

PENALTIES FOR SPECIFIED JUVENILE OFFENSES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian E. Shiozawa

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends the Utah Criminal Code relating to the punishable term of imprisonment for certain first degree felonies if the defendant was younger than 18 years of age at the time of the offense.

Highlighted Provisions:

This bill:

- ▶ provides that if a defendant was younger than 18 years of age at the time the offense of aggravated murder was committed, the offense is not a capital felony; and
- ▶ provides that when a person commits a felony subject to a penalty of life without parole, the person may not be sentenced to life without parole if the person is younger than 18 years of age at the time of the offense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Laws of Utah 2010, Chapters 13 and 373

76-5-301.1, as last amended by Laws of Utah 2007, Chapter 339

76-5-302, as last amended by Laws of Utah 2007, Chapter 339



- 28 **76-5-402**, as last amended by Laws of Utah 2007, Chapter 339
- 29 **76-5-402.1**, as last amended by Laws of Utah 2008, Chapter 179
- 30 **76-5-402.2**, as last amended by Laws of Utah 2008, Chapter 340
- 31 **76-5-402.3**, as last amended by Laws of Utah 2008, Chapter 179
- 32 **76-5-403**, as last amended by Laws of Utah 2007, Chapter 339
- 33 **76-5-403.1**, as last amended by Laws of Utah 2008, Chapter 179
- 34 **76-5-404.1**, as last amended by Laws of Utah 2007, Chapter 339
- 35 **76-5-405**, as last amended by Laws of Utah 2009, Chapter 176



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

38 Section 1. Section **76-5-202** is amended to read:

39 **76-5-202. Aggravated murder.**

40 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or
41 knowingly causes the death of another under any of the following circumstances:

42 (a) the homicide was committed by a person who is confined in a jail or other
43 correctional institution;

44 (b) the homicide was committed incident to one act, scheme, course of conduct, or
45 criminal episode during which two or more persons were killed, or during which the actor
46 attempted to kill one or more persons in addition to the victim who was killed;

47 (c) the actor knowingly created a great risk of death to a person other than the victim
48 and the actor;

49 (d) the homicide was committed incident to an act, scheme, course of conduct, or
50 criminal episode during which the actor committed or attempted to commit aggravated robbery,
51 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
52 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
53 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
54 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child
55 kidnapping;

56 (e) the homicide was committed incident to one act, scheme, course of conduct, or
57 criminal episode during which the actor committed the crime of abuse or desecration of a dead
58 human body as defined in Subsection 76-9-704(2)(e);

59 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of
60 the defendant or another by a peace officer acting under color of legal authority or for the
61 purpose of effecting the defendant's or another's escape from lawful custody;

62 (g) the homicide was committed for pecuniary gain;

63 (h) the defendant committed, or engaged or employed another person to commit the
64 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
65 for commission of the homicide;

66 (i) the actor previously committed or was convicted of:

67 (i) aggravated murder under this section;

68 (ii) attempted aggravated murder under this section;

69 (iii) murder, Section 76-5-203;

70 (iv) attempted murder, Section 76-5-203; or

71 (v) an offense committed in another jurisdiction which if committed in this state would
72 be a violation of a crime listed in this Subsection (1)(i);

73 (j) the actor was previously convicted of:

74 (i) aggravated assault, Subsection 76-5-103(2);

75 (ii) mayhem, Section 76-5-105;

76 (iii) kidnapping, Section 76-5-301;

77 (iv) child kidnapping, Section 76-5-301.1;

78 (v) aggravated kidnapping, Section 76-5-302;

79 (vi) rape, Section 76-5-402;

80 (vii) rape of a child, Section 76-5-402.1;

81 (viii) object rape, Section 76-5-402.2;

82 (ix) object rape of a child, Section 76-5-402.3;

83 (x) forcible sodomy, Section 76-5-403;

84 (xi) sodomy on a child, Section 76-5-403.1;

85 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

86 (xiii) aggravated sexual assault, Section 76-5-405;

87 (xiv) aggravated arson, Section 76-6-103;

88 (xv) aggravated burglary, Section 76-6-203;

89 (xvi) aggravated robbery, Section 76-6-302;

- 90 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 91 (xviii) an offense committed in another jurisdiction which if committed in this state
- 92 would be a violation of a crime listed in this Subsection (1)(j);
- 93 (k) the homicide was committed for the purpose of:
- 94 (i) preventing a witness from testifying;
- 95 (ii) preventing a person from providing evidence or participating in any legal
- 96 proceedings or official investigation;
- 97 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 98 any legal proceedings or official investigation; or
- 99 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 100 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 101 public office, and the homicide is based on, is caused by, or is related to that official position,
- 102 act, capacity, or candidacy;
- 103 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 104 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 105 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 106 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 107 have known, that the victim holds or has held that official position;
- 108 (n) the homicide was committed:
- 109 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 110 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 111 structure, or was mailed or delivered; or
- 112 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- 113 (o) the homicide was committed during the act of unlawfully assuming control of any
- 114 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
- 115 valuable consideration for the release of the public conveyance or any passenger, crew
- 116 member, or any other person aboard, or to direct the route or movement of the public
- 117 conveyance or otherwise exert control over the public conveyance;
- 118 (p) the homicide was committed by means of the administration of a poison or of any
- 119 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 120 (q) the victim was a person held or otherwise detained as a shield, hostage, or for

121 ransom;

122 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
123 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
124 physical abuse, or serious bodily injury of the victim before death;

125 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or
126 after death, in a manner demonstrating the actor's depravity of mind; or

127 (t) the victim, at the time of the death of the victim:

128 (i) was younger than 14 years of age; and

129 (ii) was not an unborn child.

130 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
131 indifference to human life, causes the death of another incident to an act, scheme, course of
132 conduct, or criminal episode during which the actor is a major participant in the commission or
133 attempted commission of:

134 (a) child abuse, Subsection 76-5-109(2)(a);

135 (b) child kidnapping, Section 76-5-301.1;

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

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

138 (e) sodomy on a child, Section 76-5-403.1; or

139 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

140 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder
141 is a capital felony.

142 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
143 is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

144 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
145 of intent to seek the death penalty. The notice shall be served on the defendant or defense
146 counsel and filed with the court.

147 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
148 days after the arraignment upon written stipulation of the parties or upon a finding by the court
149 of good cause.

150 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
151 noncapital first degree felony aggravated murder during the period in which the prosecutor may

152 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

153 (e) If the defendant was younger than 18 years of age at the time the offense was
154 committed, aggravated murder is a noncapital first degree felony punishable as provided in
155 Section 76-3-207.7.

156 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
157 aggravated murder that the defendant caused the death of another or attempted to cause the
158 death of another under a reasonable belief that the circumstances provided a legal justification
159 or excuse for the conduct although the conduct was not legally justifiable or excusable under
160 the existing circumstances.

161 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
162 the viewpoint of a reasonable person under the then existing circumstances.

163 (c) This affirmative defense reduces charges only as follows:

164 (i) aggravated murder to murder; and

165 (ii) attempted aggravated murder to attempted murder.

166 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes
167 a separate offense does not merge with the crime of aggravated murder.

168 (b) A person who is convicted of aggravated murder, based on an aggravating
169 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be
170 convicted of, and punished for, the separate offense.

171 Section 2. Section **76-5-301.1** is amended to read:

172 **76-5-301.1. Child kidnapping.**

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

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

178 (3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:

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

181 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact
182 finds that during the course of the commission of the child kidnapping the defendant caused

183 serious bodily injury to another; or

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

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

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

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

192 (i) 10 years and which may be for life; or

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

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

196 (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18
197 years of age at the time of the offense.

198 [~~(6)~~] (7) Imprisonment under this section is mandatory in accordance with Section
199 76-3-406.

200 Section 3. Section **76-5-302** is amended to read:

201 **76-5-302. Aggravated kidnapping.**

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

204 (a) possesses, uses, or threatens to use a dangerous weapon as defined in Section
205 76-1-601; or

206 (b) acts with intent:

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

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

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

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

213 (v) to interfere with the performance of any governmental or political function; or

214 (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual
215 Offenses.

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

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

221 (3) Aggravated kidnapping is a first degree felony punishable by a term of
222 imprisonment of:

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

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

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

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

- 234 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or
- 235 (b) for purposes of Subsection (3)(a) or (b):
 - 236 (i) 10 years and which may be for life; or
 - 237 (ii) six years and which may be for life.

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

240 (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18
241 years of age at the time of the offense.

242 [~~(6)~~] (7) Imprisonment under this section is mandatory in accordance with Section
243 76-3-406.

244 Section 4. Section **76-5-402** is amended to read:

245 **76-5-402. Rape.**

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

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

249 (3) Rape is a felony of the first degree, punishable by a term of imprisonment of:

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

252 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,
253 if the trier of fact finds that:

254 (i) during the course of the commission of the rape the defendant caused serious bodily
255 injury to another; or

256 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
257 of age and was previously convicted of a grievous sexual offense; or

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

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

264 (a) 10 years and which may be for life; or

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

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

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

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

271 **76-5-402.1. Rape of a child.**

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

274 (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

275 (a) except as provided in Subsection (2)(b), not less than 25 years and which may be

276 for life; or

277 (b) life without parole, if the trier of fact finds that:

278 (i) during the course of the commission of the rape of a child, the defendant caused
279 serious bodily injury to another; or

280 (ii) at the time of the commission of the rape of a child the defendant was previously
281 convicted of a grievous sexual offense.

282 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
283 at the time of the offense.

284 [~~(3)~~] (4) Imprisonment under this section is mandatory in accordance with Section
285 76-3-406.

286 Section 6. Section **76-5-402.2** is amended to read:

287 **76-5-402.2. Object rape.**

288 (1) A person who, without the victim's consent, causes the penetration, however slight,
289 of the genital or anal opening of another person who is 14 years of age or older, by any foreign
290 object, substance, instrument, or device, including a part of the human body other than the
291 mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or
292 with the intent to arouse or gratify the sexual desire of any person, commits an offense which is
293 a first degree felony, punishable by a term of imprisonment of:

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

296 (b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life,
297 if the trier of fact finds that:

298 (i) during the course of the commission of the object rape the defendant caused serious
299 bodily injury to another; or

300 (ii) at the time of the commission of the object rape, the defendant was younger than 18
301 years of age and was previously convicted of a grievous sexual offense; or

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

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

307 than:

308 (a) 10 years and which may be for life; or

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

310 (3) The provisions of Subsection (2) do not apply when a person is sentenced under

311 Subsection (1)(a) or (c).

312 (4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance

313 with Section 76-3-406.

314 Section 7. Section **76-5-402.3** is amended to read:

315 **76-5-402.3. Object rape of a child -- Penalty.**

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

321 (2) Object rape of a child is a first degree felony punishable by a term of imprisonment
322 of:

323 (a) except as provided in Subsection (2)(b) not less than 25 years and which may be for
324 life; or

325 (b) life without parole, if the trier of fact finds that:

326 (i) during the course of the commission of the object rape of a child the defendant
327 caused serious bodily injury to another; or

328 (ii) at the time of the commission of the object rape of a child the defendant was
329 previously convicted of a grievous sexual offense.

330 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
331 at the time of the offense.

332 [~~3~~] (4) Imprisonment under this section is mandatory in accordance with Section
333 76-3-406.

334 Section 8. Section **76-5-403** is amended to read:

335 **76-5-403. Sodomy -- Forcible sodomy.**

336 (1) A person commits sodomy when the actor engages in any sexual act with a person
337 who is 14 years of age or older involving the genitals of one person and mouth or anus of

338 another person, regardless of the sex of either participant.

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

341 (3) Sodomy is a class B misdemeanor.

342 (4) Forcible sodomy is a first degree felony [~~of the first degree~~], punishable by a term
343 of imprisonment of:

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

346 (b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life,
347 if the trier of fact finds that:

348 (i) during the course of the commission of the forcible sodomy the defendant caused
349 serious bodily injury to another; or

350 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
351 of age and was previously convicted of a grievous sexual offense; or

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

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

358 (a) 10 years and which may be for life; or

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

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

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

364 Section 9. Section **76-5-403.1** is amended to read:

365 **76-5-403.1. Sodomy on a child.**

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

369 (2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment
370 of:

371 (a) except as provided in Subsection (2)(b), not less than 25 years and which may be
372 for life; or

373 (b) life without parole, if the trier of fact finds that:

374 (i) during the course of the commission of the sodomy upon a child the defendant
375 caused serious bodily injury to another; or

376 (ii) at the time of the commission of the sodomy upon a child, the defendant was
377 previously convicted of a grievous sexual offense.

378 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age
379 at the time of the offense.

380 [~~(3)~~] (4) Imprisonment under this section is mandatory in accordance with Section
381 76-3-406.

382 Section 10. Section **76-5-404.1** is amended to read:

383 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

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

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

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

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

396 (a) the offense was committed by the use of a dangerous weapon as defined in Section
397 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
398 was committed during the course of a kidnaping;

399 (b) the accused caused bodily injury or severe psychological injury to the victim during

400 or as a result of the offense;

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

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

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

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

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

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

419 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
420 sexual acts by the victim with any other person, or sexual performance by the victim before any
421 other person; or

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

424 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of
425 imprisonment of:

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

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

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

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

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

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

440 (i) 10 years and which may be for life; or

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

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

444 (8) Subsections (5)(b) and (c) do not apply if the defendant was younger than 18 years
445 of age at the time of the offense.

446 [~~(8)~~] (9) Imprisonment under this section is mandatory in accordance with Section
447 76-3-406.

448 Section 11. Section **76-5-405** is amended to read:

449 **76-5-405. Aggravated sexual assault -- Penalty.**

450 (1) A person commits aggravated sexual assault if:

451 (a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the
452 actor:

453 (i) uses, or threatens the victim with the use of, a dangerous weapon as defined in
454 Section 76-1-601;

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

458 (iii) is aided or abetted by one or more persons;

459 (b) in the course of an attempted rape, attempted object rape, or attempted forcible
460 sodomy, the actor:

461 (i) causes serious bodily injury to any person;

462 (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in
463 Section 76-1-601;

464 (iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy,
465 by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person;
466 or

467 (iv) is aided or abetted by one or more persons; or

468 (c) in the course of an attempted forcible sexual abuse, the actor:

469 (i) causes serious bodily injury to any person;

470 (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in
471 Section 76-1-601;

472 (iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of
473 kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

474 (iv) is aided or abetted by one or more persons.

475 (2) Aggravated sexual assault is a first degree felony, punishable by a term of
476 imprisonment of:

477 (a) for an aggravated sexual assault described in Subsection (1)(a):

478 (i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and
479 which may be for life; or

480 (ii) life without parole, if the trier of fact finds that at the time of the commission of the
481 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

482 (b) for an aggravated sexual assault described in Subsection (1)(b):

483 (i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and
484 which may be for life; or

485 (ii) life without parole, if the trier of fact finds that at the time of the commission of the
486 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

487 or

488 (c) for an aggravated sexual assault described in Subsection (1)(c):

489 (i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and
490 which may be for life; or

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

493 (3) (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a
494 lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states
495 the reasons for this finding on the record, the court may impose a term of imprisonment of not
496 less than:

497 (i) 10 years and which may be for life; or

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

499 (b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under
500 Subsection (2)(a)(ii).

501 (4) (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a
502 lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states
503 the reasons for this finding on the record, the court may impose a term of imprisonment of not
504 less than six years and which may be for life.

505 (b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under
506 Subsection (2)(b)(ii).

507 (5) (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a
508 lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states
509 the reasons for this finding on the record, the court may impose a term of imprisonment of not
510 less than three years and which may be for life.

511 (b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under
512 Subsection (2)(c)(ii).

513 (6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was
514 younger than 18 years of age at the time of the offense.

515 [~~6~~] (7) Imprisonment under this section is mandatory in accordance with Section
516 76-3-406.

Legislative Review Note
as of 2-15-13 10:43 AM

Office of Legislative Research and General Counsel