

Effective 5/7/2025

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

- (1) As used in this section, "attempted child sexual offense" means an attempt to commit a felony that is:
 - (a) rape of a child as described in Section 76-5-402.1;
 - (b) object rape of a child as described in Section 76-5-402.3;
 - (c) sodomy on a child as described in Section 76-5-403.1; or
 - (d) aggravated sexual abuse of a child as described in Section 76-5-404.3.
- (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:
 - (a) 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:
 - (i) aggravated child abuse as described in Section 76-5-109.2;
 - (ii) child torture as described in Section 76-5-109.4;
 - (iii) aggravated murder as described in Section 76-5-202;
 - (iv) murder as described in Section 76-5-203;
 - (v) child kidnapping as described in Section 76-5-301.1;
 - (vi) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
 - (vii) rape as described in Subsection 76-5-402(3)(b), (3)(c), (3)(d), or (4);
 - (viii) rape of a child as described in Section 76-5-402.1;
 - (ix) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), (3)(d), or (4);
 - (x) object rape of a child as described in Section 76-5-402.3;
 - (xi) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), (3)(d), or (4);
 - (xii) sodomy on a child as described in Section 76-5-403.1;
 - (xiii) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
 - (xiv) aggravated sexual abuse of a child as described in Section 76-5-404.3; or
 - (xv) aggravated sexual assault as described in Section 76-5-405; or
 - (b) an offense for which the penalty has been increased under Section 76-3-407, Repeat and habitual sex offenders.
- (3)
 - (a) Except 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)(a) if the court:
 - (i) makes a finding on the record that:
 - (A) details why it is in the interests of justice not to execute or impose the prison sentence; and
 - (B) the actor does not pose a significant safety risk to the victim of the attempted crime or the general public; and
 - (ii) orders the actor to complete the terms and conditions of probation that is supervised by the Department of Corrections.
 - (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.
- (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:
 - (a) was under 18 years old at the time of the offense; and

- (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.
- (5) Except as provided in Subsection 77-16a-103(6) or (7), a court may not grant probation, suspend the execution or imposition of a sentence, enter a judgment for a lower category of offense under Section 76-3-402, or order hospitalization under Section 76-3-201 or 77-18-105 or Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, if the court is prohibited from doing so by this section.

Repealed and Re-enacted by Chapter 193, 2025 General Session