

1                   **CRIMINAL PENALTIES AMENDMENTS -**  
2                   **INCLUDING JESSICA'S LAW**

3                   2008 GENERAL SESSION  
4                   STATE OF UTAH

5                   **Chief Sponsor: Carl Wimmer**  
6                   Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

8                   **General Description:**

9                   This bill amends penalty provisions of the Utah Criminal Code.

10                  **Highlighted Provisions:**

11                  This bill:

12                  ▶ makes it a first degree felony to engage in criminal solicitation to commit, or  
13 attempt to commit, a felony punishable by imprisonment for life without parole;

14                  ▶ makes it a first degree felony, punishable by imprisonment for not less than three  
15 years and which may be for life, to engage in criminal solicitation to commit, or  
16 attempt to commit, murder, child kidnapping, and certain sexual offenses;

17                  ▶ makes it a first degree felony, punishable by imprisonment of not less than 15 years  
18 and which may be for life, to engage in criminal solicitation to commit, or attempt  
19 to commit, rape of a child, object rape of a child, or sodomy on a child;

20                  ▶ provides that a court may impose a lesser term of imprisonment than the term of  
21 imprisonment described in the preceding paragraph if the court finds that a lesser  
22 term of imprisonment is in the interests of justice and states the reasons for this  
23 finding on the record;

24                  ▶ increases the minimum term of imprisonment for rape of a child, object rape of a  
25 child, or sodomy on a child, to 25 years and which may be for life;

26                  ▶ removes the authority of a court to impose a lesser sentence than the minimum term



28 of imprisonment for rape of a child, object rape of a child, or sodomy on a child; and  
29       ► makes technical changes.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 **AMENDS:**

36       **76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

37       **76-4-204**, as enacted by Laws of Utah 1990, Chapter 189

38       **76-5-402.1**, as last amended by Laws of Utah 2007, Chapter 339

39       **76-5-402.3**, as last amended by Laws of Utah 2007, Chapter 339

40       **76-5-403.1**, as last amended by Laws of Utah 2007, Chapter 339

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

42           Section 1. Section **76-4-102** is amended to read:

43           **76-4-102. Attempt -- Classification of offenses.**

44           (1) Criminal attempt to commit:

45           [(1)] (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

46           [(2)] (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony[~~, except that an attempt to commit~~];

47           (c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

48           [(a)] (i) murder, [a violation of] Subsection 76-5-203(2)(a)[, if the victim or another suffers serious bodily injury in the course of the actor's commission of the offense];

49           [(b)] (ii) child kidnapping, [a violation of] Section 76-5-301.1; or

50           [(c)] (iii) except as provided in Subsection (1)(d), any of the felonies described in Title 51 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

52           (d) except as provided in Subsection (2), any of the following offenses is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for

59 life:

60       (i) rape of a child, Section 76-5-402.1;  
61       (ii) object rape of a child, Section 76-5-402.3; or  
62       (iii) sodomy on a child, Section 76-5-403.1;  
63       [~~(3)~~] (e) a second degree felony is a third degree felony;  
64       [~~(4)~~] (f) a third degree felony is a class A misdemeanor;  
65       [~~(5)~~] (g) a class A misdemeanor is a class B misdemeanor;  
66       [~~(6)~~] (h) a class B misdemeanor is a class C misdemeanor; and  
67       [~~(7)~~] (i) a class C misdemeanor is punishable by a penalty not exceeding one half the  
68 penalty for a class C misdemeanor.

69       (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser  
70 term than the term described in Subsection (1)(d) is in the interests of justice and states the  
71 reasons for this finding on the record, the court may impose a term of imprisonment of not less  
72 than:

73       (a) ten years and which may be for life;  
74       (b) six years and which may be for life; or  
75       (c) three years and which may be for life.

76 Section 2. Section **76-4-204** is amended to read:

77 **76-4-204. Criminal solicitation -- Penalties.**

78       (1) Criminal solicitation to commit:

79       [~~(1)~~] (a) a capital felony, or a felony punishable by imprisonment for life without  
80 parole, is a first degree felony;  
81       [~~(2)~~] (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second  
82 degree felony;

83       (c) any of the following offenses is a first degree felony punishable by imprisonment  
84 for an indeterminate term of not fewer than three years and which may be for life:

85           (i) murder, Subsection 76-5-203(2)(a);  
86           (ii) child kidnapping, Section 76-5-301.1; or  
87           (iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76,  
88 Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;  
89           (d) except as provided in Subsection (2), any of the following offenses is a first degree

90   felony, punishable by a term of imprisonment of not less than 15 years and which may be for  
91   life:

- 92       (i) rape of a child, Section 76-5-402.1;
- 93       (ii) object rape of a child, Section 76-5-402.3; or
- 94       (iii) sodomy on a child, Section 76-5-403.1;
- 95       [~~(3)~~] (e) a second degree felony is a third degree felony; and
- 96       [~~(4)~~] (f) a third degree felony is a class A misdemeanor.

97       (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser  
98       term than the term described in Subsection (1)(d) is in the interests of justice and states the  
99       reasons for this finding on the record, the court may impose a term of imprisonment of not less  
100      than:

- 101       (a) ten years and which may be for life;
- 102       (b) six years and which may be for life; or
- 103       (c) three years and which may be for life.

104      Section 3. Section **76-5-402.1** is amended to read:

105      **76-5-402.1. Rape of a child.**

106      (1) A person commits rape of a child when the person has sexual intercourse with a  
107      child who is under the age of 14.

108      (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:  
109       (a) except as provided in Subsection (2)(b), [~~(2)(c), or (3),~~] not less than [~~15~~] 25 years  
110      and which may be for life; or  
111       (b) [~~except as provided in Subsection (2)(c) or (3),~~] life without parole, if the trier of  
112      fact finds that:

113       (i) during the course of the commission of the rape of a child, the defendant caused  
114      serious bodily injury to another; or  
115       [~~(c) life without parole, if the trier of fact finds that~~]

116       (ii) at the time of the commission of the rape of a child the defendant was previously  
117      convicted of a grievous sexual offense.

118       [~~(3) If, when imposing a sentence under Subsection (2)(a) or (b) a court finds that a~~  
119       ~~lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and~~  
120       ~~states the reasons for this finding on the record, the court may impose a term of imprisonment~~

121 of not less than:]

122 [ (a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]

123 [ (b) for purposes of Subsection (2)(a) or (b);]

124 [ (i) ten years and which may be for life; or]

125 [ (ii) six years and which may be for life.]

126 [ (4) The provisions of Subsection (3) do not apply when a person is sentenced under]

127 Subsection (2)(e).]

128 [ (5) (3) Imprisonment under this section is mandatory in accordance with Section

129 76-3-406.

130 Section 4. Section **76-5-402.3** is amended to read:

131 **76-5-402.3. Object rape of a child -- Penalty.**

132 (1) A person commits object rape of a child when the person causes the penetration or  
133 touching, however slight, of the genital or anal opening of a child who is under the age of 14 by  
134 any foreign object, substance, instrument, or device, not including a part of the human body,  
135 with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse  
136 or gratify the sexual desire of any person.

137 (2) Object rape of a child is a first degree felony punishable by a term of imprisonment  
138 of:

139 (a) except as provided in Subsection (2)(b)[-(2)(c), or (3)], not less than [15] 25 years  
140 and which may be for life; or

141 (b) [except as provided in Subsection (2)(c) or (3)] life without parole, if the trier of  
142 fact finds that:

143 (i) during the course of the commission of the object rape of a child the defendant  
144 caused serious bodily injury to another; or

145 [(c) life without parole, if the trier of fact finds that]

146 (ii) at the time of the commission of the object rape of a child the defendant was  
147 previously convicted of a grievous sexual offense.

148 [ (3) If, when imposing a sentence under Subsection (2)(a) or (b), a court finds that a  
149 lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and  
150 states the reasons for this finding on the record, the court may impose a term of imprisonment  
151 of not less than:]

152 [ (a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]  
153 [ (b) for purposes of Subsection (2)(a) or (b):]  
154 [ (i) ten years and which may be for life; or]  
155 [ (ii) six years and which may be for life.]  
156 [ (4) The provisions of Subsection (3) do not apply when a person is sentenced under  
157 Subsection (2)(e).]

158 [ (5) ] (3) Imprisonment under this section is mandatory in accordance with Section  
159 76-3-406.

160 Section 5. Section **76-5-403.1** is amended to read:

161 **76-5-403.1. Sodomy on a child.**

162 (1) A person commits sodomy upon a child if the actor engages in any sexual act upon  
163 or with a child who is under the age of 14, involving the genitals or anus of the actor or the  
164 child and the mouth or anus of either person, regardless of the sex of either participant.

165 (2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment  
166 of:

167 (a) except as provided in Subsection (2)(b), [(2)(c), or (3)], not less than [+] 25 years  
168 and which may be for life; or

169 (b) [except as provided in Subsection (2)(c) or (3),] life without parole, if the trier of  
170 fact finds that:

171 (i) during the course of the commission of the sodomy upon a child the defendant  
172 caused serious bodily injury to another; or

173 [ (c) life without parole, if the trier of fact finds that]

174 (ii) at the time of the commission of the sodomy upon a child, the defendant was  
175 previously convicted of a grievous sexual offense.

176 [ (3) If, when imposing a sentence under Subsection (2)(a) or (b), a court finds that a  
177 lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and  
178 states the reasons for this finding on the record, the court may impose a term of imprisonment  
179 of not less than:]

180 [ (a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]  
181 [ (b) for purposes of Subsection (2)(a) or (b):]  
182 [ (i) ten years and which may be for life; or]

183 [~~(ii) six years and which may be for life.~~]

184 [~~(4) The provisions of Subsection (3) do not apply when a person is sentenced under~~  
185 ~~Subsection (2)(e).~~]

186 [~~(5)~~] (3) Imprisonment under this section is mandatory in accordance with Section  
187 76-3-406.

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**Legislative Review Note**  
**as of 10-22-07 7:34 AM**

**Office of Legislative Research and General Counsel**

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## **H.B. 256 - Criminal Penalties Amendments**

### **Fiscal Note**

2008 General Session

State of Utah

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#### **State Impact**

Enactment of this bill will not require additional appropriations in the first two years of implementation. However, each year between 2018 and 2034, the Department of Corrections will require an increase of \$50,000 per year ongoing from the General Fund to pay for incarceration costs, with an annual cost in 2034 and each fiscal year thereafter of \$850,000.

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#### **Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/30/2008, 4:57:28 PM, Lead Analyst: Syphus, G.*

**Office of the Legislative Fiscal Analyst**