

1                                   **UNLAWFUL SEXUAL ACTIVITY WITH A**  
2   **MINOR**

3   1998 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Greg J. Curtis**

6 AN ACT RELATING TO THE CRIMINAL CODE; ESTABLISHING THE CRIME OF  
7 UNLAWFUL SEXUAL ACTIVITY WITH A MINOR AND PROVIDING PENALTIES;  
8 REPEALING CRIME OF UNLAWFUL SEXUAL INTERCOURSE; ESTABLISHING THE  
9 CRIME OF SEXUAL ABUSE OF A MINOR; AND PROVIDING PENALTIES.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 ENACTS:

12                   **76-5-401.1**, Utah Code Annotated 1953

13 REPEALS AND REENACTS:

14                   **76-5-401**, as last amended by Chapter 88, Laws of Utah 1983

15 *Be it enacted by the Legislature of the state of Utah:*

16                   Section 1. Section **76-5-401** is repealed and reenacted to read:

17                   **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence**  
18 **of age raised by defendant.**

19                   (1) For purposes of this section "minor" is a person who is 14 years of age or older, but  
20 younger than 16 years of age, at the time the sexual activity described in this section occurred.

21                   (2) A person commits unlawful sexual activity with a minor if, under circumstances not  
22 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section  
23 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in  
24 violation of Section 76-5-405, the actor:

25                   (a) has sexual intercourse with the minor;

26                   (b) engages in any sexual act with the minor involving the genitals of one person and the  
27 mouth or anus of another person, regardless of the sex of either participant; or

1 (c) causes the penetration, however slight, of the genital or anal opening of the minor by  
 2 any foreign object, substance, instrument, or device, including a part of the human body, with the  
 3 intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or  
 4 gratify the sexual desire of any person, regardless of the sex of any participant.

5 (3) A violation of Subsection (2) is a third degree felony unless the defendant establishes  
 6 by a preponderance of the evidence the mitigating factor that the defendant is less than four years  
 7 older than the minor at the time the sexual activity occurred, in which case it is a class B  
 8 misdemeanor.

9 Section 2. Section **76-5-401.1** is enacted to read:

10 **76-5-401.1. Sexual abuse of a minor.**

11 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but  
 12 younger than 16 years of age, at the time the sexual activity described in this section occurred.

13 (2) A person commits sexual abuse of a minor if § **THE PERSON IS SEVEN YEARS OR MORE**  
 13a **OLDER THAN THE MINOR AND,** § under circumstances not amounting to  
 14 rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible  
 15 sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section  
 16 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt  
 17 to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals  
 18 of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the  
 19 minor, or causes a minor to take indecent liberties with the actor or another person, with the intent  
 20 to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify  
 21 the sexual desire of any person regardless of the sex of any participant.

22 § ~~(3) It is an affirmative defense that the actor is less than seven years older than the minor.~~  
 23 ~~That affirmative defense must be established by the defendant by a preponderance of the evidence.~~

24 ~~[(4)] (3) §~~ A violation of this section is a class A misdemeanor.

**Legislative Review Note**  
**as of 1-8-98 2:07 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**