

Calvin R. Musselman proposes the following substitute bill:

**Mandatory Jail Sentence Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

House Sponsor: Colin W. Jack

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**LONG TITLE**

**General Description:**

This bill requires a mandatory jail sentence for certain crimes committed under certain conditions.

**Highlighted Provisions:**

This bill:

- requires a mandatory jail sentence for certain drug and theft crimes committed under certain conditions and with specified prior criminal convictions;

- provides that a person who receives a mandatory jail sentence under certain conditions may not be turned over to the federal government for deportation until the person has served the entire mandatory jail sentence; and

- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37-8**, as last amended by Laws of Utah 2024, Chapter 105

**76-6-404**, as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407

**76-6-602**, as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407

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

Section 1. Section **58-37-8** is amended to read:

**58-37-8 . Prohibited acts -- Penalties.**

- 30 (1) Prohibited acts A -- Penalties and reporting:
- 31 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
- 32 intentionally:
- 33 (i) produce, manufacture, or dispense, or to possess with intent to produce,
- 34 manufacture, or dispense, a controlled or counterfeit substance;
- 35 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
- 36 arrange to distribute a controlled or counterfeit substance;
- 37 (iii) possess a controlled or counterfeit substance with intent to distribute; or
- 38 (iv) engage in a continuing criminal enterprise where:
- 39 (A) the person participates, directs, or engages in conduct that results in a
- 40 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter
- 41 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled
- 42 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a
- 43 felony; and
- 44 (B) the violation is a part of a continuing series of two or more violations of this
- 45 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation
- 46 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor
- 47 Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are
- 48 undertaken in concert with five or more persons with respect to whom the
- 49 person occupies a position of organizer, supervisor, or any other position of
- 50 management.
- 51 (b) A person convicted of violating Subsection (1)(a) with respect to:
- 52 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a
- 53 controlled substance analog, or gammahydroxybutyric acid as listed in Schedule
- 54 III is guilty of a second degree felony, punishable by imprisonment for not more
- 55 than 15 years, and upon a second or subsequent conviction is guilty of a first
- 56 degree felony;
- 57 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
- 58 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree
- 59 felony, and upon a second or subsequent conviction is guilty of a second degree
- 60 felony; or
- 61 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
- 62 class A misdemeanor and upon a second or subsequent conviction is guilty of a
- 63 third degree felony.

- 64 (c)(i) Except as provided in Subsection (1)(c)(ii), a person who has been convicted of  
65 a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for  
66 an indeterminate term as described in Subsection (1)(b) and Title 76, Chapter 3,  
67 Punishments.
- 68 (ii) The court shall impose an indeterminate prison term for a person who has been  
69 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony  
70 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
71 during the commission or furtherance of the violation, the person intentionally or  
72 knowingly:
- 73 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in  
74 Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,  
75 or coercive manner;
- 76 (B) used a firearm or had a firearm readily accessible for immediate use, as those  
77 terms are defined in Section 76-10-501; or
- 78 (C) distributed a firearm, as that term is defined in Section 76-10-501, or  
79 possessed a firearm with intent to distribute the firearm.
- 80 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
81 prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 82 (A) details on the record the reasons why it is in the interests of justice not to  
83 impose the indeterminate prison term;
- 84 (B) makes a finding on the record that the person does not pose a significant  
85 safety risk to the public; and
- 86 (C) orders the person to complete the terms and conditions of supervised  
87 probation provided by the Department of Corrections.
- 88 (d)(i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
89 felony punishable by imprisonment for an indeterminate term of not less than:
- 90 (A) seven years and which may be for life; or
- 91 (B) 15 years and which may be for life if the trier of fact determined that the  
92 defendant knew or reasonably should have known that any subordinate under  
93 Subsection (1)(a)(iv)(B) was under 18 years old.
- 94 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
95 not eligible for probation.
- 96 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
97 offense, was under 18 years old.

- 98 (e) The Administrative Office of the Courts shall report to the Division of Professional  
99 Licensing the name, case number, date of conviction, and if known, the date of birth  
100 of each person convicted of violating Subsection (1)(a).
- 101 (f)(i) A court shall impose the mandatory jail sentence described in Subsection  
102 (1)(f)(ii), without the possibility for probation or other early release, if:
- 103 (A) the court, as a result of a plea agreement or a conviction, sentences a person  
104 for a misdemeanor violation of an offense under Subsection (1)(a);  
105 (B)(I) the violation is the person's second or subsequent conviction for any  
106 level of offense under Subsection (1)(a); or  
107 (II) the person previously has been convicted of a criminal violation in another  
108 jurisdiction, including a state or federal court, that is substantially  
109 equivalent to the violation of an offense under Subsection (1)(a); and  
110 (C) the person previously has been convicted of reentry of a removed alien under  
111 8 U.S.C. Sec. 1326.
- 112 (ii) The mandatory jail sentences referred to in Subsection (1)(f)(i) are:
- 113 (A) for a class A misdemeanor, 360 days in jail;  
114 (B) for a class B misdemeanor, 180 days in jail; and  
115 (C) for a class C misdemeanor, 90 days in jail.
- 116 (iii) A person who is subject to a mandatory jail sentence under Subsection (1)(f)(i)  
117 may not be released to the federal Immigration and Customs Enforcement Agency  
118 of the United States Department of Homeland Security for deportation until the  
119 person has served the entire jail sentence described in Subsection (1)(f)(ii).
- 120 (2) Prohibited acts B -- Penalties and reporting:
- 121 (a) It is unlawful:
- 122 (i) for a person knowingly and intentionally to possess or use a controlled substance  
123 analog or a controlled substance, unless it was obtained under a valid prescription  
124 or order, directly from a practitioner while acting in the course of the person's  
125 professional practice, or as otherwise authorized by this chapter;
- 126 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,  
127 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them  
128 to be occupied by persons unlawfully possessing, using, or distributing controlled  
129 substances in any of those locations; or
- 130 (iii) for a person knowingly and intentionally to possess an altered or forged  
131 prescription or written order for a controlled substance.

- 132 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:  
133 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree  
134 felony; or  
135 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is  
136 guilty of a class A misdemeanor on a first or second conviction, and on a third or  
137 subsequent conviction if each prior offense was committed within seven years  
138 before the date of the offense upon which the current conviction is based is guilty  
139 of a third degree felony.
- 140 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
141 conviction under Subsection (1)(a), that person shall be sentenced to a one degree  
142 greater penalty than provided in this Subsection (2).
- 143 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
144 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in  
145 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 146 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each  
147 prior offense was committed within seven years before the date of the offense  
148 upon which the current conviction is based.
- 149 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree  
150 felony if each prior offense was committed within seven years before the date of  
151 the offense upon which the current conviction is based.
- 152 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior  
153 boundaries of property occupied by a correctional facility as defined in Section  
154 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty  
155 one degree greater than provided in Subsection (2)(b), and if the conviction is with  
156 respect to controlled substances as listed in:
- 157 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
158 indeterminate term as provided by law, and:  
159 (A) the court shall additionally sentence the person convicted to a term of one year  
160 to run consecutively and not concurrently; and  
161 (B) the court may additionally sentence the person convicted for an indeterminate  
162 term not to exceed five years to run consecutively and not concurrently; and  
163 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
164 indeterminate term as provided by law, and the court shall additionally sentence  
165 the person convicted to a term of six months to run consecutively and not

166 concurrently.

167 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

168 (i) on a first conviction, guilty of a class B misdemeanor;

169 (ii) on a second conviction, guilty of a class A misdemeanor; and

170 (iii) on a third or subsequent conviction, guilty of a third degree felony.

171 (g) The Administrative Office of the Courts shall report to the Division of Professional  
172 Licensing the name, case number, date of conviction, and if known, the date of birth  
173 of each person convicted of violating Subsection (2)(a).

174 (3) Prohibited acts C -- Penalties:

175 (a) It is unlawful for a person knowingly and intentionally:

176 (i) to use in the course of the manufacture or distribution of a controlled substance a  
177 license number which is fictitious, revoked, suspended, or issued to another  
178 person or, for the purpose of obtaining a controlled substance, to assume the title  
179 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,  
180 dentist, veterinarian, or other authorized person;

181 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
182 administration of, to obtain a prescription for, to prescribe or dispense to a person  
183 known to be attempting to acquire or obtain possession of, or to procure the  
184 administration of a controlled substance by misrepresentation or failure by the  
185 person to disclose receiving a controlled substance from another source, fraud,  
186 forgery, deception, subterfuge, alteration of a prescription or written order for a  
187 controlled substance, or the use of a false name or address;

188 (iii) to make a false or forged prescription or written order for a controlled substance,  
189 or to utter the same, or to alter a prescription or written order issued or written  
190 under the terms of this chapter; or

191 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed  
192 to print, imprint, or reproduce the trademark, trade name, or other identifying  
193 mark, imprint, or device of another or any likeness of any of the foregoing upon  
194 any drug or container or labeling so as to render a drug a counterfeit controlled  
195 substance.

196 (b)(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
197 misdemeanor.

198 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
199 degree felony.

- 200 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 201 (4) Prohibited acts D -- Penalties:
- 202 (a) Notwithstanding other provisions of this section, a person not authorized under this
- 203 chapter who commits any act that is unlawful under Subsection (1)(a) or Section
- 204 58-37b-4 is upon conviction subject to the penalties and classifications under this
- 205 Subsection (4) if the trier of fact finds the act is committed:
- 206 (i) in a public or private elementary or secondary school or on the grounds of any of
- 207 those schools during the hours of 6 a.m. through 10 p.m.;
- 208 (ii) in a public or private vocational school or postsecondary institution or on the
- 209 grounds of any of those schools or institutions during the hours of 6 a.m. through
- 210 10 p.m.;
- 211 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
- 212 facility's hours of operation;
- 213 (iv) in a public park, amusement park, arcade, or recreation center when the public or
- 214 amusement park, arcade, or recreation center is open to the public;
- 215 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 216 (vi) in or on the grounds of a library when the library is open to the public;
- 217 (vii) within an area that is within 100 feet of any structure, facility, or grounds
- 218 included in Subsections (4)(a)(i) through (vi);
- 219 (viii) in the presence of a person younger than 18 years old, regardless of where the
- 220 act occurs; or
- 221 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 222 distribution of a substance in violation of this section to an inmate or on the
- 223 grounds of a correctional facility as defined in Section 76-8-311.3.
- 224 (b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony
- 225 and shall be imprisoned for a term of not less than five years if the penalty that
- 226 would otherwise have been established but for this Subsection (4) would have
- 227 been a first degree felony.
- 228 (ii) Imposition or execution of the sentence may not be suspended, and the person is
- 229 not eligible for probation.
- 230 (c) If the classification that would otherwise have been established would have been less
- 231 than a first degree felony but for this Subsection (4), a person convicted under this
- 232 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for
- 233 that offense.

- 234 (d)(i) If the violation is of Subsection (4)(a)(ix):
- 235 (A) the person may be sentenced to imprisonment for an indeterminate term as
- 236 provided by law, and the court shall additionally sentence the person convicted
- 237 for a term of one year to run consecutively and not concurrently; and
- 238 (B) the court may additionally sentence the person convicted for an indeterminate
- 239 term not to exceed five years to run consecutively and not concurrently; and
- 240 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
- 241 the mental state required for the commission of an offense, directly or indirectly
- 242 solicits, requests, commands, coerces, encourages, or intentionally aids another
- 243 person to commit a violation of Subsection (4)(a)(ix).
- 244 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 245 (i) the actor mistakenly believed the individual to be 18 years old or older at the time
- 246 of the offense or was unaware of the individual's true age; or
- 247 (ii) the actor mistakenly believed that the location where the act occurred was not as
- 248 described in Subsection (4)(a) or was unaware that the location where the act
- 249 occurred was as described in Subsection (4)(a).
- 250 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 251 (6)(a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
- 252 guilty or no contest to a violation or attempted violation of this section or a plea
- 253 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the
- 254 equivalent of a conviction, even if the charge has been subsequently reduced or
- 255 dismissed in accordance with the plea in abeyance agreement.
- 256 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
- 257 conviction that is:
- 258 (i) from a separate criminal episode than the current charge; and
- 259 (ii) from a conviction that is separate from any other conviction used to enhance the
- 260 current charge.
- 261 (7) A person may be charged and sentenced for a violation of this section, notwithstanding
- 262 a charge and sentence for a violation of any other section of this chapter.
- 263 (8)(a) A penalty imposed for violation of this section is in addition to, and not in lieu of,
- 264 a civil or administrative penalty or sanction authorized by law.
- 265 (b) When a violation of this chapter violates a federal law or the law of another state,
- 266 conviction or acquittal under federal law or the law of another state for the same act
- 267 is a bar to prosecution in this state.



- 268 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person  
269 or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
270 substance or substances, is prima facie evidence that the person or persons did so with  
271 knowledge of the character of the substance or substances.
- 272 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
273 veterinarian's professional practice only and not for humans, from prescribing,  
274 dispensing, or administering controlled substances or from causing the substances to be  
275 administered by an assistant or orderly under the veterinarian's direction and supervision.
- 276 (11) Civil or criminal liability may not be imposed under this section on:
- 277 (a) a person registered under this chapter who manufactures, distributes, or possesses an  
278 imitation controlled substance for use as a placebo or investigational new drug by a  
279 registered practitioner in the ordinary course of professional practice or research;
- 280 (b) a law enforcement officer acting in the course and legitimate scope of the officer's  
281 employment;\_or
- 282 (c) a healthcare facility, substance use harm reduction services program, or drug  
283 addiction treatment facility that temporarily possesses a controlled or counterfeit  
284 substance to conduct a test or analysis on the controlled or counterfeit substance to  
285 identify or analyze the strength, effectiveness, or purity of the substance for a public  
286 health or safety reason.
- 287 (12)(a) Civil or criminal liability may not be imposed under this section on any Indian,  
288 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide  
289 traditional ceremonial purposes in connection with the practice of a traditional Indian  
290 religion as defined in Section 58-37-2.
- 291 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
292 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or  
293 transported by an Indian for bona fide traditional ceremonial purposes in connection  
294 with the practice of a traditional Indian religion.
- 295 (c)(i) The defendant shall provide written notice of intent to claim an affirmative  
296 defense under this Subsection (12) as soon as practicable, but not later than 10  
297 days before trial.
- 298 (ii) The notice shall include the specific claims of the affirmative defense.
- 299 (iii) The court may waive the notice requirement in the interest of justice for good  
300 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely  
301 notice.

302 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a  
303 preponderance of the evidence. If the defense is established, it is a complete defense  
304 to the charges.

305 (13)(a) It is an affirmative defense that the person produced, possessed, or administered  
306 a controlled substance listed in Section 58-37-4.2 if the person was:

307 (i) engaged in medical research; and

308 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

309 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a  
310 controlled substance listed in Section 58-37-4.2.

311 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled  
312 substance listed in Section 58-37-4.2 if:

313 (a) the person was the subject of medical research conducted by a holder of a valid  
314 license to possess controlled substances under Section 58-37-6; and

315 (b) the substance was administered to the person by the medical researcher.

316 (15) The application of any increase in penalty under this section to a violation of  
317 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

318 This Subsection (15) takes precedence over any conflicting provision of this section.

319 (16)(a) It is an affirmative defense to an allegation of the commission of an offense  
320 listed in Subsection (16)(b) that the person or bystander:

321 (i) reasonably believes that the person or another person is experiencing an overdose  
322 event due to the ingestion, injection, inhalation, or other introduction into the  
323 human body of a controlled substance or other substance;

324 (ii) reports, or assists a person who reports, in good faith the overdose event to a  
325 medical provider, an emergency medical service provider as defined in Section  
326 53-2d-101, a law enforcement officer, a 911 emergency call system, or an  
327 emergency dispatch system, or the person is the subject of a report made under  
328 this Subsection (16);

329 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
330 actual location of the overdose event that facilitates responding to the person  
331 experiencing the overdose event;

332 (iv) remains at the location of the person experiencing the overdose event until a  
333 responding law enforcement officer or emergency medical service provider  
334 arrives, or remains at the medical care facility where the person experiencing an  
335 overdose event is located until a responding law enforcement officer arrives;

- 336 (v) cooperates with the responding medical provider, emergency medical service  
337 provider, and law enforcement officer, including providing information regarding  
338 the person experiencing the overdose event and any substances the person may  
339 have injected, inhaled, or otherwise introduced into the person's body; and  
340 (vi) is alleged to have committed the offense in the same course of events from which  
341 the reported overdose arose.
- 342 (b) The offenses referred to in Subsection (16)(a) are:
- 343 (i) the possession or use of less than 16 ounces of marijuana;  
344 (ii) the possession or use of a scheduled or listed controlled substance other than  
345 marijuana; and  
346 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
347 Imitation Controlled Substances Act.
- 348 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
349 include seeking medical assistance under this section during the course of a law  
350 enforcement agency's execution of a search warrant, execution of an arrest warrant,  
351 or other lawful search.
- 352 (17) If any provision of this chapter, or the application of any provision to any person or  
353 circumstances, is held invalid, the remainder of this chapter shall be given effect without  
354 the invalid provision or application.
- 355 (18) A legislative body of a political subdivision may not enact an ordinance that is less  
356 restrictive than any provision of this chapter.
- 357 (19) If a minor who is under 18 years old is found by a court to have violated this section or  
358 Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to  
359 complete:
- 360 (a) a screening as defined in Section 41-6a-501;  
361 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an  
362 assessment to be appropriate; and  
363 (c) an educational series as defined in Section 41-6a-501 or substance use disorder  
364 treatment as indicated by an assessment.
- 365 Section 2. Section **76-6-404** is amended to read:  
366 **76-6-404 . Theft -- Elements.**
- 367 (1) Terms defined in Section 76-1-101.5 apply to this section.  
368 (2) An actor commits theft if the actor obtains or exercises unauthorized control over  
369 another person's property with a purpose to deprive the person of the person's property.

- 370 (3) A violation of Subsection (2) is:
- 371 (a) a second degree felony if the:
- 372 (i) value of the property is or exceeds \$5,000;
- 373 (ii) property stolen is a firearm or an operable motor vehicle; or
- 374 (iii) property is stolen from the person of another;
- 375 (b) a third degree felony if:
- 376 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;
- 377 (ii) the property is:
- 378 (A) a catalytic converter as defined under Section 76-6-1402; or
- 379 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402
- 380 if the value is less than \$5,000 and the suspect metal is made of or contains
- 381 aluminum or copper and is not a lead battery;
- 382 (iii) the value of the property is or exceeds \$500 and the actor has been twice before
- 383 convicted of any of the following offenses, if each prior offense was committed
- 384 within 10 years before the date of the current conviction or the date of the offense
- 385 upon which the current conviction is based and at least one of those convictions is
- 386 for a class A misdemeanor:
- 387 (A) any theft, any robbery, or any burglary with intent to commit theft;
- 388 (B) any offense under Part 5, Fraud; or
- 389 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
- 390 (iv)(A) the value of property is or exceeds \$500 but is less than \$1,500;
- 391 (B) the theft occurs on a property where the offender has committed any theft
- 392 within the past five years; and
- 393 (C) the offender has received written notice from the merchant prohibiting the
- 394 offender from entering the property pursuant to Subsection 78B-3-108(4); or
- 395 (v) the actor has been previously convicted of a felony violation of any of the
- 396 offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior
- 397 offense was committed within 10 years before the date of the current conviction or
- 398 the date of the offense upon which the current conviction is based;
- 399 (c) a class A misdemeanor if:
- 400 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
- 401 (ii)(A) the value of property is less than \$500;
- 402 (B) the theft occurs on a property where the offender has committed any theft
- 403 within the past five years; and

- 404 (C) the offender has received written notice from the merchant prohibiting the  
 405 offender from entering the property pursuant to Subsection 78B-3-108(4); or  
 406 (iii) the actor has been twice before convicted of any of the offenses listed in  
 407 Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was  
 408 committed within 10 years before the date of the current conviction or the date of  
 409 the offense upon which the current conviction is based; or  
 410 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the  
 411 theft is not an offense under Subsection (3)(c).
- 412 (4)(a) A court shall impose the mandatory jail sentence described in Subsection (4)(b),  
 413 without the possibility for probation or other early release, if:
- 414 (i) the court, as a result of a plea agreement or a conviction, sentences an actor for a  
 415 misdemeanor violation of this section;
- 416 (ii)(A) the violation is the actor's second or subsequent conviction for any level of  
 417 offense under this section; or
- 418 (B) the actor previously has been convicted of a criminal violation in another  
 419 jurisdiction, including a state or federal court, that is substantially equivalent to  
 420 the violation of this section; and
- 421 (iii) the actor previously has been convicted of reentry of a removed alien under 8  
 422 U.S.C. Sec. 1326.
- 423 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:
- 424 (i) for a class A misdemeanor, 360 days in jail;  
 425 (ii) for a class B misdemeanor, 180 days in jail; and  
 426 (iii) for a class C misdemeanor, 90 days in jail.
- 427 (c) An actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not  
 428 be released to the federal Immigration and Customs Enforcement Agency of the  
 429 United States Department of Homeland Security for deportation until the actor has  
 430 served the entire jail sentence described in Subsection (4)(b).

431 Section 3. Section **76-6-602** is amended to read:

432 **76-6-602 . Retail theft.**

- 433 (1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.
- 434 (2) An actor commits retail theft if the actor knowingly:
- 435 (a) takes possession of, conceals, carries away, transfers or causes to be carried away or  
 436 transferred, any merchandise displayed, held, stored, or offered for sale in a retail  
 437 mercantile establishment with the intention of:

- 438 (i) retaining the merchandise; or
- 439 (ii) depriving the merchant permanently of the possession, use or benefit of such
- 440 merchandise without paying the retail value of the merchandise;
- 441 (b)(i) alters, transfers, or removes any label, price tag, marking, indicia of value, or
- 442 any other markings which aid in determining value of any merchandise displayed,
- 443 held, stored, or offered for sale, in a retail mercantile establishment; and
- 444 (ii) attempts to purchase the merchandise described in Subsection (2)(b)(i) personally
- 445 or in consort with another at less than the retail value with the intention of
- 446 depriving the merchant of the retail value of the merchandise;
- 447 (c) transfers any merchandise displayed, held, stored, or offered for sale in a retail
- 448 mercantile establishment from the container in or on which the merchandise is
- 449 displayed to any other container with the intention of depriving the merchant of the
- 450 retail value of the merchandise;
- 451 (d) under-rings with the intention of depriving the merchant of the retail value of the
- 452 merchandise; or
- 453 (e) removes a shopping cart from the premises of a retail mercantile establishment with
- 454 the intent of depriving the merchant of the possession, use, or benefit of the shopping
- 455 cart.
- 456 (3) A violation of Subsection (2) is:
- 457 (a) a second degree felony if the:
- 458 (i) value of the merchandise or shopping cart is or exceeds \$5,000;
- 459 (ii) merchandise stolen is a firearm or an operable motor vehicle; or
- 460 (b) a third degree felony if:
- 461 (i) the value of the merchandise is or exceeds \$1,500 but is less than \$5,000;
- 462 (ii) the merchandise is:
- 463 (A) a catalytic converter as defined under Section 76-6-1402; or
- 464 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402
- 465 if the value is less than \$5,000 and the suspect metal is made of or contains
- 466 aluminum or copper and is not a lead battery;
- 467 (iii) the value of the merchandise or shopping cart is or exceeds \$500 and the actor
- 468 has been twice before convicted of any of the following offenses, if each prior
- 469 offense was committed within 10 years before the date of the current conviction or
- 470 the date of the offense upon which the current conviction is based and at least one
- 471 of those convictions is for a class A misdemeanor:

- 472 (A) any theft, any robbery, or any burglary with intent to commit theft;
- 473 (B) any offense under Part 5, Fraud; or
- 474 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
- 475 (iv)(A) the value of merchandise or shopping cart is or exceeds \$500 but is less
- 476 than \$1,500;
- 477 (B) the theft occurs in a retail mercantile establishment or on the premises of a
- 478 retail mercantile establishment where the offender has committed any theft
- 479 within the past five years; and
- 480 (C) the offender has received written notice from the merchant prohibiting the
- 481 offender from entering the retail mercantile establishment or premises of a
- 482 retail mercantile establishment pursuant to Subsection 78B-3-108(4); or
- 483 (v) the actor has been previously convicted of a felony violation of any of the
- 484 offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior
- 485 offense was committed within 10 years before the date of the current conviction or
- 486 the date of the offense upon which the current conviction is based;
- 487 (c) a class A misdemeanor if:
- 488 (i) the value of the merchandise or shopping cart stolen is or exceeds \$500 but is less
- 489 than \$1,500;
- 490 (ii)(A) the value of merchandise or shopping cart is less than \$500;
- 491 (B) the theft occurs in a retail mercantile establishment or premises of a retail
- 492 mercantile establishment where the offender has committed any theft within
- 493 the past five years; and
- 494 (C) the offender has received written notice from the merchant prohibiting the
- 495 offender from entering the retail mercantile establishment or premises of a
- 496 retail mercantile establishment pursuant to Subsection 78B-3-108(4); or
- 497 (iii) the actor has been twice before convicted of any of the offenses listed in
- 498 Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was
- 499 committed within 10 years before the date of the current conviction or the date of
- 500 the offense upon which the current conviction is based; or
- 501 (d) a class B misdemeanor if the value of the merchandise or shopping cart stolen is less
- 502 than \$500 and the theft is not an offense under Subsection (3)(c).
- 503 (4)(a) A court shall impose the mandatory jail sentence described in Subsection (4)(b),
- 504 without the possibility for probation or other early release, if:
- 505 (i) the court, as a result of a plea agreement or a conviction, sentences an actor for a

- 506 misdemeanor violation of this section;  
507 (ii)(A) the violation is the actor's second or subsequent conviction for any level of  
508 offense under this section; or  
509 (B) the actor previously has been convicted of a criminal violation in another  
510 jurisdiction, including a state or federal court, that is substantially equivalent to  
511 the violation of this section; and  
512 (iii) the actor previously has been convicted of reentry of a removed alien under 8  
513 U.S.C. Sec. 1326.  
514 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:  
515 (i) for a class A misdemeanor, 360 days in jail;  
516 (ii) for a class B misdemeanor, 180 days in jail; and  
517 (iii) for a class C misdemeanor, 90 days in jail.  
518 (c) An actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not  
519 be released to the federal Immigration and Customs Enforcement Agency of the  
520 United States Department of Homeland Security for deportation until the actor has  
521 served the entire jail sentence described in Subsection (4)(b).

522 **Section 4. Effective Date.**

523 This bill takes effect on May 7, 2025.