

Representative Carl Wimmer proposes the following substitute bill:

**PENALTIES FOR SEXUAL
OFFENSES AND CHILD KIDNAPPING**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: Howard A. Stephenson

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 child kidnapping;
- ▶ provides for greater penalties for certain sexual offenses and child kidnapping 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;
- ▶ modifies or replaces existing sentencing enhancements;
- ▶ expands the list of crimes for which probation, suspension of sentence, reduction of the category of offense, or hospitalization may not be granted; and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 **AMENDS:**

33 **34A-2-110**, as last amended by Chapter 329, Laws of Utah 1998

34 **76-1-601**, as last amended by Chapter 205, Laws of Utah 1996

35 **76-3-201**, as last amended by Chapter 208, Laws of Utah 2006

36 **76-3-203.2**, as last amended by Chapter 148, Laws of Utah 2003

37 **76-3-203.5**, as last amended by Chapter 59, Laws of Utah 2005

38 **76-3-203.6**, as enacted by Chapter 209, Laws of Utah 2001

39 **76-3-203.7**, as enacted by Chapter 299, Laws of Utah 2001

40 **76-3-406**, as last amended by Chapter 149, Laws of Utah 2003

41 **76-5-301.1**, as last amended by Chapter 301, Laws of Utah 2001

42 **76-5-402**, as last amended by Chapter 267, Laws of Utah 1991

43 **76-5-402.1**, as last amended by Chapter 40, Laws of Utah 1996

44 **76-5-402.2**, as last amended by Chapter 18, Laws of Utah 1984

45 **76-5-402.3**, as last amended by Chapter 128, Laws of Utah 2000

46 **76-5-403**, as last amended by Chapter 88, Laws of Utah 1983

47 **76-5-403.1**, as last amended by Chapter 40, Laws of Utah 1996

48 **76-5-404**, as last amended by Chapter 18, Laws of Utah 1984

49 **76-5-404.1**, as last amended by Chapter 149, Laws of Utah 2003

50 **76-5-405**, as last amended by Chapter 289, Laws of Utah 1997

51 **REPEALS AND REENACTS:**

52 **76-3-407**, as last amended by Chapter 208, Laws of Utah 2006

53 **REPEALS:**

54 **76-3-408**, as last amended by Chapter 18, Laws of Utah 1984

55

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

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

58 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**
59 **Notice.**

60 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (7) An insurer or self-insured employer giving written notice in accordance with

88 Subsection (10) that workers' compensation insurance fraud is a crime is not a necessary
89 element of the offense described in Subsection (2).

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

95 (9) A scheme or artifice to obtain disability compensation includes a scheme or artifice
96 to collect or make a claim for temporary disability compensation as provided in Section
97 34A-2-410 while working for gain.

98 (10) (a) Each insurer or self-insured employer who, in connection with this chapter or
99 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form to any
100 person upon which that person applies for insurance coverage, reports payroll, makes a claim
101 by reason of accident, injury, death, disease, or other claimed loss, or otherwise reports or gives
102 notice to the insurer or self-insured employer, shall cause to be printed or displayed in
103 comparative prominence with other content the statement: "Any person who knowingly
104 presents false or fraudulent underwriting information, files or causes to be filed a false or
105 fraudulent claim for disability compensation or medical benefits, or submits a false or
106 fraudulent report or billing for health care fees or other professional services is guilty of a
107 crime and may be subject to fines and confinement in state prison."

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

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

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

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

119 (B) grounds for suppressing evidence.

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

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

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

126 **76-1-601. Definitions.**

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

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

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

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

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

134 (5) "Dangerous weapon" means:

135 (a) any item capable of causing death or serious bodily injury; or

136 (b) a facsimile or representation of the item; and:

137 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
138 believe the item is likely to cause death or serious bodily injury; or

139 (ii) the actor represents to the victim verbally or in any other manner that he is in
140 control of such an item.

141 (6) "Grievous sexual offense" means:

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

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

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

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

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

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

148 (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

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

150 (i) any felony attempt to commit an offense described in Subsections (6)(a) through
151 (h); or

152 (j) an offense in another state, territory, or district of the United States that, if
153 committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).

154 [~~(6)~~] (7) "Offense" means a violation of any penal statute of this state.

155 [~~(7)~~] (8) "Omission" means a failure to act when there is a legal duty to act and the
156 actor is capable of acting.

157 [~~(8)~~] (9) "Person" means an individual, public or private corporation, government,
158 partnership, or unincorporated association.

159 [~~(9)~~] (10) "Possess" means to have physical possession of or to exercise dominion or
160 control over tangible property.

161 [~~(10)~~] (11) "Serious bodily injury" means bodily injury that creates or causes serious
162 permanent disfigurement, protracted loss or impairment of the function of any bodily member
163 or organ, or creates a substantial risk of death.

164 [~~(11)~~] (12) "Substantial bodily injury" means bodily injury, not amounting to serious
165 bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or
166 temporary loss or impairment of the function of any bodily member or organ.

167 [~~(12)~~] (13) "Writing" or "written" includes any handwriting, typewriting, printing,
168 electronic storage or transmission, or any other method of recording information or fixing
169 information in a form capable of being preserved.

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

171 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
172 **penalties -- Hearing.**

173 (1) As used in this section:

174 (a) "Conviction" includes a:

175 (i) judgment of guilt; and

176 (ii) plea of guilty.

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

180 (c) "Pecuniary damages" means all special damages, but not general damages, which a

181 person could recover against the defendant in a civil action arising out of the facts or events
182 constituting the defendant's criminal activities and includes the money equivalent of property
183 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
184 expenses.

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

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

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

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

193 (a) to pay a fine;

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

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

196 (d) to imprisonment;

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

198 (f) to death.

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

200 (i) forfeit property;

201 (ii) dissolve a corporation;

202 (iii) suspend or cancel a license;

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

204 (v) cite for contempt; or

205 (vi) impose any other civil penalty.

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

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

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

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

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

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

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

218 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

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

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

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

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

243 (B) the reimbursement does not duplicate the reimbursement provided under Section
244 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a
245 condition of probation under Subsection 77-18-1(8).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

301 ~~[(J) any offense in any other state or federal jurisdiction which constitutes or would~~
302 ~~constitute a crime in Subsections (8)(a)(ii)(A) through (I); or]~~

303 ~~[(K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through~~
304 ~~(J).]~~

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

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

307 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
308 **about school premises -- Enhanced penalties.**

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

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

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

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

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

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

321 (b) As used in this section:

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

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

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

328 (2) Any person who, on or about school premises, commits any offense and uses or
329 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the
330 offense is subject to an enhanced degree of offense as provided in Subsection (4).

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

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

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

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

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

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

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

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

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

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

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

351 (b) is subject also to the dangerous weapon enhancement provided in Section
352 76-3-203.8 except for an offense committed under Subsection (3) that does not involve a
353 firearm.

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

357 (7) In cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d),
358 or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve
359 a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section
360 76-3-203.8.

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

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

363 (i) a grievous sexual offense; or

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

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

367 offense for which the person is being sentenced.

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

369 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

370 (1) As used in this section:

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

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

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

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

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

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

384 (D) aggravated assault, Section 76-5-103;

385 (E) aggravated assault by prisoner, Section 76-5-103.5;

386 (F) mayhem, Section 76-5-105;

387 (G) stalking, Subsection 76-5-106.5(6);

388 (H) terroristic threat, Section 76-5-107;

389 (I) child abuse, Subsections 76-5-109(2)(a) and (b);

390 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

391 (K) abuse or neglect of disabled child, Section 76-5-110;

392 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

393 (M) endangerment of child or elder adult, Section 76-5-112.5;

394 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

395 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
396 5, Part 3, Kidnapping;

397 (P) rape, Section 76-5-402;

- 398 (Q) rape of a child, Section 76-5-402.1;
- 399 (R) object rape, Section 76-5-402.2;
- 400 (S) object rape of a child, Section 76-5-402.3;
- 401 (T) forcible sodomy, Section 76-5-403;
- 402 (U) sodomy on a child, Section 76-5-403.1;
- 403 (V) forcible sexual abuse, Section 76-5-404;
- 404 (W) aggravated sexual abuse of a child and sexual abuse of a child, Section
- 405 76-5-404.1;
- 406 (X) aggravated sexual assault, Section 76-5-405;
- 407 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 408 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 409 Burglary and Criminal Trespass;
- 410 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 411 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 412 (CC) tampering with a witness under Subsection 76-8-508(1);
- 413 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 414 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 415 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 416 or by use of force theft by extortion has been committed pursuant to Subsections
- 417 76-6-406(2)(a), (b), and (i);
- 418 (GG) damage or destruction of school or institution of higher education property by
- 419 explosives or flammable materials under Section 76-8-715;
- 420 (HH) possession, use, or removal of explosive, chemical, or incendiary devices under
- 421 Subsections 76-10-306(3) through (6);
- 422 (II) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 423 76-10-307;
- 424 (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person
- 425 under Section 76-10-503;
- 426 (KK) unlawful discharge of a firearm under Section 76-10-508;
- 427 (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 428 (MM) bus hijacking under Section 76-10-1504; and

429 (NN) discharging firearms and hurling missiles under Section 76-10-1505; or
430 (ii) any felony violation of a criminal statute of any other state, the United States, or
431 any district, possession, or territory of the United States which would constitute a violent
432 felony as defined in this Subsection (1) if committed in this state.

433 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
434 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
435 under this section, the penalty for a:

- 436 (a) third degree felony is as if the conviction were for a first degree felony;
- 437 (b) second degree felony is as if the conviction were for a first degree felony; or
- 438 (c) first degree felony remains the penalty for a first degree penalty except:

- 439 (i) the convicted person is not eligible for probation; and
- 440 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
441 habitual violent offender as an aggravating factor in determining the length of incarceration.

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

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

- 448 (A) the defendant is the person who was convicted or committed;
- 449 (B) the defendant was represented by counsel or had waived counsel; or
- 450 (C) the defendant's plea was understandingly or voluntarily entered.

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

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

- 456 (i) defendant's previous convictions for violent felonies, except as otherwise provided
457 in the Utah Rules of Evidence; or
- 458 (ii) allegation against the defendant of being a habitual violent offender.

459 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of

460 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
461 the jury, in which case the allegation shall be tried immediately to the court.

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

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

467 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this
468 section is applicable beyond a reasonable doubt.

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

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

480 (5) (a) The sentencing enhancement provisions of [~~Sections~~] Section 76-3-407 [~~and~~
481 ~~76-3-408~~ ~~apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses,~~
482 ~~and~~] supersede the provisions of this section.

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

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

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

490 (i) a grievous sexual offense; or

491 (ii) child kidnapping, Section 76-5-301.1; and
492 (b) applying the sentencing enhancement provided for in this section would result in a
493 lower maximum penalty than the penalty provided for under the section that describes the
494 offense for which the person is being sentenced.

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

496 **76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

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

500 (a) has not been paroled; or

501 (b) is in custody after arrest for a parole violation.

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

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

509 (a) aggravated assault, Subsection 76-5-103(2);

510 (b) mayhem, Section 76-5-105;

511 (c) attempted murder, Section 76-5-203;

512 (d) kidnapping, Section 76-5-301;

513 (e) child kidnapping, Section 76-5-301.1;

514 (f) aggravated kidnapping, Section 76-5-302;

515 (g) rape, Section 76-5-402;

516 (h) rape of a child, Section 76-5-402.1;

517 (i) object rape, Section 76-5-402.2;

518 (j) object rape of a child, Section 76-5-402.3;

519 (k) forcible sodomy, Section 76-5-403;

520 (l) sodomy on a child, Section 76-5-403.1;

521 (m) aggravated sexual abuse of a child, Section 76-5-404.1;

- 522 (n) aggravated sexual assault, Section 76-5-405;
- 523 (o) aggravated arson, Section 76-6-103;
- 524 (p) aggravated burglary, Section 76-6-203; and
- 525 (q) aggravated robbery, Section 76-6-302.
- 526 (4) The sentencing enhancement described in this section does not apply if:
- 527 (a) the offense for which the person is being sentenced is:
- 528 (i) a grievous sexual offense; or
- 529 (ii) child kidnapping, Section 76-5-301.1; and
- 530 (b) applying the sentencing enhancement provided for in this section would result in a
- 531 lower maximum penalty than the penalty provided for under the section that describes the
- 532 offense for which the person is being sentenced.

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

534 **76-3-203.7. Increase of sentence for violent felony if body armor used.**

535 (1) As used in this section:

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

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

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

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

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

547 (b) a second degree felony, the court shall sentence the person convicted for a term of
548 not less than two years nor more than 15 years, and the court may sentence the person
549 convicted for a term of not less than two years nor more than 20 years; and

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

553 (3) The sentencing enhancement described in this section does not apply if:
554 (a) the offense for which the person is being sentenced is:
555 (i) a grievous sexual offense; or
556 (ii) child kidnapping, Section 76-5-301.1; and
557 (b) applying the sentencing enhancement provided for in this section would result in a
558 lower maximum penalty than the penalty provided for under the section that describes the
559 offense for which the person is being sentenced.

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

561 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
562 **offense, or hospitalization may not be granted.**

563 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, except as
564 provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of
565 sentence shall not be suspended, the court shall not enter a judgment for a lower category of
566 offense, and hospitalization shall not be ordered, the effect of which would in any way shorten
567 the prison sentence for any person who commits a capital felony or a first degree felony
568 involving:

- 569 (1) Section 76-5-202, aggravated murder;
- 570 (2) Section 76-5-203, murder;
- 571 (3) Section 76-5-301.1, child kidnaping;
- 572 (4) Section 76-5-302, aggravated kidnaping;
- 573 (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402
574 (3)(b), (3)(c), or (4);
- 575 [~~5~~] (6) Section 76-5-402.1, rape of a child;
- 576 (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-
577 5-402.2 (1)(b), (1)(c), or (2);
- 578 [~~6~~] (8) Section 76-5-402.3, object rape of a child;
- 579 (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
580 76-5-403 (4)(b), (4)(c), or (5);
- 581 [~~7~~] (10) Section 76-5-403.1, sodomy on a child;
- 582 (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
583 Subsection 76-5-404 (2)(b) or (3);

584 ~~[(8)]~~ (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
585 ~~[(9)]~~ (13) Section 76-5-405, aggravated sexual assault; or
586 ~~[(10)]~~ (14) any attempt to commit a felony listed in Subsections ~~[(5), (6), and (7)]~~ (6),
587 (8), or (10).

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

589 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
590 **felony convictions.**

591 (1) As used in this section:

592 (a) "Type one sexual offense" means:

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

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

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

596 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
597 (iii); or

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

600 (b) "Type two sexual offense" means:

601 (i) an offense that is a felony of the second or third degree, or an attempted offense,
602 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4,
603 Sexual Offenses;

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

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

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

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

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

612 (a) the defendant was convicted of the type one sexual offense; and

613 (b) the defendant was convicted of the type one sexual offense described in Subsection
614 (2)(a) before the defendant was convicted of the type two sexual offense for which the

615 defendant is being sentenced.

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

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

619 **76-5-301.1. Child kidnapping.**

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

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

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

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

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

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

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

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

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

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

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

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

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

646 Section 11. Section **76-5-402** is amended to read:

647 **76-5-402. Rape.**

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

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

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

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

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

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

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

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

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

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

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

669 Section 12. Section **76-5-402.1** is amended to read:

670 **76-5-402.1. Rape of a child.**

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

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

676 (a) except as provided in Subsection (2)(b), (2)(c), or (3), not less than 15 years and

677 which may be for life;

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

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

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

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

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

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

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

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

693 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
694 Section 13. Section 76-5-402.2 is amended to read:

695 **76-5-402.2. Object rape.**

696 (1) A person who, without the victim's consent, causes the penetration, however slight,
697 of the genital or anal opening of another person who is 14 years of age or older, by any foreign
698 object, substance, instrument, or device, not including a part of the human body, with intent to
699 cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify
700 the sexual desire of any person, commits an offense which is [~~punishable as~~] a felony of the
701 first degree[-], punishable by a term of imprisonment of:

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

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

707 (c) life without parole, if the trier of fact finds that at the time of the commission of the

708 object rape, the defendant was previously convicted of a grievous sexual offense.

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

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

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

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

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

719 Section 14. Section **76-5-402.3** is amended to read:

720 **76-5-402.3. Object rape of a child -- Penalty.**

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

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

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

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

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

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

739 of not less than:

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

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

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

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

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

746 ~~[(b)]~~ (5) Imprisonment under this section is mandatory in accordance with Section
747 76-3-406.

748 Section 15. Section **76-5-403** is amended to read:

749 **76-5-403. Sodomy -- Forcible sodomy.**

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

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

755 (3) Sodomy is a class B misdemeanor.

756 (4) Forcible sodomy is a felony of the first degree[-], punishable by a term of
757 imprisonment of:

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

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

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

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

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

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

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

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

775 Section 16. Section **76-5-403.1** is amended to read:

776 **76-5-403.1. Sodomy on a child.**

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

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

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

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

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

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

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

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

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

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

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

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

801 Section 17. Section **76-5-404** is amended to read:

802 **76-5-404. Forcible sexual abuse.**

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

810 (2) Forcible sexual abuse is:

811 (a) except as provided in Subsection (2)(b), a felony of the second degree[-],
812 punishable by a term of imprisonment of not less than 1 year nor more than 15 years; or

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

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

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

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

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

825 Section 18. Section **76-5-404.1** is amended to read:

826 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

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

828 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
829 rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of
830 these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a
831 female child, or otherwise takes indecent liberties with a child, or causes a child to take

832 indecent liberties with the actor or another with intent to cause substantial emotional or bodily
833 pain to any person or with the intent to arouse or gratify the sexual desire of any person
834 regardless of the sex of any participant.

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

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

839 (a) the offense was committed by the use of a dangerous weapon as defined in Section
840 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
841 was committed during the course of a kidnaping;

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

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

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

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

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

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

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

862 (i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or

863 sexual acts by the victim with any other person, or sexual performance by the victim before any
864 other person; or

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

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

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

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

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

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

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

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

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

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

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

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

889 Section 19. Section **76-5-405** is amended to read:

890 **76-5-405. Aggravated sexual assault -- Penalty.**

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

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

895 (b) uses or threatens the victim with use of a dangerous weapon as defined in Section
896 76-1-601;

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

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

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

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

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

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

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

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

916 (b) for purposes of (2)(a) or (2)(b):

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

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

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

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

922 Section 20. **Repealer.**

923 This bill repeals:

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

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3rd Sub. (Cherry) H.B. 86

925 **parole on third conviction.**

Fiscal Note**H.B. 86 3rd Sub. (Cherry) - Penalties for Sexual Offenses and Child Kidnapping**

2007 General Session

State of Utah

State Impact

Enactment of this bill will require ongoing General Fund appropriations of \$47,200 for the Department of Corrections and \$7,500 for the Courts. The Department of Corrections needs only half of their funding the first year resulting in a one-time General Fund reduction of \$23,600 FY 2008. Future years will see continued cost increases as the number of incarcerated offenders grows and their sentences are extended.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$54,700	\$54,700	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$23,600)	\$0	\$0	\$0	\$0
Total	\$0	\$31,100	\$54,700	\$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.