

1 **PROHIBITING INTIMACY WITH YOUTH**
2 **RECEIVING STATE SERVICES**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Paula F. Julander**

6 **This act modifies the Criminal Code by creating the offenses of custodial sexual relations and**
7 **custodial sexual misconduct with youth who are receiving state services. These offenses**
8 **address inappropriate acts committed by persons employed by the Department of Human**
9 **Services or the juvenile court, or private contractors of these agencies. The act provides**
10 **definitions and penalties, and specifies the defense of compulsion. This act takes effect on**
11 **July 1, 2002.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 ENACTS:

14 **76-5-413**, Utah Code Annotated 1953

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

16 Section 1. Section **76-5-413** is enacted to read:

17 **76-5-413. Custodial sexual relations or misconduct with youths receiving state**
18 **services -- Definitions -- Penalties -- Defenses.**

19 (1) As used in this section:

20 (a) "Actor" means:

21 (i) a person employed by the Department of Human Services, as created in Section
22 62A-1-105, or an employee of a private provider or contractor; or

23 (ii) a person employed by the juvenile court of the state, or an employee of a private
24 provider or contractor.

25 (b) "Department" means the Department of Human Services created in Section 62A-1-102.

26 (c) "Juvenile court" means the juvenile court of the state created in Section 78-3a-102.

27 (d) "Private provider or contractor" means any person or entity that contracts with the:



28 (i) department to provide services or functions that are part of the operation of the
29 department; or

30 (ii) juvenile court to provide services or functions that are part of the operation of the
31 juvenile court.

32 (e) "Youth receiving state services" means a person:

33 (i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

34 (A) in the custody of the department under Subsection 78-3a-118(2)(c)(ii); or

35 (B) receiving services from any division of the department if any portion of the costs of
36 these services is covered by public monies as defined in Section 76-8-401; or

37 (ii) younger than 21 years of age who is:

38 (A) in the custody of the Division of Youth Corrections, or the Division of Child and
39 Family Services; or

40 (B) under the jurisdiction of the juvenile court.

41 (2) (a) An actor commits custodial sexual relations with a youth receiving state services
42 if the actor commits any of the acts under Subsection (3):

43 (i) under circumstances not amounting to commission of, or an attempt to commit, an
44 offense under Subsection (6); and

45 (ii) (A) the actor knows that the individual is a youth receiving state services; or

46 (B) a reasonable person in the actor's position should have known under the circumstances
47 that the individual was a youth receiving state services.

48 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state
49 services is younger than 18 years of age, a violation of Subsection(2)(a) is a second degree felony.

50 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
51 greater penalty under another provision of state law than is provided under this Subsection (2), this
52 Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

53 (3) Acts referred to in Subsection (2)(a) are:

54 (a) having sexual intercourse with a youth receiving state services;

55 (b) engaging in any sexual act with a youth receiving state services involving the genitals
56 of one person and the mouth or anus of another person, regardless of the sex of either participant;
57 or

58 (c) causing the penetration, however slight, of the genital or anal opening of a youth

59 receiving state services by any foreign object, substance, instrument, or device, including a part
60 of the human body, with the intent to cause substantial emotional or bodily pain to any person,
61 regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of
62 any person, regardless of the sex of any participant.

63 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state services
64 if the actor commits any of the acts under Subsection (5):

65 (i) under circumstances not amounting to commission of, or an attempt to commit, an
66 offense under Subsection (6); and

67 (ii) (A) the actor knows that the individual is a youth receiving state services; or

68 (B) a reasonable person in the actor's position should have known under the circumstances
69 that the individual was a youth receiving state services.

70 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving
71 state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree
72 felony.

73 (c) If the act committed under this Subsection (4) amounts to an offense subject to a
74 greater penalty under another provision of state law than is provided under this Subsection (4), this
75 Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

76 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with the
77 intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or
78 gratify the sexual desire of any person, regardless of the sex of any participant:

79 (a) touching the anus, buttocks, or any part of the genitals of a youth receiving state
80 services;

81 (b) touching the breast of a female youth receiving state services;

82 (c) otherwise taking indecent liberties with a youth receiving state services; or

83 (d) causing a youth receiving state services to take indecent liberties with the actor or
84 another person.

85 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

86 (a) Section 76-5-401, unlawful sexual activity with a minor;

87 (b) Section 76-5-402, rape;

88 (c) Section 76-5-402.1, rape of a child;

89 (d) Section 76-5-402.2, object rape;

- 90 (e) Section 76-5-402.3, object rape of a child;
- 91 (f) Section 76-5-403, forcible sodomy;
- 92 (g) Section 76-5-403.1, sodomy on a child;
- 93 (h) Section 76-5-404, forcible sexual abuse;
- 94 (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- 95 (j) Section 76-5-405, aggravated sexual assault.
- 96 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations
- 97 with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a
- 98 youth receiving state services under Subsection (4), or an attempt to commit either of these
- 99 offenses, if the youth receiving state services is younger than 18 years of age, that the actor:
- 100 (i) mistakenly believed the youth receiving state services to be 18 years of age or older at
- 101 the time of the alleged offense; or
- 102 (ii) was unaware of the true age of the youth receiving state services.
- 103 (b) Consent of the youth receiving state services is not a defense to any violation or
- 104 attempted violation of Subsection (2) or (4).
- 105 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)
- 106 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 107 Section 2. **Effective date.**
- 108 This act takes effect on July 1, 2002.

Legislative Review Note
as of 10-26-01 9:29 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.