

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 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) 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