

SEX ABUSE OF A CHILD

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Joseph G. Murray

AN ACT RELATING TO THE CRIMINAL CODE; CHANGING AND EXPANDING THE DEFINITION OF PERSONS WHO OCCUPY A POSITION OF SPECIAL TRUST TO A CHILD FOR PURPOSES OF PROSECUTION OF AGGRAVATED SEXUAL ABUSE OF A CHILD.

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

AMENDS:

76-5-404.1, as last amended by Chapter 40, Laws of Utah 1996

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

Section 1. Section **76-5-404.1** is amended to read:

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

(1) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child younger than 14 years of age, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(2) Sexual abuse of a child is punishable as a second degree felony.

(3) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (1) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) [~~The~~] 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 kidnaping[-];

(b) [~~The~~] the accused caused bodily injury or severe psychological injury to the victim

during or as a result of the offense[-];

(c) [The] the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense[-];

(d) [The] 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] the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense[-];

(f) [The] 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] 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] the offense was committed by a person who occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, [~~the position occupied by~~] a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, [~~or~~] adult scout leader, [~~though a~~] natural parent, stepparent, adoptive parent, [~~or other~~] legal guardian, [~~not including a foster parent, who has been living in the household, is not a person occupying a position of special trust under this subsection.~~] grandparent, aunt, uncle, or adult cohabitant of a parent;

(i) [The] the accused encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person[-]; or

(j) [The] 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.

(4) Aggravated sexual abuse of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than five years and which may be for life. Imprisonment is

mandatory in accordance with Section 76-3-406.