

Superseded 5/8/2018

76-4-401 Enticing a minor -- Elements -- Penalties.

(1) As used in this section:

- (a) "Minor" means a person who is under the age of 18.
- (b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone, computer, or other electronic communication device to another person's telephone, computer, or other electronic communication device by addressing the communication to the person's telephone number or other electronic communication access code or number.

(2)

- (a) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.
- (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:
 - (i) initiate contact with a minor or a person the actor believes to be a minor; and
 - (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

- (a) enticement to engage in sexual activity which would be a first degree felony for the actor is a:
 - (i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and
 - (ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);
- (b) enticement to engage in sexual activity which would be a second degree felony for the actor is a third degree felony;
- (c) enticement to engage in sexual activity which would be a third degree felony for the actor is a class A misdemeanor;
- (d) enticement to engage in sexual activity which would be a class A misdemeanor for the actor is a class B misdemeanor; and
- (e) enticement to engage in sexual activity which would be a class B misdemeanor for the actor is a class C misdemeanor.

(5)

- (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:
 - (i) grant probation;
 - (ii) suspend the execution or imposition of the sentence;
 - (iii) enter a judgment for a lower category of offense; or
 - (iv) order hospitalization.
- (b) The sections referred to in Subsection (5)(a) are:
 - (i) Section 76-4-401, enticing a minor;

- (ii) Section 76-5-301.1, child kidnapping;
- (iii) Section 76-5-402, rape;
- (iv) Section 76-5-402.1, rape of a child;
- (v) Section 76-5-402.2, object rape;
- (vi) Section 76-5-402.3, object rape of a child;
- (vii) Subsection 76-5-403(2), forcible sodomy;
- (viii) Section 76-5-403.1, sodomy on a child;
- (ix) Section 76-5-404, forcible sexual abuse;
- (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
- (xi) Section 76-5-405, aggravated sexual assault;
- (xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections (5)(b)(i) through (xi); or
- (xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through (xii).