



28 **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**  
 29 **Evidence of age raised by defendant.**

30 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but  
 31 younger than 16 years of age, at the time the sexual activity described in this section occurred.

32 (2) A person commits unlawful sexual activity with a minor if, under circumstances  
 33 not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section  
 34 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in  
 35 violation of Section 76-5-405, the actor:

36 (a) has sexual intercourse with the minor;

37 (b) engages in any sexual act with the minor involving the genitals of one person and  
 38 the mouth or anus of another person, regardless of the sex of either participant; or

39 (c) causes the penetration, however slight, of the genital or anal opening of the minor  
 40 by any foreign object, substance, instrument, or device, including a part of the human body,  
 41 with the intent to cause substantial emotional or bodily pain to any person or with the intent to  
 42 arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

43 (3) A violation of Subsection (2) is a third degree felony ~~[unless]~~ except under  
 44 Subsection (4).

45 (4) A violation of Subsection (2) is a class B misdemeanor if the defendant establishes  
 46 by a preponderance of the evidence ~~[the mitigating factor that]~~ that at the time the sexual  
 47 activity occurred the following mitigating factors existed:

48 (a) the defendant [is] was less than four years older than the minor ~~[at the time the~~  
 49 sexual activity occurred, in which case it is a class B misdemeanor];

50 (b) the defendant was not related to the minor by blood or legal relationship; and

51 (c) the defendant was not residing in the same household as the minor.

52 Section 2. Section **76-5-401.1** is amended to read:

53 **76-5-401.1. Sexual abuse of a minor.**

54 (1) ~~[For purposes of]~~ As used in this section, "minor" is a person who is 14 years of age  
 55 or older, but younger than 16 years of age, at the time the sexual activity described in this  
 56 section occurred.

57 (2) A person commits sexual abuse of a minor if the person ~~[is seven years or more~~  
 58 ~~older than the minor or holds a relationship of special trust as an adult teacher, employee, or~~

59 ~~volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and] touches the anus, buttocks, or~~  
 60 ~~any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes~~  
 61 ~~indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or~~  
 62 ~~another person, with the intent to cause substantial emotional or bodily pain to any person or~~  
 63 ~~with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any~~  
 64 ~~participant, under circumstances not amounting to rape, in violation of Section 76-5-402,~~  
 65 ~~object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section~~  
 66 ~~76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity~~  
 67 ~~with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses[;~~  
 68 ~~the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the~~  
 69 ~~breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a~~  
 70 ~~minor to take indecent liberties with the actor or another person, with the intent to cause~~  
 71 ~~substantial emotional or bodily pain to any person or with the intent to arouse or gratify the~~  
 72 ~~sexual desire of any person regardless of the sex of any participant].~~

73 (3) (a) A violation of ~~[this section]~~ Subsection (2) is a class A misdemeanor, except  
 74 under Subsection (3)(b), unless the defendant establishes by a preponderance of the evidence  
 75 that at the time of the sexual activity the defendant:

- 76 (i) was less than four years older than the minor;  
 77 (ii) was not related to the minor by blood or legal relationship; and  
 78 (iii) was not residing in the same residence as the minor.

79 (b) A violation of ~~[this section]~~ Subsection (2), notwithstanding the exemption under  
 80 Subsection (3)(a), is a third degree felony if the [actor] defendant at the time of the commission  
 81 of the offense:

- 82 ~~[(i) is 18 years of age or older;]~~  
 83 ~~[(ii)]~~ (i) held a position of special trust as a teacher [or a volunteer at a school, as that  
 84 position is defined in Subsection 76-5-404.1(1)(c)(xix)] or was any other person who was  
 85 employed by or volunteering at a public or private elementary school or secondary school; and  
 86 ~~[(iii)]~~ (ii) committed the offense against an individual who at the time of the offense  
 87 was enrolled as a student at the school where the actor was employed or was acting as a  
 88 volunteer.

**Legislative Review Note  
Office of Legislative Research and General Counsel**