

CRIMINAL PENALTIES AMENDMENTS -
INCLUDING JESSICA'S LAW

2008 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill amends penalty provisions of the Utah Criminal Code.

Highlighted Provisions:

This bill:

- ▶ makes it a first degree felony to engage in criminal solicitation to commit, or attempt to commit, a felony punishable by imprisonment for life without parole;
- ▶ makes it a first degree felony, punishable by imprisonment for not less than three years and which may be for life, to engage in criminal solicitation to commit, or attempt to commit, murder, child kidnapping, and certain sexual offenses;

35 ▶ makes it a first degree felony, punishable by imprisonment of not less than 15 years
36 and which may be for life, to engage in criminal solicitation to commit, or attempt to
37 commit, rape of a child, object rape of a child, or sodomy on a child;

38 ▶ provides that a court may impose a lesser term of imprisonment than the term of
39 imprisonment described in the preceding paragraph if the court finds that a lesser
40 term of imprisonment is in the interests of justice and states the reasons for this
41 finding on the record;

42 ▶ increases the minimum term of imprisonment for rape of a child, object rape of a
43 child, or sodomy on a child, to 25 years and which may be for life;

44 ▶ removes the authority of a court to impose a lesser sentence than the minimum term
45 of imprisonment for rape of a child, object rape of a child, or sodomy on a child; and

46 ▶ makes technical changes.

47 **Monies Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

50 None

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

54 **76-4-204**, as enacted by Laws of Utah 1990, Chapter 189

55 **76-5-402.1**, as last amended by Laws of Utah 2007, Chapter 339

56 **76-5-402.3**, as last amended by Laws of Utah 2007, Chapter 339

57 **76-5-403.1**, as last amended by Laws of Utah 2007, Chapter 339



58
59 *Be it enacted by the Legislature of the state of Utah:*

60 Section 1. Section **76-4-102** is amended to read:

61 **76-4-102. Attempt -- Classification of offenses.**

62 (1) Criminal attempt to commit:

63 ~~[(1)]~~ (a) a capital felony, or a felony punishable by imprisonment for life without parole,
 64 is a first degree felony;

65 ~~[(2)]~~ (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second
 66 degree felony~~[, except that an attempt to commit];~~

67 (c) any of the following offenses is a first degree felony punishable by imprisonment for
 68 an indeterminate term of not fewer than three years and which may be for life:

69 ~~[(a)]~~ (i) murder, ~~[a violation of] Subsection 76-5-203(2)(a)[, if the victim or another~~
 70 ~~suffers serious bodily injury in the course of the actor's commission of the offense];~~

71 ~~[(b)]~~ (ii) child kidnapping, ~~[a violation of] Section 76-5-301.1;~~ or

72 ~~[(c)]~~ (iii) except as provided in Subsection (1)(d), any of the felonies described in Title
 73 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

74 (d) except as provided in Subsection (2), any of the following offenses is a first degree
 75 felony, punishable by a term of imprisonment of not less than 15 years and which may be for
 76 life:

77 (i) rape of a child, Section 76-5-402.1;

78 (ii) object rape of a child, Section 76-5-402.3; or

79 (iii) sodomy on a child, Section 76-5-403.1;

80 ~~[(3)]~~ (e) a second degree felony is a third degree felony;

81 ~~[(4)]~~ (f) a third degree felony is a class A misdemeanor;

82 ~~[(5)]~~ (g) a class A misdemeanor is a class B misdemeanor;

83 ~~[(6)]~~ (h) a class B misdemeanor is a class C misdemeanor; and

84 ~~[(7)]~~ (i) a class C misdemeanor is punishable by a penalty not exceeding one half the
 85 penalty for a class C misdemeanor.

86 (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser
 87 term than the term described in Subsection (1)(d) is in the interests of justice and states the
 88 reasons for this finding on the record, the court may impose a term of imprisonment of not less
 89 than:

90 (a) ten years and which may be for life;

91 (b) six years and which may be for life; or

92 (c) three years and which may be for life.

93 Section 2. Section **76-4-204** is amended to read:

94 **76-4-204. Criminal solicitation -- Penalties.**

95 (1) Criminal solicitation to commit:

96 [(1)] (a) a capital felony, or a felony punishable by imprisonment for life without parole,
97 is a first degree felony;

98 [(2)] (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second
99 degree felony;

100 (c) any of the following offenses is a first degree felony punishable by imprisonment for
101 an indeterminate term of not fewer than three years and which may be for life:

102 (i) murder, Subsection 76-5-203(2)(a);

103 (ii) child kidnapping, Section 76-5-301.1; or

104 (iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76,
105 Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

106 (d) except as provided in Subsection (2), any of the following offenses is a first degree
107 felony, punishable by a term of imprisonment of not less than 15 years and which may be for
108 life:

109 (i) rape of a child, Section 76-5-402.1;

110 (ii) object rape of a child, Section 76-5-402.3; or

111 (iii) sodomy on a child, Section 76-5-403.1;

112 [(3)] (e) a second degree felony is a third degree felony; and

113 [(4)] (f) a third degree felony is a class A misdemeanor.

114 (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser
115 term than the term described in Subsection (1)(d) is in the interests of justice and states the
116 reasons for this finding on the record, the court may impose a term of imprisonment of not less
117 than:

118 (a) ten years and which may be for life;

119 (b) six years and which may be for life; or

120 (c) three years and which may be for life.

121 Section 3. Section **76-5-402.1** is amended to read:

122 **76-5-402.1. Rape of a child.**

123 (1) A person commits rape of a child when the person has sexual intercourse with a
124 child who is under the age of 14.

125 (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

126 (a) except as provided in Subsection (2)(b), ~~[(2)(c), or (3);]~~ not less than ~~[15]~~ 25 years
127 and which may be for life; or

128 (b) ~~[except as provided in Subsection (2)(c) or (3);]~~ life without parole, if the trier of
129 fact finds that:

130 (i) during the course of the commission of the rape of a child, the defendant caused
131 serious bodily injury to another; or

132 ~~[(c) life without parole, if the trier of fact finds that]~~

133 (ii) at the time of the commission of the rape of a child the defendant was previously
134 convicted of a grievous sexual offense.

135 ~~[(3) If, when imposing a sentence under Subsection (2)(a) or (b) a court finds that a
136 lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and
137 states the reasons for this finding on the record, the court may impose a term of imprisonment
138 of not less than:]~~

139 ~~[(a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]~~

140 ~~[(b) for purposes of Subsection (2)(a) or (b):]~~

141 ~~[(i) ten years and which may be for life; or]~~

142 ~~[(ii) six years and which may be for life.]~~

143 ~~[(4) The provisions of Subsection (3) do not apply when a person is sentenced under
144 Subsection (2)(c):]~~

145 ~~[(5)]~~ (3) Imprisonment under this section is mandatory in accordance with Section
146 76-3-406.

147 Section 4. Section **76-5-402.3** is amended to read:

148 **76-5-402.3. Object rape of a child -- Penalty.**

149 (1) A person commits object rape of a child when the person causes the penetration or
150 touching, however slight, of the genital or anal opening of a child who is under the age of 14 by
151 any foreign object, substance, instrument, or device, not including a part of the human body,
152 with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse
153 or gratify the sexual desire of any person.

154 (2) Object rape of a child is a first degree felony punishable by a term of imprisonment
155 of:

156 (a) except as provided in Subsection (2)(b)[, (2)(c), or (3);] not less than [15] 25 years
157 and which may be for life; or

158 (b) [~~except as provided in Subsection (2)(c) or (3);~~] life without parole, if the trier of
159 fact finds that:

160 (i) during the course of the commission of the object rape of a child the defendant
161 caused serious bodily injury to another; or

162 [~~(c) life without parole, if the trier of fact finds that~~]

163 (ii) at the time of the commission of the object rape of a child the defendant was
164 previously convicted of a grievous sexual offense.

165 [~~(3) If, when imposing a sentence under Subsection (2)(a) or (b), a court finds that a
166 lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and
167 states the reasons for this finding on the record, the court may impose a term of imprisonment
168 of not less than:]~~

169 [~~(a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]~~

170 [~~(b) for purposes of Subsection (2)(a) or (b):]~~

171 [~~(i) ten years and which may be for life; or]~~

172 [~~(ii) six years and which may be for life.]~~

173 [~~(4) The provisions of Subsection (3) do not apply when a person is sentenced under
174 Subsection (2)(c).]~~

175 ~~[(5)]~~ (3) Imprisonment under this section is mandatory in accordance with Section
176 76-3-406.

177 Section 5. Section **76-5-403.1** is amended to read:

178 **76-5-403.1. Sodomy on a child.**

179 (1) A person commits sodomy upon a child if the actor engages in any sexual act upon
180 or with a child who is under the age of 14, involving the genitals or anus of the actor or the
181 child and the mouth or anus of either person, regardless of the sex of either participant.

182 (2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment
183 of:

184 (a) except as provided in Subsection (2)(b), ~~[(2)(c), or (3);]~~ not less than ~~[15]~~ 25 years
185 and which may be for life; or

186 (b) ~~[except as provided in Subsection (2)(c) or (3);]~~ life without parole, if the trier of
187 fact finds that:

188 (i) during the course of the commission of the sodomy upon a child the defendant
189 caused serious bodily injury to another; or

190 ~~[(c) life without parole, if the trier of fact finds that]~~

191 (ii) at the time of the commission of the sodomy upon a child, the defendant was
192 previously convicted of a grievous sexual offense.

193 ~~[(3) If, when imposing a sentence under Subsection (2)(a) or (b), a court finds that a
194 lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and
195 states the reasons for this finding on the record, the court may impose a term of imprisonment
196 of not less than:]~~

197 ~~[(a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]~~

198 ~~[(b) for purposes of Subsection (2)(a) or (b):]~~

199 ~~[(i) ten years and which may be for life; or]~~

200 ~~[(ii) six years and which may be for life.]~~

201 ~~[(4) The provisions of Subsection (3) do not apply when a person is sentenced under
202 Subsection (2)(c).]~~

203 [~~5~~] (3) Imprisonment under this section is mandatory in accordance with Section
204 76-3-406.