

**Representative Matthew H. Gwynn** proposes the following substitute bill:

**CRIMINAL OFFENSES AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the imposition of an indeterminate prison term for certain criminal offenses.

**Highlighted Provisions:**

This bill:

- ▶ requires an indeterminate prison term to be imposed for certain attempt convictions;
- ▶ repeals a statute allowing probation for certain offenses committed against children;

and

- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-406**, as last amended by Laws of Utah 2023, Chapter 184

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

REPEALS:



26 [76-5-406.5](#), as last amended by Laws of Utah 2022, Chapter 181

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

29 Section 1. Section **76-3-406** is amended to read:

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

32 (1) Notwithstanding Sections [76-3-201](#) and [77-18-105](#) and Title 77, Chapter 16a,  
33 Commitment and Treatment of Individuals with a Mental Condition, and except as provided in  
34 [~~Section [76-5-406.5](#) or~~] Subsection [77-16a-103](#)(6) or (7), a court may not grant probation [~~may~~  
35 ~~not be granted~~], suspend the execution or imposition of a sentence<sub>2</sub> [~~may not be suspended, the~~  
36 ~~court may not~~] enter a judgment for a lower category of offense, [~~and~~] or order hospitalization  
37 [~~may not be ordered~~], if the effect of which would in any way shorten the prison sentence for  
38 an [~~individual~~] actor who commits a capital felony or a first degree felony, or attempts to  
39 commit a felony, involving:

40 (a) [~~Section [76-5-202](#);~~] aggravated murder as described in Section [76-5-202](#);

41 (b) [~~Section [76-5-203](#);~~] murder as described in Section [76-5-203](#);

42 (c) [~~Section [76-5-301.1](#), child kidnaping~~] child kidnaping as described in Section  
43 [76-5-301.1](#);

44 (d) [~~Section [76-5-302](#), aggravated kidnaping~~] aggravated kidnaping as described in  
45 Subsection [76-5-302](#)(3)(b);

46 (e) [~~Section [76-5-402](#), rape, if the individual is sentenced under~~] rape as described in  
47 Subsection [76-5-402](#)(3)(b), (3)(c), or (4);

48 (f) [~~Section [76-5-402.1](#);~~] rape of a child as described in Section [76-5-402.1](#);

49 (g) [~~Section [76-5-402.2](#), object rape, if the individual is sentenced under~~] object rape as  
50 described in Subsection [76-5-402.2](#)(3)(b), (3)(c), or (4);

51 (h) [~~Section [76-5-402.3](#);~~] object rape of a child as described in Section [76-5-402.3](#);

52 (i) [~~Section [76-5-403](#), forcible sodomy, if the individual is sentenced under~~] forcible  
53 sodomy as described in Subsection [76-5-403](#)(3)(b), (3)(c), or (4);

54 (j) [~~Section [76-5-403.1](#);~~] sodomy on a child as described in Section [76-5-403.1](#);

55 (k) [~~Section [76-5-404](#), forcible sexual abuse, if the individual is sentenced under~~] forcible  
56 sexual abuse as described in Subsection [76-5-404](#)(3)(b)(i) or (ii);

57 (l) [~~Section 76-5-404.3,~~] aggravated sexual abuse of a child as described in Section  
58 76-5-404.3; or

59 (m) [~~Section 76-5-405,~~] aggravated sexual assault[~~;~~ or] as described in Section  
60 76-5-405.

61 [~~(n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).~~]

62 (2) Except for an offense before the district court in accordance with Section 80-6-502  
63 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the  
64 [~~defendant~~] actor:

65 (a) was under 18 years old at the time of the offense; and

66 (b) could have been adjudicated in the juvenile court but for the delayed reporting or  
67 delayed filing of the information.

68 Section 2. Section **77-18-107** is amended to read:

69 **77-18-107. Home confinement -- Electronic monitoring for home confinement.**

70 (1) The court may order home confinement as a condition of probation under the  
71 supervision of the department, except as provided in [~~Sections~~] Section 76-3-406 [~~and~~  
72 76-5-406.5].

73 (2) The department shall establish procedures and standards for home confinement for  
74 all defendants supervised by the department for home confinement.

75 (3) If the court places the defendant on probation and orders the defendant to  
76 participate in home confinement under Subsection (1), the court may order the defendant to  
77 participate in home confinement through the use of electronic monitoring until further order of  
78 the court.

79 (4) The electronic monitoring of a defendant shall alert the department and the  
80 appropriate law enforcement agency of the defendant's whereabouts.

81 (5) An electronic monitoring device shall be used under conditions that require:

82 (a) the defendant to wear an electronic monitoring device at all times; and

83 (b) the device be placed in the home of the defendant to monitor the defendant's  
84 compliance with the court's order.

85 (6) If a court orders a defendant to participate in home confinement through electronic  
86 monitoring as a condition of probation under Subsection (3), the court shall:

87 (a) place the defendant on probation under the supervision of the department;

88 (b) order the department to place an electronic monitoring device on the defendant and  
89 install electronic monitoring equipment in the residence of the defendant; and

90 (c) order the defendant to pay the costs associated with home confinement to the  
91 department or the program provider.

92 (7) The department shall pay the costs of home confinement through electronic  
93 monitoring only for an individual who is determined to be indigent by the court.

94 (8) The department may provide the electronic monitoring described in this section  
95 directly or by contract with a private provider.

96 **Section 3. Repealer.**

97 This bill repeals:

98 Section **76-5-406.5, Circumstances required for probation or suspension of**  
99 **sentence for certain sex offenses against a child.**

100 **Section 4. Effective date.**

101 This bill takes effect on May 1, 2024.