

HB0181S03 compared with HB0181S02

~~text~~ shows text that was in HB0181S02 but was deleted in HB0181S03.

inserted text shows text that was not in HB0181S02 but was inserted into HB0181S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: {} _____

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:

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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

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

~~} REPEALS:~~

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

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

Section 1. Section 76-3-406 is ~~{ amended }~~ repealed and reenacted to read:

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

~~{ (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, and except }~~ (1) As used in this section, "attempted child rape 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; or
- (c) sodomy on a child as described in Section 76-5-403.1.

(2) Except as provided in ~~{ Section 76-5-406.5 or }~~ Subsection ~~{ 77-16a-103(6) or (7) }~~ (3), a court may not grant probation ~~{ may not be granted }~~, suspend the execution or imposition of a sentence, ~~{ may not be suspended, the court may not }~~ enter a judgment for a lower category of offense, ~~{ and }~~ or order hospitalization ~~{ may not be ordered }~~, if the effect of which would in any way shorten the prison sentence for an ~~{ individual }~~ actor who commits a ~~{ capital }~~ capitol felony or a first degree felony, or attempts to commit a felony, ~~{ involving }~~ that is:

- (a) ~~{ Section 76-5-202, }~~ aggravated murder as described in Section 76-5-202; ~~{ }~~
- (b) ~~{ Section 76-5-203, }~~ murder as described in Section 76-5-203; ~~{ }~~
- (c) ~~{ Section 76-5-301.1, child kidnaping }~~ child kidnapping as described in Section 76-5-301.1; ~~{ }~~

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(d) ~~[[Section 76-5-302, aggravated kidnapping]]~~ aggravated kidnapping as described in Subsection 76-5-302(3)(b); ~~};~~

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

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

~~[[Section 76-5-402.2, object rape, if the individual is sentenced under]]~~

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

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

~~[[Section 76-5-403, forcible sodomy, if the individual is sentenced under]]~~

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

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

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

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

~~[[Section 76-5-405,]]~~ aggravated sexual assault ~~[[;]]~~ ~~[[or]]~~ as described in Section 76-5-405.

~~[[n) any]]~~ (3) Except for an attempted child rape offense, a court may suspend the execution or imposition of a prison sentence for an actor that is convicted of an attempt to commit a felony ~~[[listed]]~~ described in Subsection ~~[[1]]~~ (f), (h), or (j).

~~[[2]]~~ 2) if the court:

(a) makes a finding on the record that:

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

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

(A) the victim of the attempted crime; or

(B) the general public; and

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

(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

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~~defendant~~~~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, 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 by this section.

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

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

(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~~.

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

(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.

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

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

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

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

(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:

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

(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

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

(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.

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

Section 3. Repealer.

This bill repeals:

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

Section 4. Effective date.

This bill takes effect on May 1, 2024.