecution alleging violation of this section regarding peyote as defined in
294 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or
295 transported by an Indian for bona fide traditional ceremonial purposes in connection
296 with the practice of a traditional Indian religion.

297 (c)(i) The defendant shall provide written notice of intent to claim an affirmative
298 defense under this Subsection (12) as soon as practicable, but not later than 10
299 days before trial.

300 (ii) The notice shall include the specific claims of the affirmative defense.

301 (iii) The court may waive the notice requirement in the interest of justice for good

302 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely
303 notice.

304 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a
305 preponderance of the evidence. If the defense is established, it is a complete defense
306 to the charges.

307 (13)(a) It is an affirmative defense that the person produced, possessed, or administered
308 a controlled substance listed in Section 58-37-4.2 if the person was:

309 (i) engaged in medical research; and

310 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

311 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a
312 controlled substance listed in Section 58-37-4.2.

313 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled
314 substance listed in Section 58-37-4.2 if:

315 (a) the person was the subject of medical research conducted by a holder of a valid
316 license to possess controlled substances under Section 58-37-6; and

317 (b) the substance was administered to the person by the medical researcher.

318 (15) The application of any increase in penalty under this section to a violation of
319 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

320 This Subsection (15) takes precedence over any conflicting provision of this section.

321 (16)(a) It is an affirmative defense to an allegation of the commission of an offense
322 listed in Subsection (16)(b) that the person or bystander:

323 (i) reasonably believes that the person or another person is experiencing an overdose
324 event due to the ingestion, injection, inhalation, or other introduction into the
325 human body of a controlled substance or other substance;

326 (ii) reports, or assists a person who reports, in good faith the overdose event to a
327 medical provider, an emergency medical service provider as defined in Section
328 53-2d-101, a law enforcement officer, a 911 emergency call system, or an
329 emergency dispatch system, or the person is the subject of a report made under
330 this Subsection (16);

331 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
332 actual location of the overdose event that facilitates responding to the person
333 experiencing the overdose event;

334 (iv) remains at the location of the person experiencing the overdose event until a
335 responding law enforcement officer or emergency medical service provider

- 336 arrives, or remains at the medical care facility where the person experiencing an
337 overdose event is located until a responding law enforcement officer arrives;
- 338 (v) cooperates with the responding medical provider, emergency medical service
339 provider, and law enforcement officer, including providing information regarding
340 the person experiencing the overdose event and any substances the person may
341 have injected, inhaled, or otherwise introduced into the person's body; and
- 342 (vi) is alleged to have committed the offense in the same course of events from which
343 the reported overdose arose.
- 344 (b) The offenses referred to in Subsection (16)(a) are:
- 345 (i) the possession or use of less than 16 ounces of marijuana;
- 346 (ii) the possession or use of a scheduled or listed controlled substance other than
347 marijuana; and
- 348 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
349 Imitation Controlled Substances Act.
- 350 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
351 include seeking medical assistance under this section during the course of a law
352 enforcement agency's execution of a search warrant, execution of an arrest warrant,
353 or other lawful search.
- 354 (17) If any provision of this chapter, or the application of any provision to any person or
355 circumstances, is held invalid, the remainder of this chapter shall be given effect without
356 the invalid provision or application.
- 357 (18) A legislative body of a political subdivision may not enact an ordinance that is less
358 restrictive than any provision of this chapter.
- 359 (19) If a minor who is under 18 years old is found by a court to have violated this section or
360 Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to
361 complete:
- 362 (a) a screening as defined in Section 41-6a-501;
- 363 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
364 assessment to be appropriate; and
- 365 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
366 treatment as indicated by an assessment.
- 367 Section 2. Section **76-6-404** is amended to read:
- 368 **76-6-404 . Theft -- Elements.**
- 369 (1) Terms defined in Section 76-1-101.5 apply to this section.

- 370 (2) An actor commits theft if the actor obtains or exercises unauthorized control over
371 another person's property with a purpose to deprive the person of the person's property.
- 372 (3) A violation of Subsection (2) is:
- 373 (a) a second degree felony if the:
- 374 (i) value of the property is or exceeds \$5,000;
- 375 (ii) property stolen is a firearm or an operable motor vehicle; or
- 376 (iii) property is stolen from the person of another;
- 377 (b) a third degree felony if:
- 378 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;
- 379 (ii) the property is:
- 380 (A) a catalytic converter as defined under Section 76-6-1402; or
- 381 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402
- 382 if the value is less than \$5,000 and the suspect metal is made of or contains
- 383 aluminum or copper and is not a lead battery;
- 384 (iii) the value of the property is or exceeds \$500 and the actor has been twice before
- 385 convicted of any of the following offenses, if each prior offense was committed
- 386 within 10 years before the date of the current conviction or the date of the offense
- 387 upon which the current conviction is based and at least one of those convictions is
- 388 for a class A misdemeanor:
- 389 (A) any theft, any robbery, or any burglary with intent to commit theft;
- 390 (B) any offense under Part 5, Fraud; or
- 391 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
- 392 (iv)(A) the value of property is or exceeds \$500 but is less than \$1,500;
- 393 (B) the theft occurs on a property where the offender has committed any theft
- 394 within the past five years; and
- 395 (C) the offender has received written notice from the merchant prohibiting the
- 396 offender from entering the property pursuant to Subsection 78B-3-108(4); or
- 397 (v) the actor has been previously convicted of a felony violation of any of the
- 398 offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior
- 399 offense was committed within 10 years before the date of the current conviction or
- 400 the date of the offense upon which the current conviction is based;
- 401 (c) a class A misdemeanor if:
- 402 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
- 403 (ii)(A) the value of property is less than \$500;

- 404 (B) the theft occurs on a property where the offender has committed any theft
 405 within the past five years; and
- 406 (C) the offender has received written notice from the merchant prohibiting the
 407 offender from entering the property pursuant to Subsection 78B-3-108(4); or
- 408 (iii) the actor has been twice before convicted of any of the offenses listed in
 409 Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was
 410 committed within 10 years before the date of the current conviction or the date of
 411 the offense upon which the current conviction is based; or
- 412 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the
 413 theft is not an offense under Subsection (3)(c).
- 414 (4)(a) A court shall impose the mandatory jail sentence described in Subsection (4)(b),
 415 and may not suspend any portion of the jail sentence or grant early release, if:
- 416 (i) the court suspends the imposition of a prison sentence for a felony conviction
 417 under this section or sentences an actor for a misdemeanor violation of this section;
- 418 (ii)(A) the violation is the actor's second or subsequent conviction for any level of
 419 offense under this section; or
- 420 (B) the actor previously has been convicted of a criminal violation in another
 421 jurisdiction, including a state or federal court, that is substantially equivalent to
 422 the violation of this section; and
- 423 (iii) the actor previously has been convicted of reentry of a removed alien under 8
 424 U.S.C. Sec. 1326.
- 425 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:
- 426 (i) for a felony or a class A misdemeanor, 360 days in jail;
- 427 (ii) for a class B misdemeanor, 180 days in jail; and
- 428 (iii) for a class C misdemeanor, 90 days in jail.
- 429 (c) An actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not
 430 be released to the federal Immigration and Customs Enforcement Agency of the
 431 United States Department of Homeland Security for deportation until the actor has
 432 served the entire jail sentence described in Subsection (4)(b).
- 433 Section 3. Section **76-6-602** is amended to read:
- 434 **76-6-602 . Retail theft.**
- 435 (1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.
- 436 (2) An actor commits retail theft if the actor knowingly:
- 437 (a) takes possession of, conceals, carries away, transfers or causes to be carried away or

- 438 transferred, any merchandise displayed, held, stored, or offered for sale in a retail
439 mercantile establishment with the intention of:
- 440 (i) retaining the merchandise; or
 - 441 (ii) depriving the merchant permanently of the possession, use or benefit of such
442 merchandise without paying the retail value of the merchandise;
 - 443 (b)(i) alters, transfers, or removes any label, price tag, marking, indicia of value, or
444 any other markings which aid in determining value of any merchandise displayed,
445 held, stored, or offered for sale, in a retail mercantile establishment; and
 - 446 (ii) attempts to purchase the merchandise described in Subsection (2)(b)(i) personally
447 or in consort with another at less than the retail value with the intention of
448 depriving the merchant of the retail value of the merchandise;
 - 449 (c) transfers any merchandise displayed, held, stored, or offered for sale in a retail
450 mercantile establishment from the container in or on which the merchandise is
451 displayed to any other container with the intention of depriving the merchant of the
452 retail value of the merchandise;
 - 453 (d) under-rings with the intention of depriving the merchant of the retail value of the
454 merchandise; or
 - 455 (e) removes a shopping cart from the premises of a retail mercantile establishment with
456 the intent of depriving the merchant of the possession, use, or benefit of the shopping
457 cart.
- 458 (3) A violation of Subsection (2) is:
- 459 (a) a second degree felony if the:
 - 460 (i) value of the merchandise or shopping cart is or exceeds \$5,000;
 - 461 (ii) merchandise stolen is a firearm or an operable motor vehicle; or
 - 462 (b) a third degree felony if:
 - 463 (i) the value of the merchandise is or exceeds \$1,500 but is less than \$5,000;
 - 464 (ii) the merchandise is:
 - 465 (A) a catalytic converter as defined under Section 76-6-1402; or
 - 466 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402
467 if the value is less than \$5,000 and the suspect metal is made of or contains
468 aluminum or copper and is not a lead battery;
 - 469 (iii) the value of the merchandise or shopping cart is or exceeds \$500 and the actor
470 has been twice before convicted of any of the following offenses, if each prior
471 offense was committed within 10 years before the date of the current conviction or

- 472 the date of the offense upon which the current conviction is based and at least one
473 of those convictions is for a class A misdemeanor:
- 474 (A) any theft, any robbery, or any burglary with intent to commit theft;
475 (B) any offense under Part 5, Fraud; or
476 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
477 (iv)(A) the value of merchandise or shopping cart is or exceeds \$500 but is less
478 than \$1,500;
479 (B) the theft occurs in a retail mercantile establishment or on the premises of a
480 retail mercantile establishment where the offender has committed any theft
481 within the past five years; and
482 (C) the offender has received written notice from the merchant prohibiting the
483 offender from entering the retail mercantile establishment or premises of a
484 retail mercantile establishment pursuant to Subsection 78B-3-108(4); or
485 (v) the actor has been previously convicted of a felony violation of any of the
486 offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior
487 offense was committed within 10 years before the date of the current conviction or
488 the date of the offense upon which the current conviction is based;
- 489 (c) a class A misdemeanor if:
- 490 (i) the value of the merchandise or shopping cart stolen is or exceeds \$500 but is less
491 than \$1,500;
492 (ii)(A) the value of merchandise or shopping cart is less than \$500;
493 (B) the theft occurs in a retail mercantile establishment or premises of a retail
494 mercantile establishment where the offender has committed any theft within
495 the past five years; and
496 (C) the offender has received written notice from the merchant prohibiting the
497 offender from entering the retail mercantile establishment or premises of a
498 retail mercantile establishment pursuant to Subsection 78B-3-108(4); or
499 (iii) the actor has been twice before convicted of any of the offenses listed in
500 Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was
501 committed within 10 years before the date of the current conviction or the date of
502 the offense upon which the current conviction is based; or
- 503 (d) a class B misdemeanor if the value of the merchandise or shopping cart stolen is less
504 than \$500 and the theft is not an offense under Subsection (3)(c).
- 505 (4)(a) A court shall impose the mandatory jail sentence described in Subsection (4)(b),

- 506 and may not suspend any portion of the jail sentence or grant early release, if:
- 507 (i) the court suspends the imposition of a prison sentence for a felony conviction
- 508 under this section or sentences an actor for a misdemeanor violation of this section;
- 509 (ii)(A) the violation is the actor's second or subsequent conviction for any level of
- 510 offense under this section; or
- 511 (B) the actor previously has been convicted of a criminal violation in another
- 512 jurisdiction, including a state or federal court, that is substantially equivalent to
- 513 the violation of this section; and
- 514 (iii) the actor previously has been convicted of reentry of a removed alien under 8
- 515 U.S.C. Sec. 1326.
- 516 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:
- 517 (i) for a felony or a class A misdemeanor, 360 days in jail;
- 518 (ii) for a class B misdemeanor, 180 days in jail; and
- 519 (iii) for a class C misdemeanor, 90 days in jail.
- 520 (c) An actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not
- 521 be released to the federal Immigration and Customs Enforcement Agency of the
- 522 United States Department of Homeland Security for deportation until the actor has
- 523 served the entire jail sentence described in Subsection (4)(b).

524 **Section 4. Effective Date.**

525 This bill takes effect on May 7, 2025.