

Jen Plumb proposes the following substitute bill:

Sexual Crime Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Strong

Senate Sponsor: Jen Plumb

LONG TITLE

General Description:

This bill addresses the sentence length for the crimes of rape, object rape, and forcible sodomy.

Highlighted Provisions:

This bill:

- defines terms;
- amends the length of a sentence for the crimes of rape, object rape, and forcible sodomy if the actor committed the crime against an incapacitated individual; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-406, as last amended by Laws of Utah 2024, Chapter 96

76-5-402, as last amended by Laws of Utah 2022, Chapter 181

76-5-402.2, as last amended by Laws of Utah 2022, Chapter 181

76-5-403, as last amended by Laws of Utah 2022, Chapter 181

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

Section 1. Section **76-3-406** is amended to read:

76-3-406 . Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

(1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a,

Commitment and Treatment of Individuals with a Mental Condition, except as provided

in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

- (a) aggravated murder as described in Section 76-5-202;
- (b) murder as described in Section 76-5-203;
- (c) child kidnapping as described in Section 76-5-301.1;
- (d) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
- (e) rape as described in Subsection 76-5-402(3)(b), (3)(c), (3)(d), or (4);
- (f) rape of a child as described in Section 76-5-402.1;
- (g) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), (3)(d), or (4);
- (h) object rape of a child as described in Section 76-5-402.3;
- (i) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), (3)(d), or (4);
- (j) sodomy on a child as described in Section 76-5-403.1;
- (k) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
- (l) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- (m) aggravated sexual assault as described in Section 76-5-405; or
- (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

(2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the defendant:

- (a) was under 18 years old at the time of the offense; and
- (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Section 2. Section **76-5-402** is amended to read:

76-5-402 . Rape.

(1)(a) As used in this section, "incapacitated individual" means:

(i) an individual 14 years old or older with:

(A) an intellectual disease or defect;

(B) a physical disease or defect;

(C) a neurological disease or defect; or

(D) a cognitive disease or defect; and

(ii) as a result of the disease or defect described in Subsection (1)(a)(i), the individual

is unable to meet two or more of the following requirements:

(A) appraise the nature of an act of sexual intercourse;

(B) resist or escape an act of sexual intercourse; or

(C) report an act of sexual intercourse committed against the individual.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)(a) An actor commits rape if the actor has sexual intercourse with another individual without the individual's consent.

(b) Any sexual penetration, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(c) This section applies whether or not the actor is married to the individual.

(3) A violation of Subsection (2) is a felony of the first degree, punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b)~~[-or]~~, (c), or (d), not less than five years and which may be for life;

(b) except as provided in Subsection (3)(c), (3)(d), or (4)(a), 10 years and which may be for life if the trier of fact finds that the act committed by the actor described in Subsection (2) was committed against an incapacitated individual;

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

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

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

~~[(e)]~~ (d) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.

(4)(a) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

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

~~[(a)]~~ (i) 10 years and which may be for life; or

98 ~~[(b)]~~ (ii) six years and which may be for life.

99 (5) The provisions of Subsection (4) do not apply when a defendant is sentenced under
100 Subsection (3)(a) or ~~[(e)]~~ (d).

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

103 Section 3. Section **76-5-402.2** is amended to read:

104 **76-5-402.2 . Object rape.**

105 (1)(a) As used in this section, "incapacitated individual" means the same as that term is
106 defined in Section 76-5-402.

107 (b) Terms defined in Section 76-1-101.5 apply to this section.

108 (2) An actor commits object rape if:

109 (a) the actor:

110 (i) acts without an individual's consent;

111 (ii) causes the penetration, however slight, of the genital or anal opening of the
112 individual by:

113 (A) a foreign object;

114 (B) a substance;

115 (C) an instrument;

116 (D) a device; or

117 (E) a part of the human body other than the mouth or genitals; and

118 (iii)(A) intends to cause substantial emotional or bodily pain to the individual; or

119 (B) intends to arouse or gratify the sexual desire of any individual; and

120 (b) the individual described in Subsection (2)(a)(i) is 14 years old or older.

121 (3) A violation of Subsection (2) is a first degree felony, punishable by a term of
122 imprisonment of:

123 (a) except as provided in Subsection (3)(b)~~[-or]~~ , (c) or (d), not less than five years and
124 which may be for life;

125 (b) except as provided in Subsection (3)(c), (3)(d), or (4)(a), 10 years and which may be
126 for life if the trier of fact finds that the act committed by the actor described in
127 Subsection (2) was committed against an incapacitated individual;

128 ~~[(b)]~~ (c) except as provided in Subsection ~~[(3)(e) or (4)]~~ (3)(d) or (4)(b), 15 years and
129 which may be for life, if the trier of fact finds that:

130 (i) during the course of the commission of the object rape the defendant caused
131 serious bodily injury to the victim; or

(ii) at the time of the commission of the object rape, the defendant was younger than 18 years old and was previously convicted of a grievous sexual offense; or
 [(e)] (d) life without parole, if the trier of fact finds that at the time of the commission of the object rape, the defendant was previously convicted of a grievous sexual offense.

(4)(a) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

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

- [(a)] (i) 10 years and which may be for life; or
- [(b)] (ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply if a defendant is sentenced under Subsection (3)(a) or [(e)] (d).

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

Section 4. Section **76-5-403** is amended to read:

76-5-403 . Forcible sodomy.

(1)(a) As used in this section[;] :

(i) "Incapacitated individual" means the same as that term is defined in Section 76-5-402.

(ii) ["sodomy"] "Sodomy" means engaging in any sexual act with an individual who is 14 years old or older involving the genitals of one individual and the mouth or anus of another individual.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)(a) An actor commits forcible sodomy when the actor commits sodomy upon another individual without the other individual's consent.

(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) A violation of Subsection (2) is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b)[-or] , (c), or (d), not less than five years and

which may be for life;

(b) except as provided in Subsection (3)(c), (3)(d), or (4)(a), 10 years and which may be for life if the trier of fact finds that the act committed by the actor described in Subsection (2) was committed against an incapacitated individual;

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

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

(ii) at the time of the commission of the ~~[rape]~~ forcible sodomy, the defendant was younger than 18 years old and was previously convicted of a grievous sexual offense; or

~~[(e)]~~ (d) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.

(4)(a) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

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

~~[(a)]~~ (i) 10 years and which may be for life; or

~~[(b)]~~ (ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a defendant is sentenced under Subsection (3)(a) or ~~[(e)]~~ (d).

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

Section 5. Effective Date.

This bill takes effect on May 7, 2025.