

1 **SEXUAL OFFENSES AGAINST CHILDREN -**
2 **SENTENCING AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Paul Ray**

6 Senate Sponsor: Gregory S. Bell

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Criminal Code regarding sentencing of repeat sexual offenders.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ increases from three to five years the additional term added to a sentence for a sex
14 offense for each prior felony sexual offense; and

15 ▶ amends the criminal sentencing provisions to provide that when a defendant is
16 convicted of the offenses of child kidnapping, rape of a child, object rape of a child,
17 or sodomy on a child, the defendant shall be sentenced to the highest of the three
18 optional minimum terms specified for these offenses if:

- 19 • the commission of the offense causes substantial bodily injury to the victim; or
- 20 • at the time of the commission of the offense against a child, the defendant has
21 been previously convicted of any of the listed sexual offenses against children or
22 adults.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 76-3-201, as last amended by Chapter 280, Laws of Utah 2003

30 76-3-407, as last amended by Chapter 18, Laws of Utah 1984

31

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

33 Section 1. Section 76-3-201 is amended to read:

34 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
35 **penalties -- Hearing.**

36 (1) As used in this section:

37 (a) "Conviction" includes a:

38 (i) judgment of guilt; and

39 (ii) plea of guilty.

40 (b) "Criminal activities" means any offense of which the defendant is convicted or any
41 other criminal conduct for which the defendant admits responsibility to the sentencing court
42 with or without an admission of committing the criminal conduct.

43 (c) "Pecuniary damages" means all special damages, but not general damages, which a
44 person could recover against the defendant in a civil action arising out of the facts or events
45 constituting the defendant's criminal activities and includes the money equivalent of property
46 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
47 expenses.

48 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
49 victim, and payment for expenses to a governmental entity for extradition or transportation and
50 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

51 (e) (i) "Victim" means any person who the court determines has suffered pecuniary
52 damages as a result of the defendant's criminal activities.

53 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

54 (2) Within the limits prescribed by this chapter, a court may sentence a person
55 convicted of an offense to any one of the following sentences or combination of them:

56 (a) to pay a fine;

57 (b) to removal or disqualification from public or private office;

58 (c) to probation unless otherwise specifically provided by law;

- 59 (d) to imprisonment;
- 60 (e) on or after April 27, 1992, to life in prison without parole; or
- 61 (f) to death.
- 62 (3) (a) This chapter does not deprive a court of authority conferred by law to:
- 63 (i) forfeit property;
- 64 (ii) dissolve a corporation;
- 65 (iii) suspend or cancel a license;
- 66 (iv) permit removal of a person from office;
- 67 (v) cite for contempt; or
- 68 (vi) impose any other civil penalty.
- 69 (b) A civil penalty may be included in a sentence.
- 70 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary
- 71 damages, in addition to any other sentence it may impose, the court shall order that the
- 72 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
- 73 make restitution as part of a plea agreement.
- 74 (b) In determining whether restitution is appropriate, the court shall follow the criteria
- 75 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.
- 76 (5) (a) In addition to any other sentence the court may impose, the court shall order the
- 77 defendant to pay restitution of governmental transportation expenses if the defendant was:
- 78 (i) transported pursuant to court order from one county to another within the state at
- 79 governmental expense to resolve pending criminal charges;
- 80 (ii) charged with a felony or a class A, B, or C misdemeanor; and
- 81 (iii) convicted of a crime.
- 82 (b) The court may not order the defendant to pay restitution of governmental
- 83 transportation expenses if any of the following apply:
- 84 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
- 85 warrant is issued for an infraction; or
- 86 (ii) the defendant was not transported pursuant to a court order.
- 87 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
- 88 shall be calculated according to the following schedule:
- 89 (A) \$75 for up to 100 miles a defendant is transported;

90 (B) \$125 for 100 up to 200 miles a defendant is transported; and

91 (C) \$250 for 200 miles or more a defendant is transported.

92 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant
93 transported regardless of the number of defendants actually transported in a single trip.

94 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,
95 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the
96 county to which he has been returned, the court may, in addition to any other sentence it may
97 impose, order that the defendant make restitution for costs expended by any governmental
98 entity for the extradition.

99 (6) (a) In addition to any other sentence the court may impose, the court shall order the
100 defendant to pay court-ordered restitution to the county for the cost of incarceration in the
101 county correctional facility before and after sentencing if:

102 (i) the defendant is convicted of criminal activity that results in incarceration in the
103 county correctional facility; and

104 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility
105 through a contract with the Department of Corrections; or

106 (B) the reimbursement does not duplicate the reimbursement provided under Section
107 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a
108 condition of probation under Subsection 77-18-1(8).

109 (b) (i) The costs of incarceration under Subsection (6)(a) are:

110 (A) the daily core inmate incarceration costs and medical and transportation costs
111 established under Section 64-13c-302; and

112 (B) the costs of transportation services and medical care that exceed the negotiated
113 reimbursement rate established under Subsection 64-13c-302(2).

114 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
115 by the county correctional facility in providing reasonable accommodation for an inmate
116 qualifying as an individual with a disability as defined and covered by the federal Americans
117 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
118 health treatment for the inmate's disability.

119 (c) In determining the monetary sum and other conditions for the court-ordered
120 restitution under this Subsection (6), the court shall consider the criteria provided under

121 Subsections 77-38a-302(5)(c)(i) through (iv).

122 (d) If on appeal the defendant is found not guilty of the criminal activity under
123 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall
124 reimburse the defendant for restitution the defendant paid for costs of incarceration under
125 Subsection (6)(a).

126 (7) (a) If a statute under which the defendant was convicted mandates that one of three
127 stated minimum terms shall be imposed, the court shall order imposition of the term of middle
128 severity unless there are circumstances in aggravation or mitigation of the crime, except as
129 provided in Subsection (8).

130 (b) Prior to or at the time of sentencing, either party may submit a statement identifying
131 circumstances in aggravation or mitigation or presenting additional facts. If the statement is in
132 writing, it shall be filed with the court and served on the opposing party at least four days prior
133 to the time set for sentencing.

134 (c) In determining whether there are circumstances that justify imposition of the
135 highest or lowest term, the court may consider the record in the case, the probation officer's
136 report, other reports, including reports received under Section 76-3-404, statements in
137 aggravation or mitigation submitted by the prosecution or the defendant, and any further
138 evidence introduced at the sentencing hearing.

139 (d) The court shall set forth on the record the facts supporting and reasons for imposing
140 the upper or lower term.

141 (e) In determining a just sentence, the court shall consider sentencing guidelines
142 regarding aggravating and mitigating circumstances promulgated by the Sentencing
143 Commission.

144 (8) (a) [If during the commission of a crime described as child kidnapping, rape of a
145 child, object rape of a child, sodomy upon a child, or sexual abuse of a child,] The defendant
146 shall be sentenced to the highest minimum term in prison if the trier of fact finds that:

147 (i) during the commission of any of the following offenses the defendant causes
148 substantial bodily injury to the child[, and if the charge is set forth in the information or
149 indictment and admitted by the defendant, or found true by a judge or jury at trial, the
150 defendant shall be sentenced to the highest minimum term in state prison. This Subsection (8)
151 takes precedence over any conflicting provision of law.];

- 152 (A) Section 76-5-301.1, child kidnapping;
 153 (B) Section 76-5-402.1, rape of a child;
 154 (C) Section 76-5-402.3, object rape of a child; or
 155 (D) Section 76-5-403.1, sodomy on a child; or
 156 (ii) at the time of the commission of any of the offenses in Subsections (8)(a)(i)(A)
 157 through (D), the defendant had been previously convicted of:
 158 (A) Section 76-5-402, rape;
 159 (B) Section 76-5-402.1, rape of a child;
 160 (C) Section 76-5-402.2, object rape;
 161 (D) Section 76-5-402.3, object rape of a child;
 162 (E) Subsection 76-5-403(2), forcible sodomy;
 163 (F) Section 76-5-403.1, sodomy on a child;
 164 (G) Section 76-5-404, forcible sexual abuse;
 165 (H) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
 166 (I) Section 76-5-405, aggravated sexual assault;
 167 (J) any offense in any other state or federal jurisdiction which constitutes or would
 168 constitute a crime in Subsections (8)(a)(ii)(A) through (I); or
 169 (K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through (J).
 170 (b) This Subsection (8) takes precedence over any conflicting provision of law.

171 Section 2. Section **76-3-407** is amended to read:

172 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
 173 **felony convictions.**

174 [~~Notwithstanding any other provision of law, if~~] (1) If the new offense is [~~an attempt to~~
 175 ~~commit or~~] the commission of or the attempt to commit a first or second degree felony [~~of the~~
 176 ~~first or second degree described in~~] under Title 76, Chapter 5, Part 4, Sexual Offenses, the
 177 court shall impose, in addition to and consecutive [~~with~~] to any other prison term [~~therefor~~], [~~a~~
 178 ~~three year~~] an additional five-year mandatory term for each prior conviction for a felony sexual
 179 offense in Utah or an offense in any other state or federal jurisdiction which constitutes or
 180 would constitute a crime [~~;- assault with intent to commit a crime, or an attempt to commit a~~] or
 181 an attempted crime which, if committed in Utah, [~~is~~] would be punishable under Title 76,
 182 Chapter 5, Part 4, Sexual Offenses, if [~~the existence of the felony conviction has been charged~~

183 ~~and admitted or found true in the action for the new offense and if] the trier of fact finds the~~
184 prior felony conviction was entered before the commission of the new offense.

185 (2) This section supercedes any other provision of law except Section 76-3-408.

Legislative Review Note
as of 1-25-06 5:19 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0161

Sexual Offenses Against Children - Sentencing Amendments

31-Jan-06

2:29 PM

State Impact

No fiscal impact until approximately FY 2015.

Individual and Business Impact

No fiscal impact for law-abiding citizens.

Office of the Legislative Fiscal Analyst