

SUBJECTING A MINOR TO SEXUAL MATERIAL

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code penalties regarding specified offenses against children.

Highlighted Provisions:

This bill:

- ▶ provides that the penalties regarding sexual offenses against children are increased by one degree if the victim was exposed to pornography during the course of the commission of the offense; and

- ▶ provides that a first degree felony child kidnapping offense or a sexual offense against a child include the commission of the offenses when the victim is exposed to pornography.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-301.1, as last amended by Laws of Utah 2013, Chapter 81

76-5-401, as repealed and reenacted by Laws of Utah 1998, Chapter 82

76-5-401.1, as last amended by Laws of Utah 2014, Chapter 135



28 [76-5-401.2](#), as last amended by Laws of Utah 2014, Chapter 135
29 [76-5-404](#), as last amended by Laws of Utah 2010, Chapter 218
30 [76-5-404.1](#), as last amended by Laws of Utah 2014, Chapters 135 and 141

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

33 Section 1. Section [76-5-301.1](#) is amended to read:

34 **[76-5-301.1](#). Child kidnapping.**

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

39 (2) Violation of Section [76-5-303](#) is not a violation of this section.

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

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

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

45 (i) caused serious bodily injury to another; or

46 (ii) exposed the victim to pornography during the course of the kidnapping; or

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

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

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

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

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

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

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

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

61 (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
62 Section 2. Section 76-5-401 is amended to read:

63 **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**
64 **Evidence of age raised by defendant.**

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

67 (2) A person commits unlawful sexual activity with a minor if, under circumstances
68 not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
69 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in
70 violation of Section 76-5-405, the actor:

71 (a) has sexual intercourse with the minor;

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

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

78 (3) A violation of Subsection (2) is a third degree felony unless the defendant
79 establishes by a preponderance of the evidence the mitigating factor that the defendant is less
80 than four years older than the minor at the time the sexual activity occurred, in which case it is
81 a class B misdemeanor.

82 (4) If the defendant exposes the minor to pornography during the course of a violation
83 of Subsection (2):

84 (a) a third degree felony under Subsection (3) is a second degree felony; and

85 (b) a class B misdemeanor under Subsection (3) is a class A misdemeanor.

86 Section 3. Section 76-5-401.1 is amended to read:

87 **76-5-401.1. Sexual abuse of a minor.**

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

90 (2) A person commits sexual abuse of a minor if the person is seven years or more
91 older than the minor or holds a relationship of special trust as an adult teacher, employee, or
92 volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not
93 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
94 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in
95 violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section
96 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks,
97 or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise
98 takes indecent liberties with the minor, or causes a minor to take indecent liberties with the
99 actor or another person, with the intent to cause substantial emotional or bodily pain to any
100 person or with the intent to arouse or gratify the sexual desire of any person regardless of the
101 sex of any participant.

102 (3) (a) A violation of this section is a class A misdemeanor, except under Subsection
103 (3)(b).

104 (b) A violation of this section is a third degree felony if the actor at the time of the
105 commission of the offense:

106 (i) is 18 years of age or older;

107 (ii) held a position of special trust as a teacher or a volunteer at a school, as that
108 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

109 (iii) committed the offense against an individual who at the time of the offense was
110 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

111 (4) If the defendant exposes the minor to pornography during the course of a violation
112 of Subsection (2):

113 (a) a third degree felony under Subsection (3) is a second degree felony; and

114 (b) a class A misdemeanor under Subsection (3) is a third degree felony.

115 Section 4. Section 76-5-401.2 is amended to read:

116 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

117 (1) As used in this section, "minor" means a person who is 16 years of age or older, but
118 younger than 18 years of age, at the time the sexual conduct described in Subsection (2)
119 occurred.

120 (2) (a) A person commits unlawful sexual conduct with a minor if, under

121 circumstances not amounting to an offense listed under Subsection (3), a person who is:

122 (i) seven or more years older but less than 10 years older than the minor at the time of
123 the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or
124 reasonably should have known the age of the minor;

125 (ii) 10 or more years older than the minor at the time of the sexual conduct and engages
126 in any conduct listed in Subsection (2)(b); or

127 (iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as
128 described in Subsection 76-5-404.1(1)(c)(xix).

129 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:

130 (i) has sexual intercourse with the minor;

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

133 (iii) causes the penetration, however slight, of the genital or anal opening of the minor
134 by any foreign object, substance, instrument, or device, including a part of the human body,
135 with the intent to cause substantial emotional or bodily pain to any person or with the intent to
136 arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or

137 (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the
138 breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a
139 minor to take indecent liberties with the actor or another person, with the intent to cause
140 substantial emotional or bodily pain to any person or with the intent to arouse or gratify the
141 sexual desire of any person regardless of the sex of any participant.

142 (3) The offenses referred to in Subsection (2) are:

143 (a) (i) rape, in violation of Section 76-5-402;

144 (ii) object rape, in violation of Section 76-5-402.2;

145 (iii) forcible sodomy, in violation of Section 76-5-403;

146 (iv) forcible sexual abuse, in violation of Section 76-5-404; or

147 (v) aggravated sexual assault, in violation of Section 76-5-405; or

148 (b) an attempt to commit any offense under Subsection (3)(a).

149 (4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

150 (5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under
151 Subsection (5)(b).

152 (b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time
153 of the commission of the offense:

154 (i) is 18 years of age or older;

155 (ii) held a position of special trust as a teacher or a volunteer at a school, as that
156 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

157 (iii) committed the offense against an individual who at the time of the offense was
158 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

159 (6) If the defendant exposes the minor to pornography during the course of a violation
160 of Subsection (2):

161 (a) a third degree felony under Subsection (4) is a second degree felony;

162 (b) a class A misdemeanor under Subsection (5)(a) is a third degree felony; and

163 (c) a third degree felony under Subsection (5)(b) is a second degree felony.

164 Section 5. Section 76-5-404 is amended to read:

165 **76-5-404. Forcible sexual abuse.**

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

173 (2) Forcible sexual abuse is:

174 (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable
175 by a term of imprisonment of not less than one year nor more than 15 years; or

176 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a
177 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that
178 during the course of the commission of the forcible sexual abuse the defendant:

179 (i) caused serious bodily injury to another; or

180 (ii) exposed the victim to pornography during the course of a violation of Subsection
181 (1).

182 (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser

183 term than the term described in Subsection (2)(b) is in the interests of justice and states the
184 reasons for this finding on the record, the court may impose a term of imprisonment of not less
185 than:

- 186 (a) 10 years and which may be for life; or
- 187 (b) six years and which may be for life.
- 188 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with
189 Section 76-3-406.

190 Section 6. Section 76-5-404.1 is amended to read:

191 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

192 (1) As used in this section:

- 193 (a) "Adult" means an individual 18 years of age or older.
- 194 (b) "Child" means an individual under the age of 14.
- 195 (c) "Position of special trust" means:
 - 196 (i) an adoptive parent;
 - 197 (ii) an athletic manager who is an adult;
 - 198 (iii) an aunt;
 - 199 (iv) a babysitter;
 - 200 (v) a coach;
 - 201 (vi) a cohabitant of a parent if the cohabitant is an adult;
 - 202 (vii) a counselor;
 - 203 (viii) a doctor or physician;
 - 204 (ix) an employer;
 - 205 (x) a foster parent;
 - 206 (xi) a grandparent;
 - 207 (xii) a legal guardian;
 - 208 (xiii) a natural parent;
 - 209 (xiv) a recreational leader who is an adult;
 - 210 (xv) a religious leader;
 - 211 (xvi) a sibling or a stepsibling who is an adult;
 - 212 (xvii) a scout leader who is an adult;
 - 213 (xviii) a stepparent;

214 (xix) a teacher or any other person employed by or volunteering at a public or private
215 elementary school or secondary school, and who is 18 years of age or older;

216 (xx) an uncle;

217 (xxi) a youth leader who is an adult; or

218 (xxii) any person in a position of authority, other than those persons listed in

219 Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over
220 the child.

221 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
222 rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these
223 offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female
224 child, or otherwise takes indecent liberties with a child, or causes a child to take indecent
225 liberties with the actor or another with intent to cause substantial emotional or bodily pain to
226 any person or with the intent to arouse or gratify the sexual desire of any person regardless of
227 the sex of any participant.

228 (3) Sexual abuse of a child is a second degree felony.

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

232 (a) the offense was committed by the use of a dangerous weapon as defined in Section
233 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
234 was committed during the course of a kidnapping;

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

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

239 (d) the accused [~~used, showed, or displayed~~] exposed the victim to pornography or
240 caused the victim to be photographed in a lewd condition during the course of the offense;

241 (e) the accused, prior to sentencing for this offense, was previously convicted of any
242 sexual offense;

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

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

248 (h) the offense was committed by a person who occupied a position of special trust in
249 relation to the victim;

250 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
251 sexual acts by the victim with any other person, or sexual performance by the victim before any
252 other person, human trafficking, or human smuggling; or

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

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

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

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

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

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

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

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

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

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

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

275 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18

276 years of age at the time of the offense.

277 (9) Imprisonment under this section is mandatory in accordance with Section [76-3-406](#).

Legislative Review Note
Office of Legislative Research and General Counsel