

**Superseded 5/13/2014**

**76-5-404.1 Sexual abuse of a child -- Aggravated sexual abuse of a child.**

- (1) As used in this section, "child" means a person under the age of 14.
- (2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.
- (3) Sexual abuse of a child is punishable as a second degree felony.
- (4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:
  - (a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;
  - (b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;
  - (c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;
  - (d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;
  - (e) the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;
  - (f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;
  - (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;
  - (h) the offense was committed by a person who occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;
  - (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or
  - (j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.
- (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:
  - (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;

- (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or
  - (c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.
- (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
- (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or
  - (b) for purposes of Subsection (5)(a) or (b):
    - (i) 10 years and which may be for life; or
    - (ii) six years and which may be for life.
- (7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c).
- (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.
- (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.