

Superseded 5/4/2022

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

- (1) A person 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 the victim with the use of, a dangerous weapon as defined in Section 76-1-601;
 - (ii) compels, or attempts to compel, the victim 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 person; 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 person;
 - (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;
 - (iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; 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 person;
 - (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;
 - (iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or
 - (iv) is aided or abetted by one or more persons.
- (2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of:
- (a) for an aggravated sexual assault described in Subsection (1)(a):
 - (i) except as provided in Subsection (2)(a)(ii) or (3)(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 (1)(b):
 - (i) except as provided in Subsection (2)(b)(ii) or (4)(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 (1)(c):
 - (i) except as provided in Subsection (2)(c)(ii) or (5)(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.
- (3)
- (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(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 (3)(a) do not apply when a person is sentenced under Subsection (2)(a)(ii).
- (4)
- (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(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 (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).
- (5)
- (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(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 (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).
- (6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was younger than 18 years of age at the time of the offense.
- (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.