

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

Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence shall not be suspended, the court shall not enter a judgment for a lower category of offense, and hospitalization shall not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

- (1) Section 76-5-202, aggravated murder;
- (2) Section 76-5-203, murder;
- (3) Section 76-5-301.1, child kidnaping;
- (4) Section 76-5-302, aggravated kidnaping;
- (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
- (6) Section 76-5-402.1, rape of a child;
- (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2(1)(b), (1)(c), or (2);
- (8) Section 76-5-402.3, object rape of a child;
- (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);
- (10) Section 76-5-403.1, sodomy on a child;
- (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);
- (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- (13) Section 76-5-405, aggravated sexual assault; or
- (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).

(15) The provisions of this Section shall not apply if the sentencing court finds that the defendant was under the age of 18 at the time of the offense.

Amended by Chapter 366, 2011 General Session

**Effective 5/10/2016**

**77-41-102. Definitions.**

As used in this chapter:

- (1) "Bureau" means the bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.
- (2) "Business day" means a day on which state offices are open for regular business.
- (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

- (4) "Department" means the Department of Corrections.
- (5) "Division" means the Division of Juvenile Justice Services.
- (6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.
- (7) "Indian Country" means:
  - (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;
  - (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and
  - (c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.
- (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.
- (9) "Kidnap offender" means any person other than a natural parent of the victim who:
  - (a) has been convicted in this state of a violation of:
    - (i) Subsection 76-5-301(1)(c) or (d), kidnapping;
    - (ii) Section 76-5-301.1, child kidnapping;
    - (iii) Section 76-5-302, aggravated kidnapping;
    - (iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or
    - (v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);
  - (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:
    - (i) a Utah resident; or
    - (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;
  - (c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction, who is required to register as a kidnap offender by any state, federal, or military court, or who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and
    - (ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;
  - (d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any

- substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;
- (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or
- (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.
- (10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.
- (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).
- (12) "Online identifier" or "Internet identifier":
- (a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and
- (b) does not include date of birth, Social Security number, PIN number, or Internet passwords.
- (13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.
- (14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.
- (15) "Registration website" means the Sex and Kidnap Offender Notification and Registration website described in Section 77-41-110 and the information on the website.
- (16) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12 month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.
- (17) "Sex offender" means any person:
- (a) convicted in this state of:
- (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
- (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;
- (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
- (iv) Section 76-5-401.1, sexual abuse of a minor, except under Subsection 76-5-401.1(3)(a);
- (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- (vi) Section 76-5-402, rape;
- (vii) Section 76-5-402.1, rape of a child;
- (viii) Section 76-5-402.2, object rape;
- (ix) Section 76-5-402.3, object rape of a child;
- (x) a felony violation of Section 76-5-403, forcible sodomy;

- (xi) Section 76-5-403.1, sodomy on a child;
  - (xii) Section 76-5-404, forcible sexual abuse;
  - (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
  - (xiv) Section 76-5-405, aggravated sexual assault;
  - (xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;
  - (xvi) Section 76-5b-201, sexual exploitation of a minor;
  - (xvii) Section 76-7-102, incest;
  - (xviii) Section 76-9-702, lewdness, if the person has been convicted of the offense four or more times;
  - (xix) Section 76-9-702.1, sexual battery, if the person has been convicted of the offense four or more times;
  - (xx) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
  - (xxi) Section 76-9-702.5, lewdness involving a child;
  - (xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
  - (xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or
  - (xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (17)(a);
    - (xxv) defendants who committed the predicate offense while under the age of 18 are not required to register ~~unless the sentencing court finds that requiring the defendant to is in the interest of justice.~~
- (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a) and who is:
- (i) a Utah resident; or
  - (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- (c) (i) who is required to register as a sex offender in any other jurisdiction of original conviction, who is required to register as a sex offender by any state, federal, or military court, or who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and
- (ii) who, in any 12 month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;
- (d) who is a nonresident regularly employed or working in this state or who is a student in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any

substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required to register in the person's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (17)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(18) "Traffic offense" does not include a violation of [Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving](#).

(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Amended by Chapter [372](#), 2016 General Session