

Representative Carl Wimmer proposes the following substitute bill:

**INCREASED PENALTY FOR SECOND CONVICTION
FOR CERTAIN SEXUAL OFFENSES**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes the order of precedence of certain sentencing enhancements;
- ▶ requires the maximum term of imprisonment for a person convicted of certain felony sexual offenses to be increased by five years for each prior conviction for certain felony sexual offenses;
- ▶ provides a sentencing enhancement of life without parole for a second conviction of certain grievous sexual offenses; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

27 AMENDS:

28 76-3-201, as last amended by Chapter 208, Laws of Utah 2006

29 REPEALS AND REENACTS:

30 76-3-407, as last amended by Chapter 208, Laws of Utah 2006

31 76-3-408, as last amended by Chapter 18, Laws of Utah 1984



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

33 Section 1. Section 76-3-201 is amended to read:

34 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
35 **penalties -- Hearing.**

36 (1) As used in this section:

37 (a) "Conviction" includes a:

38 (i) judgment of guilt; and

39 (ii) plea of guilty.

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

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

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

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

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

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

56 (a) to pay a fine;

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

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

60 (d) to imprisonment;

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

62 (f) to death.

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

64 (i) forfeit property;

65 (ii) dissolve a corporation;

66 (iii) suspend or cancel a license;

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

68 (v) cite for contempt; or

69 (vi) impose any other civil penalty.

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

71 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary

72 damages, in addition to any other sentence it may impose, the court shall order that the

73 defendant make restitution to the victims, or for conduct for which the defendant has agreed to

74 make restitution as part of a plea agreement.

75 (b) In determining whether restitution is appropriate, the court shall follow the criteria

76 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

77 (5) (a) In addition to any other sentence the court may impose, the court shall order the

78 defendant to pay restitution of governmental transportation expenses if the defendant was:

79 (i) transported pursuant to court order from one county to another within the state at

80 governmental expense to resolve pending criminal charges;

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

82 (iii) convicted of a crime.

83 (b) The court may not order the defendant to pay restitution of governmental

84 transportation expenses if any of the following apply:

85 (i) the defendant is charged with an infraction or on a subsequent failure to appear a

86 warrant is issued for an infraction; or

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

88 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)

89 shall be calculated according to the following schedule:

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

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

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

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

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

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

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

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

107 (B) the reimbursement does not duplicate the reimbursement provided under Section
108 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a
109 condition of probation under Subsection 77-18-1(8).

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

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

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

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

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

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

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

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

135 (c) In determining whether there are circumstances that justify imposition of the
136 highest or lowest term, the court may consider the record in the case, the probation officer's
137 report, other reports, including reports received under Section 76-3-404, statements in
138 aggravation or mitigation submitted by the prosecution or the defendant, and any further
139 evidence introduced at the sentencing hearing.

140 (d) The court shall set forth on the record the facts supporting and reasons for imposing
141 the upper or lower term.

142 (e) In determining a just sentence, the court shall consider sentencing guidelines
143 regarding aggravating and mitigating circumstances promulgated by the Sentencing
144 Commission.

145 (8) (a) The defendant shall be sentenced to the highest minimum term in prison if the
146 trier of fact finds that:

147 (i) during the commission of any of the following offenses the defendant causes
148 substantial bodily injury to the child:

149 (A) Section 76-5-301.1, child kidnapping;

150 (B) Section 76-5-402.1, rape of a child;

- 151 (C) Section 76-5-402.3, object rape of a child; or
- 152 (D) Section 76-5-403.1, sodomy on a child; or
- 153 (ii) at the time of the commission of any of the offenses in Subsections (8)(a)(i)(A)
- 154 through (D), the defendant had been previously convicted of:
- 155 (A) Section 76-5-402, rape;
- 156 (B) Section 76-5-402.1, rape of a child;
- 157 (C) Section 76-5-402.2, object rape;
- 158 (D) Section 76-5-402.3, object rape of a child;
- 159 (E) Subsection 76-5-403(2), forcible sodomy;
- 160 (F) Section 76-5-403.1, sodomy on a child;
- 161 (G) Section 76-5-404, forcible sexual abuse;
- 162 (H) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
- 163 (I) Section 76-5-405, aggravated sexual assault;
- 164 (J) any offense in any other state or federal jurisdiction which constitutes or would
- 165 constitute a crime in Subsections (8)(a)(ii)(A) through (I); or
- 166 (K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through (J).
- 167 (b) This Subsection (8) takes precedence over any conflicting provision of law, except
- 168 Section 76-3-408.

169 Section 2. Section **76-3-407** is repealed and reenacted to read:

170 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
171 **felony convictions.**

172 (1) As used in this section, "sexual offense" means:

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

174 (b) sexual exploitation of a minor, Section 76-5a-3;

175 (c) a felony offense of enticing a minor over the internet, Section 76-4-401;

176 (d) a felony attempt to commit an offense described in Subsections (1)(a) through (c);

177 or

178 (e) an offense in another state, territory, or district of the United States that, if
179 committed in Utah, would constitute an offense described in Subsections (1)(a) through (d).

180 (2) Notwithstanding any other provision of law, unless the sentencing enhancement
181 described in Section 76-3-408 applies, when a person is convicted of a sexual offense

182 described in Subsections (1)(a) through (d), the court shall increase the maximum term of
183 imprisonment for the offense by five years for each prior conviction of the person for any
184 sexual offense described in Subsection (1) that arose from a separate criminal episode.

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

187 Section 3. Section **76-3-408** is repealed and reenacted to read:

188 **76-3-408. Repeat and habitual grievous sex offenders -- Life imprisonment**
189 **without parole on second conviction.**

190 (1) As used in this section, "grievous sexual offense" means:

191 (a) rape, Section 76-5-402;

192 (b) rape of a child, Section 76-5-402.1;

193 (c) object rape, Section 76-5-402.2;

194 (d) object rape of a child, Section 76-5-402.3;

195 (e) forcible sodomy, Subsection 76-5-403(2);

196 (f) sodomy on a child; Section 76-5-403.1;

197 (g) aggravated sexual abuse of a child, Subsections 76-5-404.1(4) and (5);

198 (h) aggravated sexual assault, Section 76-5-405;

199 (i) any felony attempt to commit an offense described in Subsections (1)(a) through

200 (h); or

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

203 (2) Notwithstanding any other provision of law, a person shall be sentenced to life
204 imprisonment without the possibility of parole if the person:

205 (a) has been convicted of any grievous sexual offense described in Subsection (1); and

206 (b) after the person was convicted of a grievous sexual offense described in Subsection

207 (1), the person commits, and is convicted of, a grievous sexual offense described in

208 Subsections (1)(a) through (h).

209 (3) A person sentenced to life imprisonment without parole under Subsection (2) may
210 be placed on parole only if the Board of Pardons and Parole finds, by clear and convincing
211 evidence, that the person is permanently incapable of being a threat to the safety of society.

Fiscal Note**H.B. 86 2nd Sub. (Gray) - Increased Penalty for Second Conviction for
Certain Sexual Offenses**

2007 General Session

State of Utah

State Impact

Enactment of this bill will require additional on-going appropriations of \$7,500 from the General Fund to the Courts for court staff and related expenses. Penalty enhancements would not have a fiscal impact for the Department of Corrections until the year 2011.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
General Fund	\$0	\$7,500	\$7,500	\$0	\$0	\$0
Total	\$0	\$7,500	\$7,500	\$0	\$0	\$0

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.
