

**Representative Merrill F. Nelson** proposes the following substitute bill:

**CONSENSUAL SEXUAL ACTIVITY OF A MINOR**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merrill F. Nelson**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Criminal Code regarding abuse of a minor.

**Highlighted Provisions:**

This bill:

► modifies the definition of sexual abuse of a minor regarding the age differential between the offender and the victim ~~§~~ ; ~~§~~ [and] ~~§~~

► modifies offender registration requirements regarding a first offense of sexual abuse of a minor ~~§~~ ~~§~~ [-] ; and

► provides a cross reference regarding the current code provision that a misdemeanor offense of unlawful sexual activity with a minor is not subject to the offender registry. ~~§~~

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

~~§~~ 76-5-401, as repealed and reenacted by Laws of Utah 1998, Chapter 82 ~~§~~

76-5-401.1, as last amended by Laws of Utah 2014, Chapter 135

~~§~~ 77-41-102, as last amended by Laws of Utah 2015, Chapter 210 ~~§~~

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

~~§~~ Section 1. Section 76-5-401 is amended to read: \*



22b ☉ **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age**  
 22c **raised by defendant.**

22d (1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than  
 22e 16 years of age, at the time the sexual activity described in this section occurred.

22f (2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting  
 22g to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in  
 22h violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

22i (a) has sexual intercourse with the minor;

22j (b) engages in any sexual act with the minor involving the genitals of one person and the mouth or  
 22k anus of another person, regardless of the sex of either participant; or

22l (c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign  
 22m object, substance, instrument, or device, including a part of the human body, with the intent to cause  
 22n substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of  
 22o any person, regardless of the sex of any participant.

22p (3) ~~§~~ **[A] (a) Except under Subsection (3)(b), a** ~~←§~~ violation of Subsection (2) is a third  
 22q degree felony ~~§~~ **[unless] .**

22r **(b) If** ~~←§~~ the defendant establishes by a preponderance of the evidence the mitigating factor that  
 22s the defendant is less than four years older than the minor at the time the sexual activity occurred, ~~§~~ **[in**  
 22t **which case it] the offense** ~~←§~~ is a class B misdemeanor. ~~§~~ **An offense under this Subsection (3)(b) is**  
 22u **not subject to registration under Subsection 77-41-102(17)(iii).**

23 ~~[Section 1.]~~ **Section 2.** ~~←§~~ Section 76-5-401.1 is amended to read:

24 **76-5-401.1. Sexual abuse of a minor.**

25 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but

26 younger than 16 years of age, at the time the sexual activity described in this section occurred.

27 (2) A person commits sexual abuse of a minor if the person is [~~seven~~] ~~H~~→ [four] [~~five~~]  
 27a **four** ←~~H~~ years or  
 28 more older than the minor or holds a relationship of special trust as an adult teacher, employee,  
 29 or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not  
 30 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section  
 31 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in  
 32 violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section  
 33 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks,  
 34 or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise  
 35 takes indecent liberties with the minor, or causes a minor to take indecent liberties with the  
 36 actor or another person, with the intent to cause substantial emotional or bodily pain to any  
 37 person or with the intent to arouse or gratify the sexual desire of any person regardless of the  
 38 sex of any participant.

39 (3) (a) ~~H~~→ [A] **Except under Subsection (3)(b), a** ←~~H~~ violation of this section is a class A  
 39a misdemeanor ~~H~~→ **and is not subject to registration under Subsection 77-41-102(17)(iv) on a**  
 39b **first offense if the offender was younger than 21 years of age at the time of the offense** [~~except~~  
 39c ~~under Subsection~~  
 40 ~~(3)(b)~~] ←~~H~~ .

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

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

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

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

47a ~~H~~→ **Section 2. Section 77-41-102 is amended to read:**

47b **77-41-102. Definitions.**

47c As used in this chapter:

47d (1) "Bureau" means the bureau of Criminal Identification of the Department of Public Safety  
 47e established in section 53-10-201.

47f (2) "Business day" means a day on which state offices are open for regular business.

47g (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification  
 47h showing that the offender has met the requirements of Section 77-41-112.

47i (4) "Department" means the Department of Corrections. ☻

- 47j ☛ (5) "Division" means the Division of Juvenile Justice Services.
- 47k (6) "Employed" or "carries on a vocation" includes employment that is full time or part time,  
47l whether financially compensated, volunteered, or for the purpose of government or educational benefit.
- 47m (7) "Indian Country" means:
- 47n (a) all land within the limits of any Indian reservation under the jurisdiction of the United States  
47o government, regardless of the issuance of any patent, and includes rights-of-way running through the  
47p reservation;
- 47q (b) all dependent Indian communities within the borders of the United States whether within the  
47r original or subsequently acquired territory, and whether or not within the limits of a state; and
- 47s (c) all Indian allotments, including the Indian allotments to which the Indian titles have not been  
47t extinguished, including rights-of-way running through the allotments.
- 47u (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under  
47v the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.
- 47w (9) "Kidnap offender" means any person other than a natural parent of the victim who:
- 47x (a) has been convicted in this state of a violation of:
- 47y (i) Subsection 76-5-301(1)(c) or (d), kidnapping;
- 47z (ii) Section 76-5-301.1, child kidnapping;
- 47aa (iii) Section 76-5-302, aggravated kidnapping;
- 47ab (iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or
- 47ac (v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i)  
47ad through (iv);
- 47ae (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in  
47af another jurisdiction, including any state, federal, or military court that is substantially equivalent to the  
47ag offenses listed in Subsection (9)(a) and who is:
- 47ah (i) a Utah resident; or
- 47ai (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more  
47aj days, regardless of whether or not the offender intends to permanently reside in this state;
- 47ak (c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction,  
47al who is required to register as a kidnap offender by any state, federal, or military court, or who would be  
47am required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date  
47an of the conviction or any previous registration requirements; and
- 47ao (ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of whether or  
47ap not the offender intends to permanently reside in this state;
- 47aq (d) is a nonresident regularly employed or working in this state, or who is a student in this state, and  
47ar was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in  
47as another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;
- 47at (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more  
47au offenses listed in Subsection (9); or ☛

- 47av ☛ (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has  
 47aw been committed to the division for secure confinement for that offense and remains in the division's custody  
 47ax 30 days prior to the person's 21st birthday.
- 47ay (10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's  
 47az noncustodial parent.
- 47ba (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in  
 47bb Subsection (17).
- 47bc (12) "Online identifier" or "Internet identifier":
- 47bd (a) means any electronic mail, chat, instant messenger, social networking, or similar name used for  
 47be Internet communication; and
- 47bf (b) does not include date of birth, Social Security number, PIN number, or Internet passwords.
- 47bg (13) "Primary residence" means the location where the offender regularly resides, even if the  
 47bh offender intends to move to another location or return to another location at any future date.
- 47bi (14) "Register" means to comply with the requirements of this chapter and administrative rules of  
 47bj the department made under this chapter.
- 47bk (15) "Registration website" means the Sex and Kidnap Offender Notification and Registration  
 47bl website described in Section 77-41-110 and the information on the website.
- 47bm (16) "Secondary residence" means any real property that the offender owns or has a financial interest  
 47bn in, or any location where, in any 12 month period, the offender stays overnight a total of 10 or more nights  
 47bo when not staying at the offender's primary residence.
- 47bp (17) "Sex offender" means any person:
- 47bq (a) convicted in this state of:
- 47br (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
- 47bs (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;
- 47bt (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
- 47bu (iv) Section 76-5-401.1, sexual abuse of a minor ~~H→~~ , **except under Subsection**  
 47bv **76-5-401.1(3)(a) ←H** ;
- 47bv (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 47bw (vi) Section 76-5-402, rape;
- 47bx (vii) Section 76-5-402.1, rape of a child;
- 47by (viii) Section 76-5-402.2, object rape;
- 47bz (ix) Section 76-5-402.3, object rape of a child;
- 47ca (x) a felony violation of Section 76-5-403, forcible sodomy;
- 47cb (xi) Section 76-5-403.1, sodomy on a child;
- 47cc (xii) Section 76-5-404, forcible sexual abuse;
- 47cd (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 47ce (xiv) Section 76-5-405, aggravated sexual assault;
- 47cf (xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18  
 47cg years of age, if the offense is committed on or after May 10, 2011; ☛

- 47ch ☛ (xvi) Section 76-5b-201, sexual exploitation of a minor;
- 47ci (xvii) Section 76-7-102, incest;
- 47cj (xviii) Section 76-9-702, lewdness, if the person has been convicted of the offense four or more
- 47ck times;
- 47cl (xix) Section 76-9-702.1, sexual battery, if the person has been convicted of the offense four or more
- 47cm times;
- 47cn (xx) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1,
- 47co sexual battery, that total four or more convictions;
- 47cp (xxi) Section 76-9-702.5, lewdness involving a child;
- 47cq (xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 47cr (xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or
- 47cs (xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (17)(a);
- 47ct (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a
- 47cu crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to
- 47cv the offenses listed in Subsection (17)(a) and who is:
- 47cw (i) a Utah resident; or
- 47cx (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of 10 or more
- 47cy days, regardless of whether the offender intends to permanently reside in this state;
- 47cz (c) (i) who is required to register as a sex offender in any other jurisdiction of original conviction,
- 47da who is required to register as a sex offender by any state, federal, or military court, or who would be required
- 47db to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of
- 47dc the conviction or any previous registration requirements; and
- 47dd (ii) who, in any 12 month period, is in the state for a total of 10 or more days, regardless of whether
- 47de or not the offender intends to permanently reside in this state;
- 47df (d) who is a nonresident regularly employed or working in this state or who is a student in this state
- 47dg and was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent
- 47dh offense in any jurisdiction, or as a result of the conviction, is required to register in the person's jurisdiction
- 47di of residence;
- 47dj (e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or
- 47dk more offenses listed in Subsection (17)(a); or
- 47dl (f) who is adjudicated delinquent based on one or more offenses listed in Subsection (17)(a) and
- 47dm who has been committed to the division for secure confinement for that offense and remains in the division's
- 47dn custody 30 days prior to the person's 21st birthday.
- 47do (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the
- 47dp Influence and Reckless Driving.
- 47dq (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any
- 47dr jurisdiction. ←H