

Representative LaVar Christensen proposes the following substitute bill:

**CRIMINAL PENALTIES FOR SEXUAL CONTACT WITH A
STUDENT**

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the concept of a position of special trust regarding persons working at schools.

Highlighted Provisions:

This bill:

- ▶ modifies the offense of aggravated sexual abuse of a child by providing a definition of the term "position of special trust" and clarifying that the definition includes adult employees and volunteers at public and private schools;
- ▶ provides that specified sexual conduct against victims between 14 and 18 years of age are third degree felonies if committed by a school employee or volunteer; and
- ▶ states in the Criminal Code that a sexual offense against a minor is a ground for the revocation of a teacher's license.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **76-5-309**, as last amended by Laws of Utah 2013, Chapter 196

28 **76-5-401.1**, as enacted by Laws of Utah 1998, Chapter 82

29 **76-5-401.2**, as last amended by Laws of Utah 2013, Chapter 34

30 **76-5-404.1**, as last amended by Laws of Utah 2013, Chapters 81 and 196

31 **76-5-406**, as last amended by Laws of Utah 2013, Chapter 196

32 ENACTS:

33 **76-5-415**, Utah Code Annotated 1953



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

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

37 **76-5-309. Human trafficking and human smuggling -- Penalties.**

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

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

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

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

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

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

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

53 Section 2. Section **76-5-401.1** is amended to read:

54 **76-5-401.1. Sexual abuse of a minor.**

55 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but
56 younger than 16 years of age, at the time the sexual activity described in this section occurred.

57 (2) A person commits sexual abuse of a minor if the person is seven years or more
58 older than the minor and, under circumstances not amounting to rape, in violation of Section
59 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of
60 Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual
61 activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those
62 offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or
63 touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or
64 causes a minor to take indecent liberties with the actor or another person, with the intent to
65 cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify
66 the sexual desire of any person regardless of the sex of any participant.

67 (3) (a) A violation of this section is a class A misdemeanor[-], except under Subsection
68 (3)(b).

69 (b) A violation of this section is a third degree felony if the actor at the time of the
70 commission of the offense:

71 (i) is 18 years of age or older;

72 (ii) held a position of special trust as a teacher or a volunteer at a school, as that
73 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

74 (iii) committed the offense against an individual who at the time of the offense was
75 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

76 Section 3. Section 76-5-401.2 is amended to read:

77 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

78 (1) As used in this section, "minor" means a person who is 16 years of age or older, but
79 younger than 18 years of age, at the time the sexual conduct described in Subsection (2)
80 occurred.

81 (2) (a) A person commits unlawful sexual conduct with a minor if, under
82 circumstances not amounting to an offense listed under Subsection (3), a person who is:

83 (i) seven or more years older but less than 10 years older than the minor at the time of
84 the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or
85 reasonably should have known the age of the minor; or

86 (ii) 10 or more years older than the minor at the time of the sexual conduct and engages
87 in any conduct listed in Subsection (2)(b).

88 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:
89 (i) has sexual intercourse with the minor;
90 (ii) engages in any sexual act with the minor involving the genitals of one person and
91 the mouth or anus of another person, regardless of the sex of either participant;
92 (iii) causes the penetration, however slight, of the genital or anal opening of the minor
93 by any foreign object, substance, instrument, or device, including a part of the human body,
94 with the intent to cause substantial emotional or bodily pain to any person or with the intent to
95 arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or
96 (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the
97 breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a
98 minor to take indecent liberties with the actor or another person, with the intent to cause
99 substantial emotional or bodily pain to any person or with the intent to arouse or gratify the
100 sexual desire of any person regardless of the sex of any participant.

101 (3) The offenses referred to in Subsection (2) are:

102 (a) (i) rape, in violation of Section 76-5-402;

103 (ii) object rape, in violation of Section 76-5-402.2;

104 (iii) forcible sodomy, in violation of Section 76-5-403;

105 (iv) forcible sexual abuse, in violation of Section 76-5-404; or

106 (v) aggravated sexual assault, in violation of Section 76-5-405; or

107 (b) an attempt to commit any offense under Subsection (3)(a).

108 (4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

109 (5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor[-], except under
110 Subsection (5)(b).

111 (b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time
112 of the commission of the offense:

113 (i) is 18 years of age or older;

114 (ii) held a position of special trust as a teacher or a volunteer at a school, as that
115 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

116 (iii) committed the offense against an individual who at the time of the offense was
117 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

118 Section 4. Section 76-5-404.1 is amended to read:

- 119 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**
120 (1) As used in this section[~~,"child" means a person under the age of 14.~~];
121 (a) "Adult" means an individual 18 years of age or older.
122 (b) "Child" means an individual under the age of 14.
123 (c) "Position of special trust" means:
124 (i) an adoptive parent;
125 (ii) an athletic manager who is an adult;
126 (iii) an aunt;
127 (iv) a babysitter;
128 (v) a coach;
129 (vi) a cohabitant of a parent if the cohabitant is an adult;
130 (vii) a counselor;
131 (viii) a doctor or physician;
132 (ix) an employer;
133 (x) a foster parent;
134 (xi) a grandparent;
135 (xii) a legal guardian;
136 (xiii) a natural parent;
137 (xiv) a recreational leader who is an adult;
138 (xv) a religious leader;
139 (xvi) a sibling or a step-sibling who is an adult;
140 (xvii) a scout leader who is an adult;
141 (xviii) a stepparent;
142 (xix) a teacher or any other person employed by or volunteering at a public or private
143 elementary school or secondary school, and who is 18 years of age or older;
144 (xx) an uncle;
145 (xxi) a youth leader who is an adult; or
146 (xxii) any person in a position of authority, other than those persons listed in
147 Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over
148 the child.
149 (2) A person commits sexual abuse of a child if, under circumstances not amounting to

150 rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these
151 offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female
152 child, or otherwise takes indecent liberties with a child, or causes a child to take indecent
153 liberties with the actor or another with intent to cause substantial emotional or bodily pain to
154 any person or with the intent to arouse or gratify the sexual desire of any person regardless of
155 the sex of any participant.

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

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

160 (a) the offense was committed by the use of a dangerous weapon as defined in Section
161 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
162 was committed during the course of a kidnapping;

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

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

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

169 (e) the accused, prior to sentencing for this offense, was previously convicted of any
170 felony, or of a misdemeanor involving a sexual offense;

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

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

176 (h) the offense was committed by a person who occupied a position of special trust in
177 relation to the victim; [~~"position of special trust" means that position occupied by a person in a~~
178 ~~position of authority, who, by reason of that position is able to exercise undue influence over~~
179 ~~the victim, and includes, but is not limited to, a youth leader or recreational leader who is an~~
180 ~~adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,~~

181 ~~employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive~~
182 ~~parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (9) Imprisonment under this section is mandatory in accordance with Section [76-3-406](#).

211 Section 5. Section ~~76-5-406~~ is amended to read:

212 **76-5-406. Sexual offenses against the victim without consent of victim --**
213 **Circumstances.**

214 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
215 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
216 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
217 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
218 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
219 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
220 victim under any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

256 (a) "health professional" means an individual who is licensed or who holds himself or
257 herself out to be licensed, or who otherwise provides professional physical or mental health
258 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
259 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
260 social service worker, clinical social worker, certified social worker, marriage and family
261 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
262 specialist, or substance abuse counselor; and

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

265 Section 6. Section **76-5-415** is enacted to read:

266 **76-5-415. Educator's license subject to action for violation of this part.**

267 Commission of any offense under this Title 76, Chapter 5, Part 4, Sexual Offenses, by
268 an educator as defined in Section 53A-6-103, is grounds under Section 53A-6-501 for
269 disciplinary action against the educator, including revocation of the educator's license.