

**PENALTIES FOR SEXUAL
OFFENSES AND KIDNAPPING**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

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LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code relating to penalties for sexual offenses and child kidnapping.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ increases the base penalties for certain sexual offenses and kidnapping offenses;
- ▶ provides for greater penalties for certain sexual offenses and kidnapping offenses

when the defendant causes serious bodily injury to another during the course of the commission of the offense;

▶ provides that a person who commits certain sexual offenses after previously being convicted of a grievous sexual offense shall be sentenced to life imprisonment without parole;

- ▶ describes the order of precedence of certain sentencing enhancements;

- 32 ▶ modifies or replaces existing sentencing enhancements;
- 33 ▶ expands the list of crimes for which probation, suspension of sentence, reduction of
- 34 the category of offense, or hospitalization may not be granted; and
- 35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **34A-2-110**, as last amended by Chapter 329, Laws of Utah 1998
- 43 **76-1-601**, as last amended by Chapter 205, Laws of Utah 1996
- 44 **76-3-201**, as last amended by Chapter 208, Laws of Utah 2006
- 45 **76-3-203.2**, as last amended by Chapter 148, Laws of Utah 2003
- 46 **76-3-203.5**, as last amended by Chapter 59, Laws of Utah 2005
- 47 **76-3-203.6**, as enacted by Chapter 209, Laws of Utah 2001
- 48 **76-3-203.7**, as enacted by Chapter 299, Laws of Utah 2001
- 49 **76-3-406**, as last amended by Chapter 149, Laws of Utah 2003
- 50 **76-5-301.1**, as last amended by Chapter 301, Laws of Utah 2001
- 51 **76-5-302**, as last amended by Chapter 301, Laws of Utah 2001
- 52 **76-5-402**, as last amended by Chapter 267, Laws of Utah 1991
- 53 **76-5-402.1**, as last amended by Chapter 40, Laws of Utah 1996
- 54 **76-5-402.2**, as last amended by Chapter 18, Laws of Utah 1984
- 55 **76-5-402.3**, as last amended by Chapter 128, Laws of Utah 2000
- 56 **76-5-403**, as last amended by Chapter 88, Laws of Utah 1983
- 57 **76-5-403.1**, as last amended by Chapter 40, Laws of Utah 1996
- 58 **76-5-404**, as last amended by Chapter 18, Laws of Utah 1984
- 59 **76-5-404.1**, as last amended by Chapter 149, Laws of Utah 2003

60 76-5-405, as last amended by Chapter 289, Laws of Utah 1997

61 REPEALS AND REENACTS:

62 76-3-407, as last amended by Chapter 208, Laws of Utah 2006

63 REPEALS:

64 76-3-408, as last amended by Chapter 18, Laws of Utah 1984



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

67 Section 1. Section 34A-2-110 is amended to read:

68 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
69 **Notice.**

70 (1) As used in this section:

71 (a) "Corporation" has the same meaning as in [~~Subsection~~] Section 76-2-201[~~(3)~~].

72 (b) "Intentionally" has the same meaning as in [~~Subsection~~] Section 76-2-103[~~(1)~~].

73 (c) "Knowingly" has the same meaning as in [~~Subsection~~] Section 76-2-103[~~(2)~~].

74 (d) "Person" has the same meaning as in [~~Subsection~~] Section 76-1-601[~~(8)~~].

75 (e) "Recklessly" has the same meaning as in [~~Subsection~~] Section 76-2-103[~~(3)~~].

76 (2) (a) Any person is guilty of workers' compensation insurance fraud if that person
77 intentionally, knowingly, or recklessly:

78 (i) devises any scheme or artifice to obtain workers' compensation insurance coverage,
79 disability compensation, medical benefits, goods, professional services, fees for professional
80 services, or anything of value under this chapter or Chapter 3, Utah Occupational Disease Act,
81 by means of false or fraudulent pretenses, representations, promises, or material omissions; and

82 (ii) communicates or causes a communication with another in furtherance of the
83 scheme or artifice.

84 (b) Workers' compensation insurance fraud under Subsection (2)(a) is punishable in the
85 manner prescribed by Section 76-10-1801 for communication fraud.

86 (3) A corporation or association is guilty of the offense of workers' compensation
87 insurance fraud under the same conditions as those set forth in Section 76-2-204.

88 (4) The determination of the degree of any offense under Subsection (2) shall be
89 measured by the total value of all property, money, or other things obtained or sought to be
90 obtained by the scheme or artifice described in Subsection (2), except as provided in
91 Subsection 76-10-1801(1)(e).

92 (5) Reliance on the part of any person is not a necessary element of the offense
93 described in Subsection (2).

94 (6) An intent on the part of the perpetrator of any offense described in Subsection (2) to
95 permanently deprive any person of property, money, or anything of value is not a necessary
96 element of this offense.

97 (7) An insurer or self-insured employer giving written notice in accordance with
98 Subsection (10) that workers' compensation insurance fraud is a crime is not a necessary
99 element of the offense described in Subsection (2).

100 (8) A scheme or artifice to obtain workers' compensation insurance coverage includes
101 any scheme or artifice to make or cause to be made any false written or oral statement or
102 business reorganization, incorporation, or change in ownership intended to obtain insurance
103 coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at rates
104 that do not reflect the risk, industry, employer, or class codes actually covered by the policy.

105 (9) A scheme or artifice to obtain disability compensation includes a scheme or artifice
106 to collect or make a claim for temporary disability compensation as provided in Section
107 34A-2-410 while working for gain.

108 (10) (a) Each insurer or self-insured employer who, in connection with this chapter or
109 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form to any
110 person upon which that person applies for insurance coverage, reports payroll, makes a claim
111 by reason of accident, injury, death, disease, or other claimed loss, or otherwise reports or gives
112 notice to the insurer or self-insured employer, shall cause to be printed or displayed in
113 comparative prominence with other content the statement: "Any person who knowingly
114 presents false or fraudulent underwriting information, files or causes to be filed a false or
115 fraudulent claim for disability compensation or medical benefits, or submits a false or

116 fraudulent report or billing for health care fees or other professional services is guilty of a
117 crime and may be subject to fines and confinement in state prison."

118 (b) Each insurer or self-insured employer who issues a check, warrant, or other
119 financial instrument in payment of compensation issued under this chapter or Chapter 3, Utah
120 Occupational Disease Act, shall cause to be printed or displayed in comparative prominence
121 above the area for endorsement a statement substantially similar to the following: "Workers'
122 compensation insurance fraud is a crime punishable by Utah law."

123 (c) (i) Subsections (10)(a) and (b) apply only to the legal obligations of an insurer or a
124 self-insured employer.

125 (ii) A person who violates Subsection (2) is guilty of workers' compensation insurance
126 fraud, and the failure of an insurer or a self-insured employer to fully comply with Subsections
127 (10)(a) and (b) may not be:

128 (A) a defense to violating Subsection (2); or

129 (B) grounds for suppressing evidence.

130 (11) In the absence of malice, a person, employer, insurer, or governmental entity that
131 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
132 is not subject to any civil liability for libel, slander, or any other relevant cause of action.

133 (12) In any action involving workers' compensation, this section supersedes Title 31A,
134 Chapter 31, Insurance Fraud Act.

135 Section 2. Section **76-1-601** is amended to read:

136 **76-1-601. Definitions.**

137 Unless otherwise provided, the following terms apply to this title:

138 (1) "Act" means a voluntary bodily movement and includes speech.

139 (2) "Actor" means a person whose criminal responsibility is in issue in a criminal
140 action.

141 (3) "Bodily injury" means physical pain, illness, or any impairment of physical
142 condition.

143 (4) "Conduct" means an act or omission.

144 (5) "Dangerous weapon" means:
 145 (a) any item capable of causing death or serious bodily injury; or
 146 (b) a facsimile or representation of the item~~[; and]~~, if:
 147 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
 148 believe the item is likely to cause death or serious bodily injury; or
 149 (ii) the actor represents to the victim verbally or in any other manner that he is in
 150 control of such an item.

151 (6) "Grievous sexual offense" means:
 152 (a) rape, Section 76-5-402;
 153 (b) rape of a child, Section 76-5-402.1;
 154 (c) object rape, Section 76-5-402.2;
 155 (d) object rape of a child, Section 76-5-402.3;
 156 (e) forcible sodomy, Subsection 76-5-403(2);
 157 (f) sodomy on a child, Section 76-5-403.1;
 158 (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
 159 (h) aggravated sexual assault, Section 76-5-405;
 160 (i) any felony attempt to commit an offense described in Subsections (6)(a) through
 161 (h); or
 162 (j) an offense in another state, territory, or district of the United States that, if
 163 committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).

164 ~~[(6)]~~ (7) "Offense" means a violation of any penal statute of this state.
 165 ~~[(7)]~~ (8) "Omission" means a failure to act when there is a legal duty to act and the
 166 actor is capable of acting.
 167 ~~[(8)]~~ (9) "Person" means an individual, public or private corporation, government,
 168 partnership, or unincorporated association.
 169 ~~[(9)]~~ (10) "Possess" means to have physical possession of or to exercise dominion or
 170 control over tangible property.
 171 ~~[(10)]~~ (11) "Serious bodily injury" means bodily injury that creates or causes serious

172 permanent disfigurement, protracted loss or impairment of the function of any bodily member
173 or organ, or creates a substantial risk of death.

174 [~~(H)~~] (12) "Substantial bodily injury" means bodily injury, not amounting to serious
175 bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or
176 temporary loss or impairment of the function of any bodily member or organ.

177 [~~(I2)~~] (13) "Writing" or "written" includes any handwriting, typewriting, printing,
178 electronic storage or transmission, or any other method of recording information or fixing
179 information in a form capable of being preserved.

180 Section 3. Section **76-3-201** is amended to read:

181 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
182 **penalties -- Hearing.**

183 (1) As used in this section:

184 (a) "Conviction" includes a:

185 (i) judgment of guilt; and

186 (ii) plea of guilty.

187 (b) "Criminal activities" means any offense of which the defendant is convicted or any
188 other criminal conduct for which the defendant admits responsibility to the sentencing court
189 with or without an admission of committing the criminal conduct.

190 (c) "Pecuniary damages" means all special damages, but not general damages, which a
191 person could recover against the defendant in a civil action arising out of the facts or events
192 constituting the defendant's criminal activities and includes the money equivalent of property
193 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
194 expenses.

195 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
196 victim, and payment for expenses to a governmental entity for extradition or transportation and
197 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

198 (e) (i) "Victim" means any person who the court determines has suffered pecuniary
199 damages as a result of the defendant's criminal activities.

200 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

201 (2) Within the limits prescribed by this chapter, a court may sentence a person
202 convicted of an offense to any one of the following sentences or combination of them:

203 (a) to pay a fine;

204 (b) to removal or disqualification from public or private office;

205 (c) to probation unless otherwise specifically provided by law;

206 (d) to imprisonment;

207 (e) on or after April 27, 1992, to life in prison without parole; or

208 (f) to death.

209 (3) (a) This chapter does not deprive a court of authority conferred by law to:

210 (i) forfeit property;

211 (ii) dissolve a corporation;

212 (iii) suspend or cancel a license;

213 (iv) permit removal of a person from office;

214 (v) cite for contempt; or

215 (vi) impose any other civil penalty.

216 (b) A civil penalty may be included in a sentence.

217 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary
218 damages, in addition to any other sentence it may impose, the court shall order that the
219 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
220 make restitution as part of a plea agreement.

221 (b) In determining whether restitution is appropriate, the court shall follow the criteria
222 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

223 (5) (a) In addition to any other sentence the court may impose, the court shall order the
224 defendant to pay restitution of governmental transportation expenses if the defendant was:

225 (i) transported pursuant to court order from one county to another within the state at
226 governmental expense to resolve pending criminal charges;

227 (ii) charged with a felony or a class A, B, or C misdemeanor; and

228 (iii) convicted of a crime.

229 (b) The court may not order the defendant to pay restitution of governmental
230 transportation expenses if any of the following apply:

231 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
232 warrant is issued for an infraction; or

233 (ii) the defendant was not transported pursuant to a court order.

234 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
235 shall be calculated according to the following schedule:

236 (A) \$75 for up to 100 miles a defendant is transported;

237 (B) \$125 for 100 up to 200 miles a defendant is transported; and

238 (C) \$250 for 200 miles or more a defendant is transported.

239 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant
240 transported regardless of the number of defendants actually transported in a single trip.

241 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,
242 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the
243 county to which he has been returned, the court may, in addition to any other sentence it may
244 impose, order that the defendant make restitution for costs expended by any governmental
245 entity for the extradition.

246 (6) (a) In addition to any other sentence the court may impose, the court shall order the
247 defendant to pay court-ordered restitution to the county for the cost of incarceration in the
248 county correctional facility before and after sentencing if:

249 (i) the defendant is convicted of criminal activity that results in incarceration in the
250 county correctional facility; and

251 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility
252 through a contract with the Department of Corrections; or

253 (B) the reimbursement does not duplicate the reimbursement provided under Section
254 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a
255 condition of probation under Subsection 77-18-1(8).

256 (b) (i) The costs of incarceration under Subsection (6)(a) are:

257 (A) the daily core inmate incarceration costs and medical and transportation costs
258 established under Section 64-13c-302; and

259 (B) the costs of transportation services and medical care that exceed the negotiated
260 reimbursement rate established under Subsection 64-13c-302(2).

261 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
262 by the county correctional facility in providing reasonable accommodation for an inmate
263 qualifying as an individual with a disability as defined and covered by the federal Americans
264 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
265 health treatment for the inmate's disability.

266 (c) In determining the monetary sum and other conditions for the court-ordered
267 restitution under this Subsection (6), the court shall consider the criteria provided under
268 Subsections 77-38a-302(5)(c)(i) through (iv).

269 (d) If on appeal the defendant is found not guilty of the criminal activity under
270 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall
271 reimburse the defendant for restitution the defendant paid for costs of incarceration under
272 Subsection (6)(a).

273 ~~[(7) (a) If a statute under which the defendant was convicted mandates that one of three~~
274 ~~stated minimum terms shall be imposed, the court shall order imposition of the term of middle~~
275 ~~severity unless there are circumstances in aggravation or mitigation of the crime, except as~~
276 ~~provided in Subsection (8).]~~

277 ~~[(b) Prior to or at the time of sentencing, either party may submit a statement~~
278 ~~identifying circumstances in aggravation or mitigation or presenting additional facts. If the~~
279 ~~statement is in writing, it shall be filed with the court and served on the opposing party at least~~
280 ~~four days prior to the time set for sentencing.]~~

281 ~~[(c) In determining whether there are circumstances that justify imposition of the~~
282 ~~highest or lowest term, the court may consider the record in the case, the probation officer's~~
283 ~~report, other reports, including reports received under Section 76-3-404, statements in~~

284 ~~aggravation or mitigation submitted by the prosecution or the defendant, and any further~~
285 ~~evidence introduced at the sentencing hearing.]~~

286 ~~[(d) The court shall set forth on the record the facts supporting and reasons for~~
287 ~~imposing the upper or lower term.]~~

288 ~~[(e) In determining a just sentence, the court shall consider sentencing guidelines~~
289 ~~regarding aggravating and mitigating circumstances promulgated by the Sentencing~~
290 ~~Commission.]~~

291 ~~[(8) (a) The defendant shall be sentenced to the highest minimum term in prison if the~~
292 ~~trier of fact finds that:]~~

293 ~~[(i) during the commission of any of the following offenses the defendant causes~~
294 ~~substantial bodily injury to the child:]~~

295 ~~[(A) Section 76-5-301.1, child kidnapping;]~~

296 ~~[(B) Section 76-5-402.1, rape of a child;]~~

297 ~~[(C) Section 76-5-402.3, object rape of a child; or]~~

298 ~~[(D) Section 76-5-403.1, sodomy on a child; or]~~

299 ~~[(ii) at the time of the commission of any of the offenses in Subsections (8)(a)(i)(A)~~
300 ~~through (D), the defendant had been previously convicted of:]~~

301 ~~[(A) Section 76-5-402, rape;]~~

302 ~~[(B) Section 76-5-402.1, rape of a child;]~~

303 ~~[(C) Section 76-5-402.2, object rape;]~~

304 ~~[(D) Section 76-5-402.3, object rape of a child;]~~

305 ~~[(E) Subsection 76-5-403(2), forcible sodomy;]~~

306 ~~[(F) Section 76-5-403.1, sodomy on a child;]~~

307 ~~[(G) Section 76-5-404, forcible sexual abuse;]~~

308 ~~[(H) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a~~
309 ~~child;]~~

310 ~~[(I) Section 76-5-405, aggravated sexual assault;]~~

311 ~~[(J) any offense in any other state or federal jurisdiction which constitutes or would~~

312 ~~constitute a crime in Subsections (8)(a)(ii)(A) through (I); or]~~
 313 ~~[(K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through~~
 314 ~~(J).]~~

315 ~~[(b) This Subsection (8) takes precedence over any conflicting provision of law.]~~

316 Section 4. Section **76-3-203.2** is amended to read:

317 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
 318 **about school premises -- Enhanced penalties.**

319 (1) (a) As used in this section and Section 76-10-505.5, "on or about school premises"
 320 means any of the following:

321 (i) in a public or private elementary, secondary, or on the grounds of any of those
 322 schools;

323 (ii) in a public or private vocational school or postsecondary institution or on the
 324 grounds of any of those schools or institutions;

325 (iii) in those portions of any building, park, stadium, or other structure or grounds
 326 which are, at the time of the act, being used for an activity sponsored by or through a school or
 327 institution under Subsections (1)(a)(i) and (ii);

328 (iv) in or on the grounds of a preschool or child-care facility; and

329 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections
 330 (1)(a)(i), (ii), (iii), and (iv).

331 (b) As used in this section:

332 (i) "Dangerous weapon" has the same definition as in Section 76-1-601.

333 (ii) "Educator" means any person who is employed by a public school district and who
 334 is required to hold a certificate issued by the State Board of Education in order to perform
 335 duties of employment.

336 (iii) "Within the course of employment" means that an educator is providing services or
 337 engaging in conduct required by the educator's employer to perform the duties of employment.

338 (2) Any person who, on or about school premises, commits any offense and uses or
 339 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the

340 offense is subject to an enhanced degree of offense as provided in Subsection (4).

341 (3) (a) Any person who commits an offense against an educator when the educator is
342 acting within the course of employment is subject to an enhanced degree of offense as provided
343 in Subsection (4).

344 (b) As used in Subsection (3)(a), "offense" means:

345 (i) an offense under Title 76, Chapter 5, Offenses Against The Person; and

346 (ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

347 (4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or
348 about school premises, commits any offense and in the commission of the offense uses or
349 threatens to use a dangerous weapon, or that the defendant committed an offense against an
350 educator when the educator was acting within the course of his employment, the enhanced
351 penalty for a:

352 (a) class B misdemeanor is a class A misdemeanor;

353 (b) class A misdemeanor is a third degree felony;

354 (c) third degree felony is a second degree felony; or

355 (d) second degree felony is a first degree felony.

356 (5) The enhanced penalty for a first degree felony offense of a convicted person:

357 (a) is imprisonment for a term of not less than five years and which may be for life, and
358 imposition or execution of the sentence may not be suspended unless the court finds that the
359 interests of justice would be best served and states the specific circumstances justifying the
360 disposition on the record; and

361 (b) is subject also to the dangerous weapon enhancement provided in Section
362 76-3-203.8 except for an offense committed under Subsection (3) that does not involve a
363 firearm.

364 (6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
365 notice upon the information or indictment that the defendant is subject to the enhanced degree
366 of offense or penalty under Subsection (4) or (5).

367 (7) In cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d),

368 or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve
369 a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section
370 76-3-203.8.

371 (8) The sentencing enhancement described in this section does not apply if:

372 (a) the offense for which the person is being sentenced is:

373 (i) a grievous sexual offense;

374 (ii) child kidnapping, Section 76-5-301.1;

375 (iii) aggravated kidnapping, Section 76-5-302; or

376 (iv) forcible sexual abuse, Section 76-5-404; and

377 (b) applying the sentencing enhancement provided for in this section would result in a
378 lower maximum penalty than the penalty provided for under the section that describes the
379 offense for which the person is being sentenced.

380 Section 5. Section **76-3-203.5** is amended to read:

381 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

382 (1) As used in this section:

383 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
384 United States, or any district, possession, or territory of the United States for which the
385 maximum punishment the offender may be subjected to exceeds one year in prison.

386 (b) "Habitual violent offender" means a person convicted within the state of any violent
387 felony and who on at least two previous occasions has been convicted of a violent felony and
388 committed to either prison in Utah or an equivalent correctional institution of another state or
389 of the United States either at initial sentencing or after revocation of probation.

390 (c) (i) "Violent felony" means any of the following offenses, or any attempt,
391 solicitation, or conspiracy to commit any of these offenses punishable as a felony:

392 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
393 Title 76, Chapter 6, Part 1, Property Destruction;

394 (B) assault by prisoner, Section 76-5-102.5;

395 (C) disarming a police officer, Section 76-5-102.8;

- 396 (D) aggravated assault, Section 76-5-103;
- 397 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 398 (F) mayhem, Section 76-5-105;
- 399 (G) stalking, Subsection 76-5-106.5(6);
- 400 (H) terroristic threat, Section 76-5-107;
- 401 (I) child abuse, Subsections 76-5-109(2)(a) and (b);
- 402 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 403 (K) abuse or neglect of disabled child, Section 76-5-110;
- 404 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 405 (M) endangerment of child or elder adult, Section 76-5-112.5;
- 406 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 407 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 408 5, Part 3, Kidnapping;
- 409 (P) rape, Section 76-5-402;
- 410 (Q) rape of a child, Section 76-5-402.1;
- 411 (R) object rape, Section 76-5-402.2;
- 412 (S) object rape of a child, Section 76-5-402.3;
- 413 (T) forcible sodomy, Section 76-5-403;
- 414 (U) sodomy on a child, Section 76-5-403.1;
- 415 (V) forcible sexual abuse, Section 76-5-404;
- 416 (W) aggravated sexual abuse of a child and sexual abuse of a child, Section
- 417 76-5-404.1;
- 418 (X) aggravated sexual assault, Section 76-5-405;
- 419 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 420 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 421 Burglary and Criminal Trespass;
- 422 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 423 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);

- 424 (CC) tampering with a witness under Subsection 76-8-508(1);
- 425 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 426 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 427 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 428 or by use of force theft by extortion has been committed pursuant to Subsections
- 429 76-6-406(2)(a), (b), and (i);
- 430 (GG) damage or destruction of school or institution of higher education property by
- 431 explosives or flammable materials under Section 76-8-715;
- 432 (HH) possession, use, or removal of explosive, chemical, or incendiary devices under
- 433 Subsections 76-10-306(3) through (6);
- 434 (II) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 435 76-10-307;
- 436 (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person
- 437 under Section 76-10-503;
- 438 (KK) unlawful discharge of a firearm under Section 76-10-508;
- 439 (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 440 (MM) bus hijacking under Section 76-10-1504; and
- 441 (NN) discharging firearms and hurling missiles under Section 76-10-1505; or
- 442 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 443 any district, possession, or territory of the United States which would constitute a violent
- 444 felony as defined in this Subsection (1) if committed in this state.
- 445 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
- 446 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
- 447 under this section, the penalty for a:
- 448 (a) third degree felony is as if the conviction were for a first degree felony;
- 449 (b) second degree felony is as if the conviction were for a first degree felony; or
- 450 (c) first degree felony remains the penalty for a first degree penalty except:
- 451 (i) the convicted person is not eligible for probation; and

452 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
453 habitual violent offender as an aggravating factor in determining the length of incarceration.

454 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
455 provide notice in the information or indictment that the defendant is subject to punishment as a
456 habitual violent offender under this section. Notice shall include the case number, court, and
457 date of conviction or commitment of any case relied upon by the prosecution.

458 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
459 intends to deny that:

460 (A) the defendant is the person who was convicted or committed;

461 (B) the defendant was represented by counsel or had waived counsel; or

462 (C) the defendant's plea was understandingly or voluntarily entered.

463 (ii) The notice of denial shall be served not later than five days prior to trial and shall
464 state in detail the defendant's contention regarding the previous conviction and commitment.

465 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
466 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
467 of the:

468 (i) defendant's previous convictions for violent felonies, except as otherwise provided
469 in the Utah Rules of Evidence; or

470 (ii) allegation against the defendant of being a habitual violent offender.

471 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
472 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
473 the jury, in which case the allegation shall be tried immediately to the court.

474 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section
475 applies.

476 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
477 and the defendant shall be afforded an opportunity to present any necessary additional
478 evidence.

479 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this

480 section is applicable beyond a reasonable doubt.

481 (d) If any previous conviction and commitment is based upon a plea of guilty or no
482 contest, there is a rebuttable presumption that the conviction and commitment were regular and
483 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
484 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
485 to establish by a preponderance of the evidence that the defendant was then represented by
486 counsel or had lawfully waived his right to have counsel present, and that his plea was
487 understandingly and voluntarily entered.

488 (e) If the trier of fact finds this section applicable, the court shall enter that specific
489 finding on the record and shall indicate in the order of judgment and commitment that the
490 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
491 under this section.

492 (5) (a) The sentencing enhancement provisions of [~~Sections~~] Section 76-3-407 [~~and~~
493 ~~76-3-408~~ ~~apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses,~~
494 ~~and~~] supersede the provisions of this section.

495 (b) Notwithstanding Subsection (5)(a) [~~-(i) the convictions under Sections 76-5-404~~
496 ~~and 76-5a-3 are governed by the enhancement provisions of this section; and (ii)], the "violent
497 felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of
498 Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual
499 violent offender.~~

500 (6) The sentencing enhancement described in this section does not apply if:

501 (a) the offense for which the person is being sentenced is:

502 (i) a grievous sexual offense;

503 (ii) child kidnapping, Section 76-5-301.1;

504 (iii) aggravated kidnapping, Section 76-5-302; or

505 (iv) forcible sexual abuse, Section 76-5-404; and

506 (b) applying the sentencing enhancement provided for in this section would result in a
507 lower maximum penalty than the penalty provided for under the section that describes the

508 offense for which the person is being sentenced.

509 Section 6. Section **76-3-203.6** is amended to read:

510 **76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

511 (1) As used in this section, "serving a sentence" means a prisoner is sentenced and
512 committed to the custody of the Department of Corrections, the sentence has not been
513 terminated or voided, and the prisoner:

- 514 (a) has not been paroled; or
- 515 (b) is in custody after arrest for a parole violation.

516 (2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence
517 for a capital felony or a first degree felony commits any offense listed in Subsection (3), the
518 court shall sentence the defendant to life in prison without parole. However, the court may
519 sentence the defendant to an indeterminate prison term of not less than 20 years and which may
520 be for life if the court finds that the interests of justice would best be served and states the
521 specific circumstances justifying the disposition on the record.

522 (3) Offenses referred to in Subsection (2) are:

- 523 (a) aggravated assault, Section 76-5-103(2);
- 524 (b) mayhem, Section 76-5-105;
- 525 (c) attempted murder, Section 76-5-203;
- 526 (d) kidnapping, Section 76-5-301;
- 527 (e) child kidnapping, Section 76-5-301.1;
- 528 (f) aggravated kidnapping, Section 76-5-302;
- 529 (g) rape, Section 76-5-402;
- 530 (h) rape of a child, Section 76-5-402.1;
- 531 (i) object rape, Section 76-5-402.2;
- 532 (j) object rape of a child, Section 76-5-402.3;
- 533 (k) forcible sodomy, Section 76-5-403;
- 534 (l) sodomy on a child, Section 76-5-403.1;
- 535 (m) aggravated sexual abuse of a child, Section 76-5-404.1;

- 536 (n) aggravated sexual assault, Section 76-5-405;
- 537 (o) aggravated arson, Section 76-6-103;
- 538 (p) aggravated burglary, Section 76-6-203; and
- 539 (q) aggravated robbery, Section 76-6-302.
- 540 (4) The sentencing enhancement described in this section does not apply if:
- 541 (a) the offense for which the person is being sentenced is:
- 542 (i) a grievous sexual offense;
- 543 (ii) child kidnapping, Section 76-5-301.1; or
- 544 (iii) aggravated kidnapping, Section 76-5-302; and
- 545 (b) applying the sentencing enhancement provided for in this section would result in a
- 546 lower maximum penalty than the penalty provided for under the section that describes the
- 547 offense for which the person is being sentenced.

548 Section 7. Section **76-3-203.7** is amended to read:

549 **76-3-203.7. Increase of sentence for violent felony if body armor used.**

550 (1) As used in this section:

551 (a) "Body armor" means any material designed or intended to provide bullet
552 penetration resistance or protection from bodily injury caused by a dangerous weapon.

553 (b) "Dangerous weapon" has the same definition as in Section 76-1-601.

554 (c) "Violent felony" has the same definition as in Section 76-3-203.5.

555 (2) A person convicted of a violent felony may be sentenced to imprisonment for an
556 indeterminate term, as provided in Section 76-3-203, but if the trier of fact finds beyond a
557 reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also
558 used or wore body armor, with the intent to facilitate the commission of the violent felony, and
559 the violent felony is:

560 (a) a first degree felony, the court shall sentence the person convicted for a term of not
561 less than six years, and which may be for life;

562 (b) a second degree felony, the court shall sentence the person convicted for a term of
563 not less than two years nor more than 15 years, and the court may sentence the person

564 convicted for a term of not less than two years nor more than 20 years; and

565 (c) a third degree felony, the court shall sentence the person convicted for a term of not
566 less than one year nor more than five years, and the court may sentence the person convicted
567 for a term of not less than one year nor more than ten years.

568 (3) The sentencing enhancement described in this section does not apply if:

569 (a) the offense for which the person is being sentenced is:

570 (i) a grievous sexual offense;

571 (ii) child kidnapping, Section 76-5-301.1;

572 (iii) aggravated kidnapping, Section 76-5-302; or

573 (iv) forcible sexual abuse, Section 76-5-404; and

574 (b) applying the sentencing enhancement provided for in this section would result in a
575 lower maximum penalty than the penalty provided for under the section that describes the
576 offense for which the person is being sentenced.

577 Section 8. Section **76-3-406** is amended to read:

578 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
579 **offense, or hospitalization may not be granted.**

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

586 (1) Section 76-5-202, aggravated murder;

587 (2) Section 76-5-203, murder;

588 (3) Section 76-5-301.1, child kidnaping;

589 (4) Section 76-5-302, aggravated kidnaping;

590 (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402

591 (3)(b), (3)(c), or (4);

592 ~~[(5)]~~ (6) Section 76-5-402.1, rape of a child;
593 (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-
594 5-402.2 (1)(b), (1)(c), or (2);

595 ~~[(6)]~~ (8) Section 76-5-402.3, object rape of a child;
596 (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
597 76-5-403 (4)(b), (4)(c), or (5);

598 ~~[(7)]~~ (10) Section 76-5-403.1, sodomy on a child;
599 (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
600 Subsection 76-5-404 (2)(b) or (3);

601 ~~[(8)]~~ (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

602 ~~[(9)]~~ (13) Section 76-5-405, aggravated sexual assault; or

603 ~~[(10)]~~ (14) any attempt to commit a felony listed in [~~Subsections (5), (6), and (7)]~~
604 Subsection (6), (8), or (10).

605 Section 9. Section **76-3-407** is repealed and reenacted to read:

606 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
607 **felony convictions.**

608 (1) As used in this section:

609 (a) "Prior sexual offense" means:

610 (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

611 (ii) sexual exploitation of a minor, Section 76-5a-3;

612 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

613 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through

614 (iii); or

615 (v) an offense in another state, territory, or district of the United States that, if
616 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).

617 (b) "Sexual offense" means:

618 (i) an offense that is a felony of the second or third degree, or an attempted offense,

619 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4,

620 Sexual Offenses:

621 (ii) sexual exploitation of a minor, Section 76-5a-3;

622 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

623 (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or

624 (v) an offense in another state, territory, or district of the United States that, if

625 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).

626 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual
627 offense is increased by five years for each conviction of the defendant for a prior sexual offense
628 that arose from a separate criminal episode, if the trier of fact finds that:

629 (a) the defendant was convicted of a prior sexual offense; and

630 (b) the defendant was convicted of the prior sexual offense described in Subsection
631 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is
632 being sentenced.

633 (3) The increased maximum term described in Subsection (2) shall be in addition to,
634 and consecutive to, any other prison term served by the defendant.

635 Section 10. Section **76-5-301.1** is amended to read:

636 **76-5-301.1. Child kidnapping.**

637 (1) An actor commits child kidnapping if the actor intentionally or knowingly, without
638 authority of law, and by any means and in any manner, seizes, confines, detains, or transports a
639 child under the age of 14 without the consent of the victim's parent or guardian, or the consent
640 of a person acting in loco parentis.

641 (2) Violation of Section 76-5-303 is not a violation of this section.

642 (3) Child kidnapping is a first degree felony punishable by [~~imprisonment for an~~
643 ~~indeterminate term of not less than 6, 10, or 15 years and which may be for life.~~] a term of
644 imprisonment of:

645 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and
646 which may be for life;

647 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact

648 finds that during the course of the commission of the child kidnapping the defendant caused
649 serious bodily injury to another; or

650 (c) life without parole, if the trier of fact finds that at the time of the commission of the
651 child kidnapping the defendant was previously convicted of a grievous sexual offense.

652 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a
653 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and
654 states the reasons for this finding on the record, the court may impose a term of imprisonment
655 of not less than:

656 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

657 (b) for purposes of Subsection (3)(a) or (b):

658 (i) ten years and which may be for life; or

659 (ii) six years and which may be for life.

660 (5) The provisions of Subsection (4) do not apply when a person is sentenced under
661 Subsection (3)(c).

662 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
663 Section 11. Section 76-5-302 is amended to read:

664 **76-5-302. Aggravated kidnapping.**

665 (1) An actor commits aggravated kidnapping if the actor, in the course of committing
666 unlawful detention or kidnapping:

667 (a) possesses, uses, or threatens to use a dangerous weapon as defined in Section
668 76-1-601; or

669 (b) acts with intent:

670 (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a
671 third person to engage in particular conduct or to forbear from engaging in particular conduct;

672 (ii) to facilitate the commission, attempted commission, or flight after commission or
673 attempted commission of a felony;

674 (iii) to hinder or delay the discovery of or reporting of a felony;

675 (iv) to inflict bodily injury on or to terrorize the victim or another;

676 (v) to interfere with the performance of any governmental or political function; or
677 (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual
678 Offenses.

679 (2) As used in this section, "in the course of committing unlawful detention or
680 kidnapping" means in the course of committing, attempting to commit, or in the immediate
681 flight after the attempt or commission of a violation of:

- 682 (a) Section 76-5-301, kidnapping; or
- 683 (b) Section 76-5-304, unlawful detention.

684 (3) Aggravated kidnapping is a first degree felony punishable by [~~imprisonment for an~~
685 ~~indeterminate term of not less than 6, 10, or 15 years and which may be for life.~~] a term of
686 imprisonment of:

687 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and
688 which may be for life;

689 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact
690 finds that during the course of the commission of the aggravated kidnapping the defendant
691 caused serious bodily injury to another; or

692 (c) life without parole, if the trier of fact finds that at the time of the commission of the
693 aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

694 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a
695 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and
696 states the reasons for this finding on the record, the court may impose a term of imprisonment
697 of not less than:

698 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

699 (b) for purposes of Subsection (3)(a) or (b):

700 (i) ten years and which may be for life; or

701 (ii) six years and which may be for life.

702 (5) The provisions of Subsection (4) do not apply when a person is sentenced under
703 Subsection (3)(c).

704 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

705 Section 12. Section **76-5-402** is amended to read:

706 **76-5-402. Rape.**

707 (1) A person commits rape when the actor has sexual intercourse with another person
708 without the victim's consent.

709 (2) This section applies whether or not the actor is married to the victim.

710 (3) Rape is a felony of the first degree[-], punishable by a term of imprisonment of:

711 (a) except as provided in Subsection (3)(b) or (c), not less than five years and which
712 may be for life;

713 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,
714 if the trier of fact finds that during the course of the commission of the rape the defendant
715 caused serious bodily injury to another; or

716 (c) life without parole, if the trier of fact finds that at the time of the commission of the
717 rape the defendant was previously convicted of a grievous sexual offense.

718 (4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser
719 term than the term described in Subsection (3)(b) is in the interests of justice and states the
720 reasons for this finding on the record, the court may impose a term of imprisonment of not less
721 than:

722 (a) ten years and which may be for life; or

723 (b) six years and which may be for life.

724 (5) The provisions of Subsection (4) do not apply when a person is sentenced under
725 Subsection (3)(a) or (c).

726 (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance
727 with Section 76-3-406.

728 Section 13. Section **76-5-402.1** is amended to read:

729 **76-5-402.1. Rape of a child.**

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

732 (2) Rape of a child is a first degree felony punishable by [~~imprisonment for an~~
733 ~~indeterminate term of not less than 6, 10, or 15 years and which may be for life.~~] a term of
734 imprisonment of:

735 (a) except as provided in Subsection (2)(b), (2)(c), or (3), not less than 15 years and
736 which may be for life;

737 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of fact
738 finds that during the course of the commission of the rape of a child, the defendant caused
739 serious bodily injury to another; or

740 (c) life without parole, if the trier of fact finds that at the time of the commission of the
741 rape of a child the defendant was previously convicted of a grievous sexual offense.

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

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

747 (b) for purposes of Subsection (2)(a) or (b):

748 (i) ten years and which may be for life; or

749 (ii) six years and which may be for life.

750 (4) The provisions of Subsection (3) do not apply when a person is sentenced under
751 Subsection (2)(c).

752 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

753 Section 14. Section **76-5-402.2** is amended to read:

754 **76-5-402.2. Object rape.**

755 (1) A person who, without the victim's consent, causes the penetration, however slight,
756 of the genital or anal opening of another person who is 14 years of age or older, by any foreign
757 object, substance, instrument, or device, not including a part of the human body, with intent to
758 cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify
759 the sexual desire of any person, commits an offense which is [~~punishable as~~] a felony of the

760 first degree[-], punishable by a term of imprisonment of:

761 (a) except as provided in Subsection (1)(b) or (c), not less than five years and which
762 may be for life;

763 (b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life,
764 if the trier of fact finds that during the course of the commission of the object rape the
765 defendant caused serious bodily injury to another; or

766 (c) life without parole, if the trier of fact finds that at the time of the commission of the
767 object rape, the defendant was previously convicted of a grievous sexual offense.

768 (2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser
769 term than the term described in Subsection (1)(b) is in the interests of justice and states the
770 reasons for this finding on the record, the court may impose a term of imprisonment of not less
771 than:

772 (a) ten years and which may be for life; or

773 (b) six years and which may be for life.

774 (3) The provisions of Subsection (2) do not apply when a person is sentenced under
775 Subsection (1)(a) or (c).

776 (4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance
777 with Section 76-3-406.

778 Section 15. Section **76-5-402.3** is amended to read:

779 **76-5-402.3. Object rape of a child -- Penalty.**

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

785 (2) [~~(a)~~] Object rape of a child is a first degree felony punishable by [~~imprisonment for~~
786 ~~an indeterminate term of not less than 6, 10, or 15 years and which may be for life.~~] a term of
787 imprisonment of:

788 (a) except as provided in Subsection (2)(b), (2)(c), or (3), not less than 15 years and
789 which may be for life;

790 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of fact
791 finds that during the course of the commission of the object rape of a child the defendant
792 caused serious bodily injury to another; or

793 (c) life without parole, if the trier of fact finds that at the time of the commission of the
794 object rape of a child the defendant was previously convicted of a grievous sexual offense.

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

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

800 (b) for purposes of Subsection (2)(a) or (b):

801 (i) ten years and which may be for life; or

802 (ii) six years and which may be for life.

803 (4) The provisions of Subsection (3) do not apply when a person is sentenced under
804 Subsection (2)(c).

805 [~~b~~] (5) Imprisonment under this section is mandatory in accordance with Section
806 76-3-406.

807 Section 16. Section **76-5-403** is amended to read:

808 **76-5-403. Sodomy -- Forcible sodomy.**

809 (1) A person commits sodomy when the actor engages in any sexual act with a person
810 who is 14 years of age or older involving the genitals of one person and mouth or anus of
811 another person, regardless of the sex of either participant.

812 (2) A person commits forcible sodomy when the actor commits sodomy upon another
813 without the other's consent.

814 (3) Sodomy is a class B misdemeanor.

815 (4) Forcible sodomy is a felony of the first degree[-], punishable by a term of

816 imprisonment of:

817 (a) except as provided in Subsection (4)(b) or (c), not less than five years and which
818 may be for life;

819 (b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life,
820 if the trier of fact finds that during the course of the commission of the forcible sodomy the
821 defendant caused serious bodily injury to another; or

822 (c) life without parole, if the trier of fact finds that at the time of the commission of the
823 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

824 (5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser
825 term than the term described in Subsection (4)(b) is in the interests of justice and states the
826 reasons for this finding on the record, the court may impose a term of imprisonment of not less
827 than:

828 (a) ten years and which may be for life; or

829 (b) six years and which may be for life.

830 (6) The provisions of Subsection (5) do not apply when a person is sentenced under
831 Subsection (4)(a) or (c).

832 (7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance
833 with Section 76-3-406.

834 Section 17. Section **76-5-403.1** is amended to read:

835 **76-5-403.1. Sodomy on a child.**

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

839 (2) Sodomy upon a child is a first degree felony punishable by [~~imprisonment for an~~
840 ~~indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment~~
841 ~~is mandatory in accordance with Section 76-3-406.] a term of imprisonment of:~~

842 (a) except as provided in Subsection (2)(b), (2)(c), or (3), not less than 15 years and
843 which may be for life;

844 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of fact
845 finds that during the course of the commission of the sodomy upon a child the defendant
846 caused serious bodily injury to another; or

847 (c) life without parole, if the trier of fact finds that at the time of the commission of the
848 sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

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

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

854 (b) for purposes of Subsection (2)(a) or (b):

855 (i) ten years and which may be for life; or

856 (ii) six years and which may be for life.

857 (4) The provisions of Subsection (3) do not apply when a person is sentenced under
858 Subsection (2)(c).

859 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

860 Section 18. Section **76-5-404** is amended to read:

861 **76-5-404. Forcible sexual abuse.**

862 (1) A person commits forcible sexual abuse if the victim is 14 years of age or older and,
863 under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy,
864 the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast
865 of a female, or otherwise takes indecent liberties with another, or causes another to take
866 indecent liberties with the actor or another, with intent to cause substantial emotional or bodily
867 pain to any person or with the intent to arouse or gratify the sexual desire of any person,
868 without the consent of the other, regardless of the sex of any participant.

869 (2) Forcible sexual abuse is:

870 (a) except as provided in Subsection (2)(b), a felony of the second degree[-],

871 punishable by a term of imprisonment of not less than one year nor more than 15 years; or

872 (b) except as provided in Subsection (3), a felony of the first degree, punishable by
873 imprisonment for 15 years and which may be for life, if the trier of fact finds that during the
874 course of the commission of the forcible sexual abuse the defendant caused serious bodily
875 injury to another.

876 (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser
877 term than the term described in Subsection (2)(b) is in the interests of justice and states the
878 reasons for this finding on the record, the court may impose a term of imprisonment of not less
879 than:

880 (a) ten years and which may be for life; or

881 (b) six years and which may be for life.

882 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with
883 Section 76-3-406.

884 Section 19. Section **76-5-404.1** is amended to read:

885 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

886 (1) As used in this section, "child" means a person under the age of 14.

887 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
888 rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of
889 these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a
890 female child, or otherwise takes indecent liberties with a child, or causes a child to take
891 indecent liberties with the actor or another with intent to cause substantial emotional or bodily
892 pain to any person or with the intent to arouse or gratify the sexual desire of any person
893 regardless of the sex of any participant.

894 (3) Sexual abuse of a child is punishable as a second degree felony.

895 (4) A person commits aggravated sexual abuse of a child when in conjunction with the
896 offense described in Subsection (2) any of the following circumstances have been charged and
897 admitted or found true in the action for the offense:

898 (a) the offense was committed by the use of a dangerous weapon as defined in Section
899 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or

900 was committed during the course of a kidnaping;

901 (b) the accused caused bodily injury or severe psychological injury to the victim during
902 or as a result of the offense;

903 (c) the accused was a stranger to the victim or made friends with the victim for the
904 purpose of committing the offense;

905 (d) the accused used, showed, or displayed pornography or caused the victim to be
906 photographed in a lewd condition during the course of the offense;

907 (e) the accused, prior to sentencing for this offense, was previously convicted of any
908 felony, or of a misdemeanor involving a sexual offense;

909 (f) the accused committed the same or similar sexual act upon two or more victims at
910 the same time or during the same course of conduct;

911 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if
912 committed in Utah would constitute an offense described in this chapter, and were committed
913 at the same time, or during the same course of conduct, or before or after the instant offense;

914 (h) the offense was committed by a person who occupied a position of special trust in
915 relation to the victim; "position of special trust" means that position occupied by a person in a
916 position of authority, who, by reason of that position is able to exercise undue influence over
917 the victim, and includes, but is not limited to, a youth leader or recreational leader who is an
918 adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,
919 employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive
920 parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;

921 (i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or
922 sexual acts by the victim with any other person, or sexual performance by the victim before any
923 other person; or

924 (j) the accused caused the penetration, however slight, of the genital or anal opening of
925 the child by any part or parts of the human body other than the genitals or mouth.

926 (5) Aggravated sexual abuse of a child is a first degree felony punishable by
927 [~~imprisonment for an indeterminate term of not less than five years and which may be for life.~~]

928 a term of imprisonment of:

929 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and
930 which may be for life;

931 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact
932 finds that during the course of the commission of the aggravated sexual abuse of a child the
933 defendant caused serious bodily injury to another; or

934 (c) life without parole, if the trier of fact finds that at the time of the commission of the
935 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
936 sexual offense.

937 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a
938 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and
939 states the reasons for this finding on the record, the court may impose a term of imprisonment
940 of not less than:

941 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

942 (b) for purposes of Subsection (5)(a) or (b):

943 (i) ten years and which may be for life; or

944 (ii) six years and which may be for life.

945 (7) The provisions of Subsection (6) do not apply when a person is sentenced under
946 Subsection (5)(c).

947 (8) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
948 Section 20. Section **76-5-405** is amended to read:

949 **76-5-405. Aggravated sexual assault -- Penalty.**

950 (1) A person commits aggravated sexual assault if in the course of a rape or attempted
951 rape, object rape or attempted object rape, forcible sodomy or attempted forcible sodomy, or
952 forcible sexual abuse or attempted forcible sexual abuse the actor:

953 (a) causes bodily injury to the victim that does not amount to serious bodily injury;

954 (b) uses or threatens the victim with use of a dangerous weapon as defined in Section
955 76-1-601;

956 (c) compels, or attempts to compel, the victim to submit to rape, object rape, forcible
957 sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be
958 inflicted imminently on any person; or

959 (d) is aided or abetted by one or more persons.

960 (2) Aggravated sexual assault is a first degree felony, punishable by [~~imprisonment for~~
961 ~~an indeterminate term of not less than 6, 10, or 15 years and which may be for life.~~] a term of
962 imprisonment of:

963 (a) except as provided in Subsection (2)(b), (2)(c), or (3), not less than 15 years and
964 which may be for life;

965 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of fact
966 finds that during the course of the commission of the aggravated sexual assault, the defendant
967 caused serious bodily injury to another; or

968 (c) life without parole, if the trier of fact finds that at the time of the commission of the
969 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

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

974 (a) for purposes of Subsection (2)(b), 15 years and which may be for life;

975 (b) for purposes of Subsection (2)(a) or (b):

976 (i) ten years and which may be for life; or

977 (ii) six years and which may be for life.

978 (4) The provisions of Subsection (3) do not apply when a person is sentenced under
979 Subsection (2)(c).

980 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

981 Section 21. **Repealer.**

982 This bill repeals:

983 Section **76-3-408, Repeat and habitual sex offenders -- Life imprisonment without**

984 **parole on third conviction.**