

## Part 4 Sexual Offenses

### **76-5-401 Unlawful sexual activity with a minor -- Penalties -- Evidence of age raised by defendant -- Limitations.**

- (1)
  - (a) As used in this section, "minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.
  - (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 18 years old or older commits unlawful sexual activity with a minor if the actor:
    - (i) has sexual intercourse with the minor;
    - (ii) engages in any sexual act with the minor involving the genitals of an individual and the mouth or anus of another individual; or
    - (iii) causes the penetration, however slight, of the genital or anal opening of the minor by a foreign object, substance, instrument, or device, including a part of the human body, 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.
  - (b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a)(ii).
- (3)
  - (a) A violation of Subsection (2) is a third degree felony.
  - (b)
    - (i) Notwithstanding Subsection (3)(a) or (c), a violation of Subsection (2) is a class B misdemeanor if the defendant establishes by a preponderance of the evidence the mitigating factor that:
      - (A) the defendant is less than four years older than the minor at the time the sexual activity occurred; or
      - (B) the defendant is 18 years old and enrolled in high school at the time the sexual activity occurred.
    - (ii) An offense under Subsection (3)(b)(i) is not subject to registration under Subsection 77-41-102(19)(a)(vii).
  - (c)
    - (i) Notwithstanding Subsection (3)(a), if the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant was younger than 21 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.
    - (ii) An offense under Subsection (3)(c)(i) is not subject to registration under Subsection 77-41-102(19)(a)(vii).
- (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) aggravated sexual assault, in violation of Section 76-5-405; or
  - (e) an attempt to commit an offense listed in Subsections (4)(a) through (4)(d).

Amended by Chapter 234, 2024 General Session

**76-5-401.1 Sexual abuse of a minor -- Penalties -- Limitations.**

- (1)
  - (a) As used in this section:
    - (i) "Indecent liberties" means:
      - (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or female breast;
      - (B) causing any part of an individual's body to touch the actor's or another's genitals, pubic area, anus, buttocks, or female breast;
      - (C) simulating or pretending to engage in sexual intercourse with another individual, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or
      - (D) causing an individual to simulate or pretend to engage in sexual intercourse with the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.
    - (ii) "Minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.
  - (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 sexual abuse of a minor if the actor:
    - (i) is four years or more older than the minor; and
    - (ii) 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:
      - (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
      - (B) touches the breast of a female minor; or
      - (C) otherwise takes indecent liberties with the minor.
  - (b) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3) A violation of Subsection (2)(a) is:
  - (a) a class A misdemeanor; and
  - (b) not subject to registration under Subsection 77-41-102(19)(a)(viii) on a first offense if the offender was younger than 21 years old at the time of the offense.
- (4) The offenses referred to in Subsection (2)(a) 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) object rape, in violation of Section 76-5-402.2;
  - (d) forcible sodomy, in violation of Section 76-5-403;
  - (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 (e).

Amended by Chapter 234, 2024 General Session

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

- (1)
  - (a) As used in this section:
    - (i) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
    - (ii) "Minor" means an individual who is 16 years old or older, but younger than 18 years old, at the time the sexual conduct described in Subsection (2) occurred.
  - (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 unlawful sexual conduct with a minor if the actor:
    - (i)
      - (A) is seven or more years older but less than 10 years older than the minor at the time of the sexual conduct;
      - (B) engages in any conduct listed in Subsection (2)(b); and
      - (C) knew or reasonably should have known the age of the minor; or
    - (ii)
      - (A) is 10 or more years older than the minor at the time of the sexual conduct; and
      - (B) engages in any conduct listed in Subsection (2)(b).
  - (b) As used in Subsection (2)(a), "sexual conduct" refers to when the actor:
    - (i) has sexual intercourse with the minor;
    - (ii) engages in any sexual act with the minor involving the genitals of one individual and the mouth or anus of another individual;
    - (iii)
      - (A) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body; and
      - (B) causes the penetration 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; or
    - (iv) 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:
      - (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
      - (B) touches the breast of a female minor; or
      - (C) otherwise takes indecent liberties with the minor.
  - (c)
    - (i) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
    - (ii) Any penetration, however slight, is sufficient to constitute the relevant element under Subsection (2)(b)(i).
    - (iii) Any touching, however slight, is sufficient to constitute the relevant element under Subsection (2)(b)(ii).
- (3)
  - (a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
  - (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- (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 (e).

Amended by Chapter 181, 2022 General Session

**76-5-401.3 Unlawful adolescent sexual activity -- Penalties -- Limitations.**

- (1)

- (a) As used in this section, "adolescent" means an individual who is 12 years old or older but younger than 18 years old.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) Under circumstances not amounting to an offense listed in Subsection (5), an actor commits unlawful sexual activity if:
- (a)
    - (i) the actor is 12 years old or older but younger than 18 years old;
    - (ii) the actor engages in sexual activity with an adolescent;
    - (iii) the actor is not the biological sibling of the adolescent; and
    - (iv) both the actor and the adolescent mutually agree to the sexual activity; or
  - (b)
    - (i) the actor engages in sexual activity with an adolescent who is 13 years old;
    - (ii) the actor is 18 years old and enrolled in high school at the time that the sexual activity occurred;
    - (iii) the actor is not the biological sibling of the adolescent; and
    - (iv) both the actor and the adolescent mutually agree to the sexual activity.
- (3)
- (a) A violation of Subsection (2)(a) is a:
    - (i) third degree felony if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;
    - (ii) third degree felony if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;
    - (iii) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;
    - (iv) class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;
    - (v) class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 14 years old;
    - (vi) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;
    - (vii) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and
    - (viii) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old.
  - (b) A violation of Subsection (2)(b) is a third degree felony.
- (4) The actor and the adolescent do not mutually agree to the sexual activity under Subsection (2) if:
- (a) the adolescent expresses lack of agreement to the sexual activity through words or conduct;
  - (b) the actor overcomes the adolescent's will through:
    - (i) threats to the adolescent or any other individual;
    - (ii) force;
    - (iii) coercion; or
    - (iv) enticement;
  - (c) the actor is able to overcome the adolescent through concealment or by the element of surprise;
  - (d) the actor knows, or reasonably should know, that the adolescent has a mental disease or defect, which renders the adolescent unable to:
    - (i) appraise the nature of the act;

- (ii) resist the act;
  - (iii) understand the possible consequences to the adolescent's health or safety; or
  - (iv) appraise the nature of the relationship between the actor and the adolescent;
  - (e) the actor knows that the adolescent participates in the sexual activity because the adolescent erroneously believes that the actor is someone else; or
  - (f) the actor intentionally impaired the power of the adolescent to appraise or control the adolescent's conduct by administering any substance without the adolescent's knowledge.
- (5) The offenses referred to in Subsection (2) are:
- (a) rape under Section 76-5-402;
  - (b) object rape under Section 76-5-402.2;
  - (c) forcible sodomy under Section 76-5-403;
  - (d) aggravated sexual assault under Section 76-5-405;
  - (e) incest under Section 76-7-102; or
  - (f) an attempt to commit an offense listed in Subsections (5)(a) through (e).
- (6) An offense under this section is not eligible for a nonjudicial adjustment under Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.
- (7) Except for an offense that is transferred to a district court by the juvenile court in accordance with Section 80-6-504, the district court may enter any sentence or combination of sentences that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.
- (8) An offense under this section is not subject to registration under Subsection 77-41-102(19).

Amended by Chapter 234, 2024 General Session

**76-5-402 Rape -- Penalties.**

- (1) 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), not less than five years and which may be for life;
  - (b) except as provided in Subsection (3)(c) or (4), 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
  - (c) 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) 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:
- (a) 10 years and which may be for life; or

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

Amended by Chapter 181, 2022 General Session

**76-5-402.1 Rape of a child -- Penalties.**

- (1)
  - (a) As used in this section:
    - (i) "Child" means an individual who is younger than 14 years old.
    - (ii) "Sexual intercourse" means:
      - (A) any touching skin-to-skin, however slight, of an individual's genitals to another individual's genitals; or
      - (B) any penetration, however slight, of an individual's genitals by another individual's genitals, whether over or under the clothing.
    - (iii) "Simulated intercourse" means rubbing or otherwise stimulating or attempting to stimulate an individual's genitals or pubic area by another individual's genitals or pubic area whether over or under the clothing.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits rape of a child if the actor:
  - (a) has sexual intercourse with a child; or
  - (b) intentionally engages in simulated intercourse with a child.
- (3) A violation of Subsection (2) is a first degree felony punishable by a term of imprisonment of:
  - (a) except as provided in Subsections (3)(b) and (5), not less than 25 years and which may be for life; or
  - (b) life without parole, if the trier of fact finds that:
    - (i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to the victim; or
    - (ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.
- (4) Subsection (3)(b) does not apply if the defendant was younger than 18 years old at the time of the offense.
- (5)
  - (a) When imposing a sentence under Subsections (3)(a) and (5)(b), a court may impose a term of imprisonment under Subsection (5)(b) if:
    - (i) it is a first time offense for the defendant under this section;
    - (ii) the defendant was younger than 21 years old at the time of the offense; and
    - (iii) the court finds that a lesser term than the term described in Subsection (3)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.
  - (b) If the conditions of Subsection (5)(a) are met, the court may impose a term of imprisonment of not less than:
    - (i) 15 years and which may be for life;
    - (ii) 10 years and which may be for life; or
    - (iii) six years and which may be for life.
- (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 97, 2024 General Session

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

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits object rape if:
  - (a) the actor:
    - (i) acts without an individual's consent;
    - (ii) causes the penetration, however slight, of the genital or anal opening of the individual by:
      - (A) a foreign object;
      - (B) a substance;
      - (C) an instrument;
      - (D) a device; or
      - (E) a part of the human body other than the mouth or genitals; and
    - (iii)
      - (A) intends to cause substantial emotional or bodily pain to the individual; or
      - (B) intends to arouse or gratify the sexual desire of any individual; and
  - (b) the individual described in Subsection (2)(a)(i) is 14 years old or older.
- (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), not less than five years and which may be for life;
  - (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:
    - (i) during the course of the commission of the object rape the defendant caused 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
  - (c) 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) 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:
  - (a) 10 years and which may be for life; or
  - (b) 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 (c).
- (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 181, 2022 General Session

**76-5-402.3 Object rape of a child -- Penalty.**

- (1)
  - (a) As used in this section:
    - (i) "Child" means an individual who is younger than 14 years old.
    - (ii) "Masturbatory contact" means the stimulation or attempted stimulation of an individual's genitals or pubic area by another individual.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits object rape of a child if:

(a)

(i) the actor causes the penetration , however slight, whether over or under the clothing, of the genitals or anus of a child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument;
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals;

(ii) the actor causes the touching, however slight, of the skin of the genitals or anus of a child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument;
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals; or

(iii) the actor causes the masturbatory contact over or under the clothing of the genitals or anus of a child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument;
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals; and

(b) the actor:

- (i) intends to cause substantial emotional or bodily pain to the child; or
- (ii) intends to arouse or gratify the sexual desire of any individual.

(3)

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

- (i) except as provided in Subsections (3)(a)(ii) and (4), not less than 25 years and which may be for life; or
- (ii) life without parole, if the trier of fact finds that:
  - (A) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to the victim; or
  - (B) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(b) Subsection (3)(a)(ii) does not apply if the defendant was younger than 18 years old at the time of the offense.

(4)

(a) When imposing a sentence under Subsections (3)(a)(i) and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

- (i) it is a first time offense for the defendant under this section;
- (ii) the defendant was younger than 21 years old at the time of the offense; and
- (iii) the court finds that a lesser term than the term described in Subsection (3)(a)(i) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

- (i) 15 years and which may be for life;



- (ii) 10 years and which may be for life; or
  - (iii) six years and which may be for life.
- (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 97, 2024 General Session

**76-5-403 Forcible sodomy -- Penalties.**

- (1)
- (a) As used in this section, "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), not less than five years and which may be for life;
  - (b) except as provided in Subsection (3)(c) or (4), 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, the defendant was younger than 18 years old and was previously convicted of a grievous sexual offense; or
  - (c) 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) 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:
- (a) 10 years and which may be for life; or
  - (b) 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 (c).
- (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 181, 2022 General Session

**76-5-403.1 Sodomy on a child -- Penalties.**

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
- (a) An actor commits sodomy on a child if:
    - (i) the actor engages in any sexual act upon or with another individual;
    - (ii) the individual is younger than 14 years old; and
    - (iii) the sexual act involves the genitals or anus of the actor or the individual and the mouth or anus of either the actor or individual.

- (b) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3) A violation of Subsection (2)(a) is a first degree felony punishable by a term of imprisonment of:
  - (a) except as provided in Subsections (3)(b) and (5), not less than 25 years and which may be for life; or
  - (b) life without parole, if the trier of fact finds that:
    - (i) during the course of the commission of the sodomy on a child the defendant caused serious bodily injury to the victim; or
    - (ii) at the time of the commission of the sodomy on a child, the defendant was previously convicted of a grievous sexual offense.
- (4) Subsection (3)(b) does not apply if the defendant was younger than 18 years old at the time of the offense.
- (5)
  - (a) When imposing a sentence under Subsections (3)(a) and (5)(b), a court may impose a term of imprisonment under Subsection (5)(b) if:
    - (i) it is a first time offense for the defendant under this section;
    - (ii) the defendant was younger than 21 years old at the time of the offense; and
    - (iii) the court finds that a lesser term than the term described in Subsection (3)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.
  - (b) If the conditions of Subsection (5)(a) are met, the court may impose a term of imprisonment of not less than:
    - (i) 15 years and which may be for life;
    - (ii) 10 years and which may be for life; or
    - (iii) six years and which may be for life.
- (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 181, 2022 General Session

**76-5-404 Forcible sexual abuse -- Penalties -- Limitations.**

- (1)
  - (a) As used in this section, "indecent liberties" means the same as that term is defined in Section 76-5-401.1.
  - (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 forcible sexual abuse if:
    - (i) without the consent of the individual, the actor:
      - (A) touches the anus, buttocks, pubic area, or any part of the genitals of another individual;
      - (B) touches the breast of another individual who is female; or
      - (C) otherwise takes indecent liberties with another individual;
    - (ii) the actor intends to:
      - (A) cause substantial emotional or bodily pain to any individual; or
      - (B) arouse or gratify the sexual desire of any individual; and
    - (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or older.
  - (b) 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 felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years.
- (b)
  - (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection (3)(b)(ii), a violation of Subsection (2) is a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to the victim.
  - (ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser term than the term described in Subsection (3)(b)(i) 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) 10 years and which may be for life; or
    - (B) six years and which may be for life.
- (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; or
  - (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 181, 2022 General Session

**76-5-404.1 Sexual abuse of a child -- Penalties -- Limitations.**

- (1)
  - (a) As used in this section:
    - (i) "Adult" means an individual 18 years old or older.
    - (ii) "Child" means an individual younger than 14 years old.
    - (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
    - (iv) "Position of special trust" means:
      - (A) an adoptive parent;
      - (B) an athletic manager who is an adult;
      - (C) an aunt;
      - (D) a babysitter;
      - (E) a coach;
      - (F) a cohabitant of a parent if the cohabitant is an adult;
      - (G) a counselor;
      - (H) a doctor or physician;
      - (I) an employer;
      - (J) a foster parent;
      - (K) a grandparent;
      - (L) a legal guardian;
      - (M) a natural parent;
      - (N) a recreational leader who is an adult;
      - (O) a religious leader;
      - (P) a sibling or a stepsibling who is an adult;
      - (Q) a scout leader who is an adult;
      - (R) a stepparent;

- (S) a teacher or any other individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years old or older;
  - (T) an instructor, professor, or teaching assistant at a public or private institution of higher education;
  - (U) an uncle;
  - (V) a youth leader who is an adult; or
  - (W) any individual in a position of authority, other than those individuals listed in Subsections (1)(a)(iv)(A) through (V), which enables the individual to exercise undue influence over the child.
- (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 sexual abuse of a child if the actor:
    - (i)
      - (A) touches, whether over or under the clothing, the buttocks or pubic area of a child;
      - (B) touches, whether over or under the clothing, the breast of a female child;
      - (C) touches the anus or genitals of a child over the clothing; or
      - (D) otherwise takes indecent liberties with a child whether over or under the clothing; and
    - (ii) the actor's conduct is with intent to:
      - (A) cause substantial emotional or bodily pain to any individual; or
      - (B) arouse or gratify the sexual desire of any individual.
  - (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 second degree felony.
- (4) The offenses referred to in Subsection (2)(a) are:
- (a) rape of a child, in violation of Section 76-5-402.1;
  - (b) object rape of a child, in violation of Section 76-5-402.3;
  - (c) sodomy on a child, in violation of Section 76-5-403.1; or
  - (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).

Amended by Chapter 96, 2024 General Session

Amended by Chapter 97, 2024 General Session

### **76-5-404.3 Aggravated sexual abuse of a child -- Penalties.**

- (1)
- (a) As used in this section:
    - (i) "Adult" means the same as that term is defined in Section 76-5-404.1.
    - (ii) "Child" means the same as that term is defined in Section 76-5-404.1.
    - (iii) "Position of special trust" means the same as that term is defined in Section 76-5-404.1.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits aggravated sexual abuse of a child if, in conjunction with the offense described in Subsection 76-5-404.1(2)(a), any of the following circumstances have been charged and admitted or found true in the action for the offense:
- (a) the actor committed the offense:
    - (i) by the use of a dangerous weapon;
    - (ii) by force, duress, violence, intimidation, coercion, menace, or threat of harm; or
    - (iii) during the course of a kidnapping;

- (b) the actor caused bodily injury or severe psychological injury to the child during or as a result of the offense;
  - (c) the actor was a stranger to the child or made friends with the child for the purpose of committing the offense;
  - (d) the actor used, showed, or displayed pornography or caused the child to be photographed in a lewd condition during the course of the offense;
  - (e) the actor, prior to sentencing for this offense, was previously convicted of any sexual offense;
  - (f) the actor committed the same or similar sexual act upon two or more individuals at the same time or during the same course of conduct;
  - (g) the actor committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;
  - (h) the actor occupied a position of special trust in relation to the child; or
  - (i) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the child with any other individual, sexual performance by the child before any other individual, human trafficking, or human smuggling.
- (3) Except as provided in Subsection (6), 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), (3)(c), or (4), not less than 15 years and which may be for life;
  - (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or
  - (c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.
- (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (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:
- (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or
  - (b) for purposes of Subsection (3)(a) or (b):
    - (i) 10 years and which may be for life; or
    - (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)(c).
- (6) Subsection (3)(b) or (3)(c) does not apply if the defendant was younger than 18 years old at the time of the offense.
- (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 97, 2024 General Session

**76-5-405 Aggravated sexual assault -- Penalty.**

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits aggravated sexual assault if:
  - (a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:
    - (i) uses, or threatens another individual with the use of, a dangerous weapon;

- (ii) compels, or attempts to compel, another individual to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any individual; or
    - (iii) is aided or abetted by one or more persons;
  - (b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:
    - (i) causes serious bodily injury to any individual;
    - (ii) uses, or threatens the individual with the use of a dangerous weapon;
    - (iii) attempts to compel the individual to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any individual; or
    - (iv) is aided or abetted by one or more persons; or
  - (c) in the course of an attempted forcible sexual abuse, the actor:
    - (i) causes serious bodily injury to any individual;
    - (ii) uses, or threatens the individual with the use of a dangerous weapon;
    - (iii) attempts to compel the individual to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any individual; or
    - (iv) is aided or abetted by one or more persons.
- (3) A violation of Subsection (2) is a first degree felony, punishable by a term of imprisonment of:
- (a) for an aggravated sexual assault described in Subsection (2)(a):
    - (i) except as provided in Subsection (3)(a)(ii) or (4)(a), not less than 15 years and which may be for life; or
    - (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;
  - (b) for an aggravated sexual assault described in Subsection (2)(b):
    - (i) except as provided in Subsection (3)(b)(ii) or (5)(a), not less than 10 years and which may be for life; or
    - (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or
  - (c) for an aggravated sexual assault described in Subsection (2)(c):
    - (i) except as provided in Subsection (3)(c)(ii) or (6)(a), not less than six years and which may be for life; or
    - (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.
- (4)
- (a) If, when imposing a sentence under Subsection (3)(a)(i), a court finds that a lesser term than the term described in Subsection (3)(a)(i) 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:
    - (i) 10 years and which may be for life; or
    - (ii) six years and which may be for life.
  - (b) The provisions of Subsection (4)(a) do not apply when a defendant is sentenced under Subsection (3)(a)(ii).
- (5)
- (a) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser term than the term described in Subsection (3)(b)(i) 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) The provisions of Subsection (5)(a) do not apply when a defendant is sentenced under Subsection (3)(b)(ii).
- (6)
  - (a) If, when imposing a sentence under Subsection (3)(c)(i), a court finds that a lesser term than the term described in Subsection (3)(c)(i) 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 three years and which may be for life.
  - (b) The provisions of Subsection (6)(a) do not apply when a defendant is sentenced under Subsection (3)(c)(ii).
- (7) Subsections (3)(a)(ii), (3)(b)(ii), and (3)(c)(ii) do not apply if the defendant was younger than 18 years old at the time of the offense.
- (8) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 181, 2022 General Session

**76-5-406 Sexual offenses against the victim without consent of victim -- Circumstances.**

- (1) As used in this section:
  - (a) "Health professional" means an individual who is licensed or who holds the individual out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling, including an athletic trainer, physician, osteopathic physician, physician assistant, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor.
  - (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.
  - (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.
- (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:
  - (a) the victim expresses lack of consent through words or conduct;
  - (b) the actor overcomes the victim through the actual application of physical force or violence;
  - (c) the actor is able to overcome the victim through concealment or by the element of surprise;
  - (d)
    - (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
    - (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
  - (e) the actor knows the victim is unconscious, unaware that the act is occurring, or is physically unable to resist;

- (f) the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to:
    - (i) appraise the nature of the act;
    - (ii) resist the act;
    - (iii) understand the possible consequences to the victim's health or safety; or
    - (iv) appraise the nature of the relationship between the actor and the victim;
  - (g) the actor knows that the victim participates because the victim erroneously believes that the actor is someone else;
  - (h) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;
  - (i) the victim is younger than 14 years of age;
  - (j) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;
  - (k) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2)(b) or (d); or
  - (l) the actor is a health professional or religious counselor, the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested.
- (3) Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity.

Amended by Chapter 92, 2020 General Session

### **76-5-406.3 Applicability of sentencing provisions.**

A person convicted of a violation of Section 76-5-301.1, child kidnaping; Section 76-5-302, aggravated kidnaping; Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; Section 76-5-404.3, aggravated sexual abuse of a child; or Section 76-5-405, aggravated sexual assault shall be sentenced as follows:

- (1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in accordance with the statutory provisions in effect prior to that date.
- (2) If the person commits the crime and is sentenced on or after April 29, 1996, he shall be punished in accordance with the statutory provisions in effect after April 29, 1996.
- (3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after April 29, 1996, he shall be given the option prior to sentencing to proceed either under the law which was in effect at the time the offense was committed or the law which was in effect at the time of sentencing. If the person refuses to select, the court shall sentence the person in accordance with the law in effect at the time of sentencing. The provisions of Subsections 77-27-9(2)(a) and (b) apply to the sentence of any person who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

Amended by Chapter 181, 2022 General Session



**76-5-406.5 Circumstances required for probation or suspension of sentence for certain sex offenses against a child.**

- (1) In a case involving a conviction for a violation of Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; or any attempt to commit a felony under those sections or a conviction for a violation of Section 76-5-404.3, aggravated sexual abuse of a child, the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:
- (a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;
  - (b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;
  - (c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;
  - (d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;
  - (e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;
  - (f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;
  - (g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child victim before any other person;
  - (h) the defendant admits the offense of which he has been convicted and has been accepted for mental health treatment in a residential sexual abuse treatment center that has been approved by the Department of Corrections under Subsection (3);
  - (i) rehabilitation of the defendant through treatment is probable, based upon evidence provided by a treatment professional who has been approved by the Department of Corrections under Subsection (3) and who has accepted the defendant for treatment;
  - (j) prior to being sentenced, the defendant has undergone a complete psychological evaluation conducted by a professional approved by the Department of Corrections and:
    - (i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an immediate and present danger to the community if released on probation and placed in a residential sexual abuse treatment center; and
    - (ii) the court accepts the opinion of the professional;
  - (k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian of the child victim, the defendant shall, in addition to establishing all other conditions of this section, establish it is in the child victim's best interest that the defendant not be imprisoned, by presenting evidence provided by a treatment professional who:
    - (i) is treating the child victim and understands he will be treating the family as a whole; or
    - (ii) has assessed the child victim for purposes of treatment as ordered by the court based on a showing of good cause; and

- (l) if probation is imposed, the defendant, as a condition of probation, may not reside in a home where children younger than 18 years old reside for at least one year beginning with the commencement of treatment, and may not again take up residency in a home where children younger than 18 years old reside during the period of probation until allowed to do so by order of the court.
- (2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of 10 years.
- (3)
  - (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.
  - (b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.
- (4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:
  - (a) the nature, frequency, and duration of the conduct;
  - (b) the effects of the conduct on any child victim involved;
  - (c) the best interest of the public and any child victim; and
  - (d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.
- (5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.
- (6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.
- (7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.
- (8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

Amended by Chapter 181, 2022 General Session

**76-5-407 Consensual conduct in marriage.**

The provisions of this part do not apply to consensual conduct between individuals married to each other.

Amended by Chapter 181, 2022 General Session

**76-5-409 Corroboration of admission by child's statement.**

- (1) Notwithstanding any provision of law requiring corroboration of admissions or confessions, and notwithstanding any prohibition of hearsay evidence, a child's statement indicating in any

manner the occurrence of the sexual offense involving the child is sufficient corroboration of the admission or the confession regardless of whether or not the child is available to testify regarding the offense.

(2) A child, for purposes of Subsection (1), is a person under the age of 14.

Enacted by Chapter 88, 1983 General Session

**76-5-410 Child victim of sexual abuse as competent witness.**

A child victim of sexual abuse under the age of 10 is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall determine the weight and credibility of the testimony.

Amended by Chapter 74, 1985 General Session

**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).

Amended by Chapter 322, 2023 General Session

Amended by Chapter 330, 2023 General Session

**76-5-412.2 Custodial sexual misconduct -- Penalties -- Defenses.**

- (1)
  - (a) As used in this section:
    - (i) "Actor" means the same as that term is defined in Section 76-5-412.
    - (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

- (iii) "Person in custody" means the same as that term is defined in Section 76-5-412.
- (iv) "Private provider or contractor" means the same as that term is defined in Section 76-5-412.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
  - (a) An actor commits custodial sexual misconduct if:
    - (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection 76-5-412(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 the following acts when committed with the intent to cause substantial emotional or bodily pain to another 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 person in custody;
    - (ii) touching the breast of a female person in custody; or
    - (iii) otherwise taking indecent liberties with a person in custody.
- (3)
  - (a) A violation of Subsection (2) is a class A misdemeanor.
  - (b) Notwithstanding Subsection (3)(a), if the person in custody 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)
  - (a) It is not a defense to the commission of, or attempt to commit, the offense described in 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).
- (5) 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).

Enacted by Chapter 181, 2022 General Session

**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 and Youth 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).

Amended by Chapter 240, 2024 General Session

**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).

Enacted by Chapter 181, 2022 General Session

**76-5-415 Educator's license subject to action for violation of this part.**

Commission of any offense under this Title 76, Chapter 5, Part 4, Sexual Offenses, by an educator as defined in Section 53E-6-102, is grounds under Section 53E-6-604 for disciplinary action against the educator, including revocation of the educator's license.

Amended by Chapter 415, 2018 General Session

**76-5-416.2 Unlawful kissing of a child.**



- (1)
  - (a) As used in this section, "child" means an individual who is under 14 years old.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits unlawful kissing of a child if the actor:
  - (a) is 18 years old or older; and
  - (b) intentionally or knowingly:
    - (i) kisses a child on the child's mouth; and
    - (ii) penetrates the minor's mouth with the actor's tongue.
- (3) A violation of Subsection (2) is a class A misdemeanor.
- (4) Any penetration, however slight, of the mouth of the child by the actor's tongue is sufficient to constitute a violation of this section.

Enacted by Chapter 140, 2024 General Session

**76-5-416.4 Unlawful kissing of a minor.**

- (1)
  - (a) As used in this section, "minor" means an individual who is 14 years old or older but younger than 18 years old.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits unlawful kissing of a minor if the actor:
  - (a) intentionally or knowingly:
    - (i) kisses a minor on the minor's mouth; and
    - (ii) penetrates the minor's mouth with the actor's tongue; and
  - (b) is older than the minor by 10 years or more.
- (3) A violation of Subsection (2) is a class A misdemeanor.
- (4) Any penetration, however slight, of the mouth of the minor by the actor's tongue is sufficient to constitute a violation of this section.

Enacted by Chapter 140, 2024 General Session