

1 **CRIMINAL PENALTIES AMENDMENTS -**
2 **INCLUDING JESSICA'S LAW**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carl Wimmer**

6 Senate Sponsor: Howard A. Stephenson

8 **LONG TITLE**

9 **General Description:**

10 This bill amends penalty provisions of the Utah Criminal Code.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ makes it a first degree felony to engage in criminal solicitation to commit, or
14 attempt to commit, a felony punishable by imprisonment for life without parole;
- 15 ▶ makes it a first degree felony, punishable by imprisonment for not less than three
16 years and which may be for life, to engage in criminal solicitation to commit, or
17 attempt to commit, murder, child kidnapping, and certain sexual offenses;
- 18 ▶ makes it a first degree felony, punishable by imprisonment of not less than 15 years
19 and which may be for life, to engage in criminal solicitation to commit, or attempt
20 to commit, rape of a child, object rape of a child, or sodomy on a child;
- 21 ▶ provides that a court may impose a lesser term of imprisonment than the term of
22 imprisonment described in the preceding paragraph if the court finds that a lesser
23 term of imprisonment is in the interests of justice and states the reasons for this
24 finding on the record;
- 25 ▶ increases the minimum term of imprisonment for rape of a child, object rape of a
26 child, or sodomy on a child, to 25 years and which may be for life;
- 27 ▶ removes the authority of a court to impose a lesser sentence than the minimum term



28 of imprisonment for rape of a child, object rape of a child, or sodomy on a child; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

37 **76-4-204**, as enacted by Laws of Utah 1990, Chapter 189

38 **76-5-402.1**, as last amended by Laws of Utah 2007, Chapter 339

39 **76-5-402.3**, as last amended by Laws of Utah 2007, Chapter 339

40 **76-5-403.1**, as last amended by Laws of Utah 2007, Chapter 339



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

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

44 **76-4-102. Attempt -- Classification of offenses.**

45 (1) Criminal attempt to commit:

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

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

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

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

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

55 ~~[(c)]~~ (iii) except as provided in Subsection (1)(d), any of the felonies described in Title
56 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

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

59 life:

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

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

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

63 [~~3~~] (e) a second degree felony is a third degree felony;

64 [~~4~~] (f) a third degree felony is a class A misdemeanor;

65 [~~5~~] (g) a class A misdemeanor is a class B misdemeanor;

66 [~~6~~] (h) a class B misdemeanor is a class C misdemeanor; and

67 [~~7~~] (i) a class C misdemeanor is punishable by a penalty not exceeding one half the
68 penalty for a class C misdemeanor.

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

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

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

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

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

77 **76-4-204. Criminal solicitation -- Penalties.**

78 (1) Criminal solicitation to commit:

79 [~~1~~] (a) a capital felony, or a felony punishable by imprisonment for life without
80 parole, is a first degree felony;

81 [~~2~~] (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second
82 degree felony;

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

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

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

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

89 (d) except as provided in Subsection (2), any of the following offenses is a first degree

90 felony, punishable by a term of imprisonment of not less than 15 years and which may be for
91 life:

- 92 (i) rape of a child, Section 76-5-402.1;
- 93 (ii) object rape of a child, Section 76-5-402.3; or
- 94 (iii) sodomy on a child, Section 76-5-403.1;
- 95 ~~[(3)]~~ (e) a second degree felony is a third degree felony; and
- 96 ~~[(4)]~~ (f) a third degree felony is a class A misdemeanor.

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

- 101 (a) ten years and which may be for life;
- 102 (b) six years and which may be for life; or
- 103 (c) three years and which may be for life.

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

105 **76-5-402.1. Rape of a child.**

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

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

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

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

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

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

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

118 ~~[(3) If, when imposing a sentence under Subsection (2)(a) or (b) a court finds that a~~
119 ~~lesser term than the term described in Subsection (2)(a) or (b) is in the interests of justice and~~
120 ~~states the reasons for this finding on the record, the court may impose a term of imprisonment~~

121 of not less than:]

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

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

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

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

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

128 [~~(5)~~ (3) Imprisonment under this section is mandatory in accordance with Section
129 76-3-406.

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

131 **76-5-402.3. Object rape of a child -- Penalty.**

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

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

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

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

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

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

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

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

152 ~~[(a) for purposes of Subsection (2)(b), 15 years and which may be for life; or]~~
 153 ~~[(b) for purposes of Subsection (2)(a) or (b):]~~
 154 ~~[(i) ten years and which may be for life; or]~~
 155 ~~[(ii) six years and which may be for life.]~~
 156 ~~[(4) The provisions of Subsection (3) do not apply when a person is sentenced under~~
 157 ~~Subsection (2)(c).]~~

158 ~~[(5)]~~ (3) Imprisonment under this section is mandatory in accordance with Section
 159 76-3-406.

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

161 **76-5-403.1. Sodomy on a child.**

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

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

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

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

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

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

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

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

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

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

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

183 [~~(ii) six years and which may be for life.~~]
184 [~~(4) The provisions of Subsection (3) do not apply when a person is sentenced under~~
185 Subsection (2)(c).]
186 [~~(5)~~ (3) Imprisonment under this section is mandatory in accordance with Section
187 76-3-406.

Legislative Review Note
as of 10-22-07 7:34 AM

Office of Legislative Research and General Counsel

H.B. 256 - Criminal Penalties Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations in the first two years of implementation. However, each year between 2018 and 2034, the Department of Corrections will require an increase of \$50,000 per year ongoing from the General Fund to pay for incarceration costs, with an annual cost in 2034 and each fiscal year thereafter of \$850,000.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.