

Representative Marc K. Roberts proposes the following substitute bill:

JUVENILE OFFENSES AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to juvenile sex offenses when both juveniles are under 18 years of age.

Highlighted Provisions:

This bill:

- ▶ describes unlawful sexual activity between minors;
- ▶ sets parameters for when unlawful sexual activity occurs between minors and both are under 18 years of age;
- ▶ creates penalties; and
- ▶ makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-401, as last amended by Laws of Utah 2016, Chapter 372



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

27 Section 1. Section **76-5-401** is amended to read:

28 **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**

29 **Evidence of age raised by defendant.**

30 (1) (a) For purposes of [~~this section~~] Subsection (2)(a), "minor" is a person who is 14
31 years of age or older, but younger than 16 years of age, at the time the sexual activity described
32 in this section occurred.

33 (b) For purposes of Subsection (2)(b), "minor" is a person who is 12 years of age or
34 older, but younger than 16 years of age, at the time the sexual activity described in this section
35 occurred.

36 (2) (a) A person 18 years of age or older commits unlawful sexual activity with a minor
37 if, under circumstances not amounting to rape, in violation of Section **76-5-402**, object rape, in
38 violation of Section **76-5-402.2**, forcible sodomy, in violation of Section **76-5-403**, or
39 aggravated sexual assault, in violation of Section **76-5-405**, the actor:

40 [~~(a)~~] (i) has sexual intercourse with the minor;

41 [~~(b)~~] (ii) engages in any sexual act with the minor involving the genitals of one person
42 and the mouth or anus of another person, regardless of the sex of either participant; or

43 [~~(c)~~] (iii) causes the penetration, however slight, of the genital or anal opening of the
44 minor by any foreign object, substance, instrument, or device, including a part of the human
45 body, with the intent to cause substantial emotional or bodily pain to any person or with the
46 intent to arouse or gratify the sexual desire of any person, regardless of the sex of any
47 participant.

48 (b) A person under 18 years of age commits unlawful sexual activity with a minor if,
49 under circumstances not amounting to rape, in violation of Section **76-5-402**, object rape, in
50 violation of Section **76-5-402.2**, forcible sodomy, in violation of Section **76-5-403**, or
51 aggravated sexual assault, in violation of section **76-5-405**, the actor:

52 (i) has sexual intercourse with a minor who is at least two years younger than the actor;

53 (ii) engages in any sexual act with a minor who is at least two years younger than the
54 actor involving the genitals of one person and the mouth or anus of another person, regardless
55 of the sex of either participant; or

56 (iii) causes the penetration, however slight, of the genitals or anal opening of a minor

57 who is at least two years younger than the actor by any foreign object, substance, instrument, or
58 device, including a part of the human body, with the intent to cause substantial emotional or
59 bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person,
60 regardless of the sex of any participant.

61 (3) (a) Except under Subsection (3)(b), a violation of Subsection (2)(a) is a third degree
62 felony.

63 (b) If the defendant establishes by a preponderance of the evidence the mitigating
64 factor that the defendant is less than four years older than the minor at the time the sexual
65 activity occurred, the offense is a class B misdemeanor. [~~An offense under this Subsection~~
66 ~~(3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).]~~

67 (4) A violation of Subsection (2)(b) by a person under the age of 18 is:

68 (a) a class A misdemeanor if the minor is under 14 and there is more than four years
69 difference in the ages of the parties;

70 (b) a class B misdemeanor if the minor is under 14 and there is less than four but more
71 than two years difference in the ages of the parties; or

72 (c) not punishable as a criminal or delinquent offense if the minor is over 14 years of
73 age.

74 (5) Offenses under Subsections (2)(b), (3)(b) and (4) are not subject to registration
75 under Subsection 77-41-102(17)(a)(iii).

76 (6) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702,
77 or 78A-6-703, the district court may enter any sentence or combination of sentences which
78 would have been available in juvenile court but for the delayed reporting or delayed filing of
79 the information in district court.