

Sexual relations with an adult secondary school student

DRAFT #3

1. As used in this section:

- a. Actor means: an individual in a position of special trust at a district, charter or private secondary school, including but not limited to a teacher, administrator, coach, counselor or any other individual employed by or volunteering at the a district, charter or private secondary school, and who is 21 years old or older;
- b. Student means an individual less than twenty-one years of age 18 years or older who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

2. An actor commits Sexual Relations with an Adult Secondary School Student if the actor commits any of the acts under Subsection (3) with a student:

- a. under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and
- b. the actor knows that the individual was a student or a reasonable person in the actor's position should have known under the circumstances that the individual was a student.

3. Acts referred to in Subsection (2) are:

- a. having sexual intercourse with a student;
- b. engaging in a sexual act with a student involving the genitals of one individual and the mouth or anus of another individual;
- c. causing the penetration, however slight, of the genital or anal opening of a student by any foreign object, substance, instrument, or device, including a part of the human body;
- d. touching the anus, buttocks, pubic area, or any part of the genitals of a student;
- e. touching the breast of a female student; or
- f. otherwise taking indecent liberties with a student.
- g. any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (3)(b), (c) (d), (e) or (f).

4. The offenses referred to in Subsection (2)(a) are:

- a. rape, in violation of Section 76-5-402;
- b. object rape, in violation of Section 76-5-402.2;
- c. forcible sodomy, in violation of Section 76-5-403;
- d. forcible sexual abuse, in violation of Section 76-5-404;
- e. aggravated sexual assault, in violation of Section 76-5-405; or
- f. an attempt to commit an offense listed in Subsections (4)(a) through (4)(f).

5. Consent of the student is not a defense to any violation or attempted violation of this section.

6. A violation of this section is a third degree felony.

Statutes

Effective 5/4/2022

76-3-203.13. Enhanced penalty for unlawful sexual contact with a student.

(1) A person convicted of a sexual offense described in Section 76-5-401.1 or 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of the sexual offense, the actor:

- (a) was 18 years old or older;
- (b) held a position of special trust as a teacher, employee, or volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(a)(iv)(S); and
- (c) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

(2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the offense of which the person was convicted.

Effective 5/3/2023

76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.

(1)

(a) As used in this section:

(i) "Actor" means:

- (A) a law enforcement officer, as defined in Section 53-13-103;
- (B) a correctional officer, as defined in Section 53-13-104;
- (C) a special function officer, as defined in Section 53-13-105; or
- (D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:

(A) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 26B-5-302 or other medical facility;

(B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(C) under lawful or unlawful arrest, either with or without a warrant.

(iv) "Private provider or contractor" means a person that contracts or enters into a memorandum of understanding with a governmental or private entity to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

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

(2)

(a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and

(ii)

(A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) Acts referred to in Subsection (2)(a) are:

(i) having sexual intercourse with a person in custody;

(ii) engaging in a sexual act with a person in custody involving the genitals of one individual and the mouth or anus of another individual; or

(iii)

- (A) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body; and
- (B) intending to cause substantial emotional or bodily pain to any individual.
- (c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3)
 - (a) A violation of Subsection (2) is a third degree felony.
 - (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a second degree felony.
 - (c) If the act committed under Subsection (3) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.
- (4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i) are:
 - (a) Section 76-5-401, unlawful sexual activity with a minor;
 - (b) Section 76-5-402, rape;
 - (c) Section 76-5-402.1, rape of a child;
 - (d) Section 76-5-402.2, object rape;
 - (e) Section 76-5-402.3, object rape of a child;
 - (f) Section 76-5-403, forcible sodomy;
 - (g) Section 76-5-403.1, sodomy on a child;
 - (h) Section 76-5-404, forcible sexual abuse;
 - (i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child; or
 - (j) Section 76-5-405, aggravated sexual assault.
- (5)
 - (a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years old, that the actor:
 - (i) mistakenly believed the person in custody to be 18 years old or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the person in custody.
 - (b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).
- (6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Effective 5/3/2023

76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.

- (1)
 - (a) As used in this section:
 - (i) "Actor" means:
 - (A) a law enforcement officer, as defined in Section 53-13-103;
 - (B) a correctional officer, as defined in Section 53-13-104;
 - (C) a special function officer, as defined in Section 53-13-105; or
 - (D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.
 - (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

- (iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:
 - (A) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 26B-5-302 or other medical facility;
 - (B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or
 - (C) under lawful or unlawful arrest, either with or without a warrant.
- (iv) "Private provider or contractor" means a person that contracts or enters into a memorandum of understanding with a governmental or private entity to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.
 - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
 - (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):
 - (i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and
 - (ii)
 - (A) the actor knows that the individual is a person in custody; or
 - (B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.
 - (b) Acts referred to in Subsection (2)(a) are:
 - (i) having sexual intercourse with a person in custody;
 - (ii) engaging in a sexual act with a person in custody involving the genitals of one individual and the mouth or anus of another individual; or
 - (iii)
 - (A) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body; and
 - (B) intending to cause substantial emotional or bodily pain to any individual.
 - (C) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
 - (3)
 - (a) A violation of Subsection (2) is a third degree felony.
 - (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a second degree felony.
 - (c) If the act committed under Subsection (3) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.
 - (4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i) are:
 - (a) Section 76-5-401, unlawful sexual activity with a minor;
 - (b) Section 76-5-402, rape;
 - (c) Section 76-5-402.1, rape of a child;
 - (d) Section 76-5-402.2, object rape;
 - (e) Section 76-5-402.3, object rape of a child;
 - (f) Section 76-5-403, forcible sodomy;
 - (g) Section 76-5-403.1, sodomy on a child;
 - (h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(5)

(a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years old, that the actor:

(i) mistakenly believed the person in custody to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).

(6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

76-5-413. Custodial sexual relations with youth receiving state services -- Penalties -- Defenses and limitations.

(1)

(a) As used in this section:

(i) "Actor" means:

(A) an individual employed by the Department of Health and Human Services created in Section 26B-1-201, or an employee of a private provider or contractor; or

(B) an individual employed by the juvenile court of the state, or an employee of a private provider or contractor.

(ii) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(iii) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

(iv) "Private provider or contractor" means a person that contracts with the:

(A) department to provide services or functions that are part of the operation of the department; or

(B) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(v) "Youth receiving state services" means an individual:

(A) younger than 18 years old, except as provided under Subsection (1)(a)(v)(B), who is:

(I) in the custody of the department under Section 80-6-703; or

(II) receiving services from any division of the department if any portion of the costs of these services is covered by public money; or

(B) younger than 21 years old:

(I) who is in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(II) whose case is under the jurisdiction of the juvenile court.

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

(2)

(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits custodial sexual relations with a youth receiving state services if:

(i) the actor commits any of the acts described in Subsection (2)(b); and

(ii)

(A) the actor knows that the individual is a youth receiving state services; or

- (B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.
- (b) Acts referred to in Subsection (2)(a)(i) are:
- (i) having sexual intercourse with a youth receiving state services;
 - (ii) engaging in any sexual act with a youth receiving state services involving the genitals of one individual and the mouth or anus of another individual; or
 - (iii)
 - (A) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body; and
 - (B) with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual.
 - (c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3)
- (a) A violation of Subsection (2) is a third degree felony.
 - (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger than 18 years old, a violation of Subsection (2) is a second degree felony.
 - (c) If the act committed under Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.
- (4) The offenses referred to in Subsection (2) are:
- (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
 - (b) rape, in violation of Section 76-5-402;
 - (c) rape of a child, in violation of Section 76-5-402.1;
 - (d) object rape, in violation of Section 76-5-402.2;
 - (e) object rape of a child, in violation of Section 76-5-402.3;
 - (f) forcible sodomy, in violation of Section 76-5-403;
 - (g) sodomy on a child, in violation of Section 76-5-403.1;
 - (h) forcible sexual abuse, in violation of Section 76-5-404;
 - (i) sexual abuse of a child, in violation of Section 76-5-404.1;
 - (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;
 - (k) aggravated sexual assault, in violation of Section 76-5-405; or
 - (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
- (5)
- (a) It is not a defense to the commission of, or an attempt to commit, the offense described in Subsection (2) if the youth receiving state services is younger than 18 years old, that the actor:
 - (i) mistakenly believed the youth receiving state services to be 18 years old or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the youth receiving state services.
 - (b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2).
- (6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Effective 5/4/2022

76-5-413.2. Custodial sexual misconduct with a youth receiving state services -- Penalties -- Defenses and limitations.

(1)

- (a) As used in this section:
 - (i) "Actor" means the same as that term is defined in Section 76-5-413.
 - (ii) "Department" means the same as that term is defined in Section 76-5-413.
 - (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
 - (iv) "Juvenile court" means the same as that term is defined in Section 76-5-413.
 - (v) "Private provider or contractor" means the same as that term is defined in Section 76-5-413.
 - (vi) "Youth receiving state services" means the same as that term is defined in Section 76-5-413.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
 - (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits custodial sexual misconduct with a youth receiving state services if:
 - (i) the actor commits any of the acts described in Subsection (2)(b); and
 - (ii)
 - (A) the actor knows that the individual is a youth receiving state services; or
 - (B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.
 - (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual:
 - (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth receiving state services;
 - (ii) touching the breast of a female youth receiving state services; or
 - (iii) otherwise taking indecent liberties with a youth receiving state services.
 - (c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3)
 - (a) A violation of Subsection (2) is a class A misdemeanor.
 - (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger than 18 years old, a violation of Subsection (2) is a third degree felony.
 - (c) If the act committed under Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.
- (4) The offenses referred to in Subsection (2) are:
 - (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
 - (b) rape, in violation of Section 76-5-402;
 - (c) rape of a child, in violation of Section 76-5-402.1;
 - (d) object rape, in violation of Section 76-5-402.2;
 - (e) object rape of a child, in violation of Section 76-5-402.3;
 - (f) forcible sodomy, in violation of Section 76-5-403;
 - (g) sodomy on a child, in violation of Section 76-5-403.1;
 - (h) forcible sexual abuse, in violation of Section 76-5-404;
 - (i) sexual abuse of a child, in violation of Section 76-5-404.1;
 - (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;
 - (k) aggravated sexual assault, in violation of Section 76-5-405; or
 - (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
- (5)
 - (a) It is not a defense to the commission of, or an attempt to commit, the offense described in Subsection (2) if the youth receiving state services is younger than 18 years old, that the actor:

- (i) mistakenly believed the youth receiving state services to be 18 years old or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the youth receiving state services.
- (b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2).
- (6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).