

CRIMINAL PENALTIES FOR SEXUAL CONTACT WITH A STUDENT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure and the Utah Criminal Code regarding sexual offenses.

Highlighted Provisions:

This bill:

▶ provides that when any employee of or volunteer at a public or private elementary or secondary school commits or attempts to commit against an enrolled student of the school any sexual offense that is not currently a first degree felony or a second degree felony, the offense is a second degree felony;

▶ imposes the same second degree felony penalty if the offense against a student occurs within five years after the offender was most recently employed by or had volunteered at a school; and

▶ includes these convicted persons on the sex offender registry.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 77-27-10, as last amended by Laws of Utah 2008, Chapters 294 and 382
29 77-41-102, as enacted by Laws of Utah 2012, Chapter 145 and last amended by
30 Coordination Clause, Laws of Utah 2012, Chapter 247

31 ENACTS:

32 76-5-404.5, Utah Code Annotated 1953



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

35 Section 1. Section 76-5-404.5 is enacted to read:

36 **76-5-404.5. Sexual offenses committed by a current or former school employee**
37 **against a student.**

38 (1) An employee of or a volunteer at a public or private primary or secondary school
39 who commits or attempts to commit any sexual offense under Section 76-5-401, 76-5-401.1, or
40 76-5-401.2 against any person who is enrolled as a student in a public or private primary or
41 secondary school is guilty of a second degree felony.

42 (2) A person who was employed by or was a volunteer at a public or private primary or
43 secondary school who, and within five years of the person's most recent date of employment by
44 or volunteering at a public or private primary or secondary school, commits or attempts to
45 commit any sexual offense under Section 76-5-401, 76-5-401.1, or 76-5-401.2 against any
46 person who is at the time of the offense or attempted offense enrolled as a student in a public or
47 private primary or secondary school is guilty of a second degree felony.

48 Section 2. Section 77-27-10 is amended to read:

49 **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking --**
50 **Intensive early release parole program.**

51 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
52 issue to the parolee a certificate setting forth the conditions of parole which the offender shall
53 accept and agree to as evidenced by the offender's signature affixed to the agreement.

54 (b) The parole agreement shall require that the inmate agree in writing that the board
55 may issue a warrant and conduct a parole revocation hearing if:

56 (i) the board determines after the grant of parole that the inmate willfully provided to
57 the board false or inaccurate information that the board finds was significant in the board's
58 determination to grant parole; or

59 (ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and
60 (B) the board did not have information regarding the conduct at the time parole was
61 granted.

62 (c) A copy of the agreement shall be delivered to the Department of Corrections and a
63 copy shall be given to the parolee. The original shall remain with the board's file.

64 (2) (a) If an offender convicted of violating or attempting to violate Section
65 76-5-301.1, Subsection 76-5-302(1), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3,
66 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-404.5, or 76-5-405, is released on parole, the
67 board shall order outpatient mental health counseling and treatment as a condition of parole.

68 (b) The board shall develop standards and conditions of parole under this Subsection
69 (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

70 (c) This Subsection (2) does not apply to intensive early release parole.

71 (3) (a) In addition to the conditions set out in Subsection (1), the board may place
72 offenders in an intensive early release parole program. The board shall determine the
73 conditions of parole which are reasonably necessary to protect the community as well as to
74 protect the interests of the offender and to assist the offender to lead a law-abiding life.

75 (b) The offender is eligible for this program only if the offender:

76 (i) has not been convicted of a sexual offense; or

77 (ii) has not been sentenced pursuant to Section 76-3-406.

78 (c) The department shall:

79 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
80 Rulemaking Act, for operation of the program;

81 (ii) adopt and implement internal management policies for operation of the program;

82 (iii) determine whether or not to refer an offender into this program within 120 days
83 from the date the offender is committed to prison by the sentencing court; and

84 (iv) make the final recommendation to the board regarding the placement of an
85 offender into the program.

86 (d) The department may not consider credit for time served in a county jail awaiting
87 trial or sentencing when calculating the 120-day period.

88 (e) The prosecuting attorney or sentencing court may refer an offender for
89 consideration by the department for participation in the program.

90 (f) The board shall determine whether or not to place an offender into this program
91 within 30 days of receiving the department's recommendation.

92 (4) This program shall be implemented by the department within the existing budget.

93 (5) During the time the offender is on parole, the department shall collect from the
94 offender the monthly supervision fee authorized by Section 64-13-21.

95 Section 3. Section 77-41-102 is amended to read:

96 **77-41-102. Definitions.**

97 As used in this chapter:

98 (1) "Bureau" means the bureau of Criminal Identification of the Department of Public
99 Safety established in section 53-10-201.

100 (2) "Business day" means a day on which state offices are open for regular business.

101 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
102 Identification showing that the offender has met the requirements of Section 77-41-112.

103 (4) "Department" means the Department of Corrections.

104 (5) "Division" means the Division of Juvenile Justice Services.

105 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
106 time, whether financially compensated, volunteered, or for the purpose of government or
107 educational benefit.

108 (7) "Indian Country" means:

109 (a) all land within the limits of any Indian reservation under the jurisdiction of the
110 United States government, regardless of the issuance of any patent, and includes rights-of-way
111 running through the reservation;

112 (b) all dependent Indian communities within the borders of the United States whether
113 within the original or subsequently acquired territory, and whether or not within the limits of a
114 state; and

115 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
116 not been extinguished, including rights-of-way running through the allotments.

117 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
118 property under the jurisdiction of the United States military, Canada, the United Kingdom,
119 Australia, or New Zealand.

120 (9) "Kidnap offender" means any person other than a natural parent of the victim who:

- 121 (a) has been convicted in this state of a violation of:
- 122 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;
- 123 (ii) Section 76-5-301.1, child kidnapping;
- 124 (iii) Section 76-5-302, aggravated kidnapping;
- 125 (iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or
- 126 (v) attempting, soliciting, or conspiring to commit any felony offense listed in
- 127 Subsections (9)(a)(i) through (iv);
- 128 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 129 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 130 substantially equivalent to the offenses listed in Subsection (9)(a) and who is:
- 131 (i) a Utah resident; or
- 132 (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of
- 133 10 or more days, regardless of whether or not the offender intends to permanently reside in this
- 134 state;
- 135 (c) (i) is required to register as an offender in any other jurisdiction, or who is required
- 136 to register as an offender by any state, federal, or military court; and
- 137 (ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of
- 138 whether or not the offender intends to permanently reside in this state;
- 139 (d) is a nonresident regularly employed or working in this state, or who is a student in
- 140 this state, and was convicted of one or more offenses listed in Subsection (9), or any
- 141 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
- 142 required to register in the person's state of residence;
- 143 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of
- 144 one or more offenses listed in Subsection (9); or
- 145 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a)
- 146 and who has been committed to the division for secure confinement for that offense and
- 147 remains in the division's custody 30 days prior to the person's 21st birthday.
- 148 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the
- 149 minor's noncustodial parent.
- 150 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
- 151 as defined in Subsection (16).

- 152 (12) "Online identifier" or "Internet identifier":
153 (a) means any electronic mail, chat, instant messenger, social networking, or similar
154 name used for Internet communication; and
155 (b) does not include date of birth, Social Security number, PIN number, or Internet
156 passwords.
- 157 (13) "Primary residence" means the location where the offender regularly resides, even
158 if the offender intends to move to another location or return to another location at any future
159 date.
- 160 (14) "Register" means to comply with the requirements of this chapter and
161 administrative rules of the department made under this chapter.
- 162 (15) "Secondary residence" means any real property that the offender owns or has a
163 financial interest in, or any location where, in any 12 month period, the offender stays
164 overnight a total of 10 or more nights when not staying at the offender's primary residence.
- 165 (16) "Sex offender" means any person:
166 (a) convicted in this state of:
167 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
168 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
169 2011;
170 (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
171 (iv) Section 76-5-401.1, sexual abuse of a minor;
172 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
173 (vi) Section 76-5-402, rape;
174 (vii) Section 76-5-402.1, rape of a child;
175 (viii) Section 76-5-402.2, object rape;
176 (ix) Section 76-5-402.3, object rape of a child;
177 (x) a felony violation of Section 76-5-403, forcible sodomy;
178 (xi) Section 76-5-403.1, sodomy on a child;
179 (xii) Section 76-5-404, forcible sexual abuse;
180 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
181 (xiv) Section 76-5-404.5, sexual offense against a student;
182 [~~(xiv)~~] (xv) Section 76-5-405, aggravated sexual assault;

183 [~~(xv)~~] (xvi) Section 76-5-412, custodial sexual relations, when the person in custody is
184 younger than 18 years of age, if the offense is committed on or after May 10, 2011;

185 [~~(xvi)~~] (xvii) Section 76-5b-201, sexual exploitation of a minor;

186 [~~(xvii)~~] (xviii) Section 76-7-102, incest;

187 [~~(xviii)~~] (xix) Section 76-9-702, lewdness, if the person has been convicted of the
188 offense four or more times;

189 [~~(xix)~~] (xx) Section 76-9-702.1, sexual battery, if the person has been convicted of the
190 offense four or more times;

191 [~~(xx)~~] (xxi) any combination of convictions of Section 76-9-702, lewdness, and of
192 Section 76-9-702.1, sexual battery, that total four or more convictions;

193 [~~(xxi)~~] (xxii) Section 76-9-702.5, lewdness involving a child;

194 [~~(xxii)~~] (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7,
195 voyeurism;

196 [~~(xxiii)~~] (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or

197 [~~(xxiv)~~] (xxv) attempting, soliciting, or conspiring to commit any felony offense listed
198 in Subsection (16)(a);

199 (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
200 commit a crime in another jurisdiction, including any state, federal, or military court that is
201 substantially equivalent to the offenses listed in Subsection (16)(a) and who is:

202 (i) a Utah resident; or

203 (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of
204 10 or more days, regardless of whether the offender intends to permanently reside in this state;

205 (c) (i) who is required to register as an offender in any other jurisdiction, or who is
206 required to register as an offender by any state, federal, or military court; and

207 (ii) who, in any 12 month period, is in the state for a total of 10 or more days,
208 regardless of whether or not the offender intends to permanently reside in this state;

209 (d) who is a nonresident regularly employed or working in this state or who is a student
210 in this state and was convicted of one or more offenses listed in Subsection (16)(a), or any
211 substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required
212 to register in the person's jurisdiction of residence;

213 (e) who is found not guilty by reason of insanity in this state, or in any other

214 jurisdiction of one or more offenses listed in Subsection (16)(a); or
215 (f) who is adjudicated delinquent based on one or more offenses listed in Subsection
216 (16)(a) and who has been committed to the division for secure confinement for that offense and
217 remains in the division's custody 30 days prior to the person's 21st birthday.
218 (17) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
219 Driving Under the Influence and Reckless Driving.
220 (18) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
221 any jurisdiction.

Legislative Review Note
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Office of Legislative Research and General Counsel