

**Effective 5/14/2019**

**Superseded 5/4/2022**

**76-5-404.1 Sexual abuse of a child -- Aggravated sexual abuse of a child.**

(1) As used in this section:

- (a) "Adult" means an individual 18 years of age or older.
- (b) "Child" means an individual under the age of 14.
- (c) "Position of special trust" means:
  - (i) an adoptive parent;
  - (ii) an athletic manager who is an adult;
  - (iii) an aunt;
  - (iv) a babysitter;
  - (v) a coach;
  - (vi) a cohabitant of a parent if the cohabitant is an adult;
  - (vii) a counselor;
  - (viii) a doctor or physician;
  - (ix) an employer;
  - (x) a foster parent;
  - (xi) a grandparent;
  - (xii) a legal guardian;
  - (xiii) a natural parent;
  - (xiv) a recreational leader who is an adult;
  - (xv) a religious leader;
  - (xvi) a sibling or a stepsibling who is an adult;
  - (xvii) a scout leader who is an adult;
  - (xviii) a stepparent;
  - (xix) 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 of age or older;
  - (xx) an instructor, professor, or teaching assistant at a public or private institution of higher education;
  - (xxi) an uncle;
  - (xxii) a youth leader who is an adult; or
  - (xxiii) any individual in a position of authority, other than those individuals listed in Subsections (1)(c)(i) through (xxiii), which enables the individual to exercise undue influence over the child.

(2) An individual commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, with 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 regardless of the sex of any participant.

(3) Sexual abuse of a child is a second degree felony.

(4) An individual commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

- (a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

- (b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;
  - (c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;
  - (d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;
  - (e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;
  - (f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;
  - (g) the accused 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 offense was committed by an individual who occupied a position of special trust in relation to the victim;
  - (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other individual, or sexual performance by the victim before any other individual, human trafficking, or human smuggling; or
  - (j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.
- (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:
- (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;
  - (b) except as provided in Subsection (5)(c) or (6), 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.
- (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(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 (5)(b), 15 years and which may be for life; or
  - (b) for purposes of Subsection (5)(a) or (b):
    - (i) 10 years and which may be for life; or
    - (ii) six years and which may be for life.
- (7) The provisions of Subsection (6) do not apply when an individual is sentenced under Subsection (5)(c).
- (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.
- (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.