

**Effective 5/7/2025**

**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) 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:
    - (i) the defendant is less than four years older than the minor at the time the sexual activity occurred; or
    - (ii) the defendant is 18 years old and enrolled in high school at the time the sexual activity occurred.
  - (c) 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.
- (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 291, 2025 General Session