

1 **AGGRAVATED SEXUAL ABUSE OF A CHILD AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad R. Wilson**

5 Senate Sponsor: Todd Weiler

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Criminal Code regarding the offense of aggravated sexual abuse
10 of a child.

11 **Highlighted Provisions:**

12 This bill:

13 ► modifies the offense of aggravated sexual abuse of a child by providing a definition
14 of the term "position of special trust".

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **76-5-309**, as last amended by Laws of Utah 2013, Chapter 196

22 **76-5-404.1**, as last amended by Laws of Utah 2013, Chapters 81 and 196

23 **76-5-406**, as last amended by Laws of Utah 2013, Chapter 196

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

26 Section 1. Section **76-5-309** is amended to read:

27 **76-5-309. Human trafficking and human smuggling -- Penalties.**

28 (1) Human trafficking for forced labor and human trafficking for forced sexual
29 exploitation are each a second degree felony, except under Section **76-5-310**.

30 (2) Human smuggling, under Section 76-5-308 of one or more persons is a third degree
31 felony, except under Section 76-5-310.

32 (3) Human trafficking for forced labor or for forced sexual exploitation and human
33 smuggling are each a separate offense from any other crime committed in relationship to the
34 commission of either of these offenses.

35 (4) Under circumstances not amounting to aggravated sexual abuse of a child, a
36 violation of Subsection 76-5-404.1(4)(h)(~~†~~), a person who benefits, receives, or exchanges
37 anything of value from knowing participation in:

38 (a) human trafficking for forced labor or for forced sexual exploitation in violation of
39 Section 76-5-308 is guilty of a second degree felony; and

40 (b) human smuggling is guilty of a third degree felony.

41 (5) A person commits a separate offense of human trafficking or human smuggling for
42 each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

43 Section 2. Section 76-5-404.1 is amended to read:

44 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

45 (1) As used in this section[~~,"child" means a person under the age of 14.~~]:

46 (a) "Adult" means an individual 18 years of age or older.

47 (b) "Child" means an individual under the age of 14.

48 (c) "Position of special trust" means:

49 (i) an adoptive parent;

50 (ii) an athletic manager who is an adult;

51 (iii) an aunt;

52 (iv) a babysitter;

53 (v) a coach;

54 (vi) a cohabitant of a parent if the cohabitant is an adult;

55 (vii) a counselor;

56 (viii) a doctor or physician;

57 (ix) an employer;

- 58 (x) a foster parent;
- 59 (xi) a grandparent;
- 60 (xii) a legal guardian;
- 61 (xiii) a natural parent;
- 62 (xiv) a recreational leader who is an adult;
- 63 (xv) a religious leader;
- 64 (xvi) a sibling or a step sibling who is an adult;
- 65 (xvii) a scout leader who is an adult;
- 66 (xviii) a stepparent;
- 67 (xix) a teacher;
- 68 (xx) an uncle;
- 69 (xxi) a youth leader who is an adult; or
- 70 (xxii) any person in a position of authority, other than those persons listed in
- 71 Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over
- 72 the child.

73 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
74 rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these
75 offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female
76 child, or otherwise takes indecent liberties with a child, or causes a child to take indecent
77 liberties with the actor or another with intent to cause substantial emotional or bodily pain to
78 any person or with the intent to arouse or gratify the sexual desire of any person regardless of
79 the sex of any participant.

80 (3) Sexual abuse of a child is [~~punishable as~~] a second degree felony.

81 (4) A person commits aggravated sexual abuse of a child when in conjunction with the
82 offense described in Subsection (2) any of the following circumstances have been charged and
83 admitted or found true in the action for the offense:

84 (a) the offense was committed by the use of a dangerous weapon as defined in Section
85 [76-1-601](#), or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or

86 was committed during the course of a kidnapping;

87 (b) the accused caused bodily injury or severe psychological injury to the victim during
88 or as a result of the offense;

89 (c) the accused was a stranger to the victim or made friends with the victim for the
90 purpose of committing the offense;

91 (d) the accused used, showed, or displayed pornography or caused the victim to be
92 photographed in a lewd condition during the course of the offense;

93 (e) the accused, prior to sentencing for this offense, was previously convicted of any
94 [~~felony, or of a misdemeanor involving a~~] sexual offense;

95 (f) the accused committed the same or similar sexual act upon two or more victims at
96 the same time or during the same course of conduct;

97 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if
98 committed in Utah would constitute an offense described in this chapter, and were committed
99 at the same time, or during the same course of conduct, or before or after the instant offense;

100 (h) the offense was committed by a person who occupied a position of special trust in
101 relation to the victim; [~~"position of special trust" means that position occupied by a person in a~~
102 ~~position of authority, who, by reason of that position is able to exercise undue influence over~~
103 ~~the victim, and includes, but is not limited to, a youth leader or recreational leader who is an~~
104 ~~adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,~~
105 ~~employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive~~
106 ~~parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;]~~

107 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
108 sexual acts by the victim with any other person, or sexual performance by the victim before any
109 other person, human trafficking, or human smuggling; or

110 (j) the accused caused the penetration, however slight, of the genital or anal opening of
111 the child by any part or parts of the human body other than the genitals or mouth.

112 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of
113 imprisonment of:

114 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and
115 which may be for life;

116 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact
117 finds that during the course of the commission of the aggravated sexual abuse of a child the
118 defendant caused serious bodily injury to another; or

119 (c) life without parole, if the trier of fact finds that at the time of the commission of the
120 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
121 sexual offense.

122 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a
123 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and
124 states the reasons for this finding on the record, the court may impose a term of imprisonment
125 of not less than:

126 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

127 (b) for purposes of Subsection (5)(a) or (b):

128 (i) 10 years and which may be for life; or

129 (ii) six years and which may be for life.

130 (7) The provisions of Subsection (6) do not apply when a person is sentenced under
131 Subsection (5)(c).

132 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18
133 years of age at the time of the offense.

134 (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

135 Section 3. Section 76-5-406 is amended to read:

136 **76-5-406. Sexual offenses against the victim without consent of victim --**

137 **Circumstances.**

138 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
139 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
140 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
141 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,

142 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
143 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
144 victim under any of the following circumstances:

145 (1) the victim expresses lack of consent through words or conduct;

146 (2) the actor overcomes the victim through the actual application of physical force or
147 violence;

148 (3) the actor is able to overcome the victim through concealment or by the element of
149 surprise;

150 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
151 immediate future against the victim or any other person, and the victim perceives at the time
152 that the actor has the ability to execute this threat; or

153 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
154 against the victim or any other person, and the victim believes at the time that the actor has the
155 ability to execute this threat;

156 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
157 kidnapping, or extortion;

158 (5) the victim has not consented and the actor knows the victim is unconscious,
159 unaware that the act is occurring, or physically unable to resist;

160 (6) the actor knows that as a result of mental disease or defect, the victim is at the time
161 of the act incapable either of appraising the nature of the act or of resisting it;

162 (7) the actor knows that the victim submits or participates because the victim
163 erroneously believes that the actor is the victim's spouse;

164 (8) the actor intentionally impaired the power of the victim to appraise or control his or
165 her conduct by administering any substance without the victim's knowledge;

166 (9) the victim is younger than 14 years of age;

167 (10) the victim is younger than 18 years of age and at the time of the offense the actor
168 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
169 special trust in relation to the victim as defined in ~~[Subsection]~~ Section 76-5-404.1~~[(4)(11)]~~;

170 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
171 actor is more than three years older than the victim and entices or coerces the victim to submit
172 or participate, under circumstances not amounting to the force or threat required under
173 Subsection (2) or (4); or

174 (12) the actor is a health professional or religious counselor, as those terms are defined
175 in this Subsection (12), the act is committed under the guise of providing professional
176 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
177 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
178 to the extent that resistance by the victim could not reasonably be expected to have been
179 manifested; for purposes of this Subsection (12):

180 (a) "health professional" means an individual who is licensed or who holds himself or
181 herself out to be licensed, or who otherwise provides professional physical or mental health
182 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
183 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
184 social service worker, clinical social worker, certified social worker, marriage and family
185 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
186 specialist, or substance abuse counselor; and

187 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
188 member of the clergy.