

**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: Keith Grover

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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:

**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 2023, Chapter 184



26 REPEALS:

27 76-5-406.5, as last amended by Laws of Utah 2022, Chapter 181



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

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 Section 76-3-406 is repealed and reenacted to read:

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

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

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

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

37 (c) sodomy on a child as described in Section 76-5-403.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (3) Except for an attempted child rape offense, a court may suspend the execution or

57 imposition of a prison sentence for an actor that is convicted of an attempt to commit a felony  
58 described in Subsection (2) if the court:

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

60 (i) details why it is in the interests of justice not to execute or impose the prison

61 sentence; and

62 (ii) the individual does not pose a significant safety risk to:

63 (A) the victim of the attempted crime; or

64 (B) the general public; and

65 (b) orders the individual to complete the terms and condition of probation that is  
66 supervised by the Department of Corrections.

67 (4) Except for an offense before the district court in accordance with Section [80-6-502](#)  
68 or [80-6-504](#), the provisions of this section do not apply if the sentencing court finds that the  
69 defendant:

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

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

73 (5) Except as provided in Subsection [77-16a-103](#)(6) or (7), a court may not grant  
74 probation, suspend the execution or imposition of a sentence, enter a judgment for a lower  
75 category of offense, or order hospitalization under Section [76-3-201](#) or [77-18-105](#) or Title 77,  
76 Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, if the court  
77 is prohibited by this section.

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

79 **77-18-107. Home confinement -- Electronic monitoring for home confinement.**

80 (1) The court may order home confinement as a condition of probation under the  
81 supervision of the department, except as provided in [~~Sections~~] Section [76-3-406](#) [~~and~~  
82 [76-5-406.5](#)].

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

85 (3) If the court places the defendant on probation and orders the defendant to  
86 participate in home confinement under Subsection (1), the court may order the defendant to  
87 participate in home confinement through the use of electronic monitoring until further order of

88 the court.

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

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

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

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

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

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

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

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

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

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

106 Section 3. **Repealer.**

107 This bill repeals:

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

110 Section 4. **Effective date.**

111 This bill takes effect on May 1, 2024.