

30 Section 1. Section 76-5-401 is amended to read:

31 **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**
32 **Evidence of age raised by defendant.**

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

35 (2) A person commits unlawful sexual activity with a minor if, under circumstances
36 not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
37 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in
38 violation of Section 76-5-405, the actor:

39 (a) has sexual intercourse with the minor;

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

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

46 (3) [A] (a) Except under Subsection (3)(b), a violation of Subsection (2) is a third
47 degree felony [unless].

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

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

53 **76-5-401.1. Sexual abuse of a minor.**

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

56 (2) A person commits sexual abuse of a minor if the person is [seven] four years or
57 more older than the minor or holds a relationship of special trust as an adult teacher, employee,

58 or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not
59 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
60 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in
61 violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section
62 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks,
63 or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise
64 takes indecent liberties with the minor, or causes a minor to take indecent liberties with the
65 actor or another person, with the intent to cause substantial emotional or bodily pain to any
66 person or with the intent to arouse or gratify the sexual desire of any person regardless of the
67 sex of any participant.

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

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

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

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

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

79 Section 3. Section 77-41-102 is amended to read:

80 **77-41-102. Definitions.**

81 As used in this chapter:

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

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

85 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal

86 Identification showing that the offender has met the requirements of Section 77-41-112.

87 (4) "Department" means the Department of Corrections.

88 (5) "Division" means the Division of Juvenile Justice Services.

89 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
90 time, whether financially compensated, volunteered, or for the purpose of government or
91 educational benefit.

92 (7) "Indian Country" means:

93 (a) all land within the limits of any Indian reservation under the jurisdiction of the
94 United States government, regardless of the issuance of any patent, and includes rights-of-way
95 running through the reservation;

96 (b) all dependent Indian communities within the borders of the United States whether
97 within the original or subsequently acquired territory, and whether or not within the limits of a
98 state; and

99 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
100 not been extinguished, including rights-of-way running through the allotments.

101 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
102 property under the jurisdiction of the United States military, Canada, the United Kingdom,
103 Australia, or New Zealand.

104 (9) "Kidnap offender" means any person other than a natural parent of the victim who:

105 (a) has been convicted in this state of a violation of:

106 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;

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

108 (iii) Section 76-5-302, aggravated kidnapping;

109 (iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

110 (v) attempting, soliciting, or conspiring to commit any felony offense listed in

111 Subsections (9)(a)(i) through (iv);

112 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
113 commit a crime in another jurisdiction, including any state, federal, or military court that is

114 substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

115 (i) a Utah resident; or

116 (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of
117 10 or more days, regardless of whether or not the offender intends to permanently reside in this
118 state;

119 (c) (i) is required to register as a kidnap offender in any other jurisdiction of original
120 conviction, who is required to register as a kidnap offender by any state, federal, or military
121 court, or who would be required to register as a kidnap offender if residing in the jurisdiction of
122 the conviction regardless of the date of the conviction or any previous registration
123 requirements; and

124 (ii) in any 12 month period, is in this state for a total of 10 or more days, regardless of
125 whether or not the offender intends to permanently reside in this state;

126 (d) is a nonresident regularly employed or working in this state, or who is a student in
127 this state, and was convicted of one or more offenses listed in Subsection (9), or any
128 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
129 required to register in the person's state of residence;

130 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of
131 one or more offenses listed in Subsection (9); or

132 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a)
133 and who has been committed to the division for secure confinement for that offense and
134 remains in the division's custody 30 days prior to the person's 21st birthday.

135 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the
136 minor's noncustodial parent.

137 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
138 as defined in Subsection (17).

139 (12) "Online identifier" or "Internet identifier":

140 (a) means any electronic mail, chat, instant messenger, social networking, or similar
141 name used for Internet communication; and

142 (b) does not include date of birth, Social Security number, PIN number, or Internet
143 passwords.

144 (13) "Primary residence" means the location where the offender regularly resides, even
145 if the offender intends to move to another location or return to another location at any future
146 date.

147 (14) "Register" means to comply with the requirements of this chapter and
148 administrative rules of the department made under this chapter.

149 (15) "Registration website" means the Sex and Kidnap Offender Notification and
150 Registration website described in Section 77-41-110 and the information on the website.

151 (16) "Secondary residence" means any real property that the offender owns or has a
152 financial interest in, or any location where, in any 12 month period, the offender stays
153 overnight a total of 10 or more nights when not staying at the offender's primary residence.

154 (17) "Sex offender" means any person:

155 (a) convicted in this state of:

156 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

157 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
158 2011;

159 (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

160 (iv) Section 76-5-401.1, sexual abuse of a minor, except under Subsection
161 76-5-401.1(3)(a);

162 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

163 (vi) Section 76-5-402, rape;

164 (vii) Section 76-5-402.1, rape of a child;

165 (viii) Section 76-5-402.2, object rape;

166 (ix) Section 76-5-402.3, object rape of a child;

167 (x) a felony violation of Section 76-5-403, forcible sodomy;

168 (xi) Section 76-5-403.1, sodomy on a child;

169 (xii) Section 76-5-404, forcible sexual abuse;

- 170 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 171 (xiv) Section 76-5-405, aggravated sexual assault;
- 172 (xv) Section 76-5-412, custodial sexual relations, when the person in custody is
- 173 younger than 18 years of age, if the offense is committed on or after May 10, 2011;
- 174 (xvi) Section 76-5b-201, sexual exploitation of a minor;
- 175 (xvii) Section 76-7-102, incest;
- 176 (xviii) Section 76-9-702, lewdness, if the person has been convicted of the offense four
- 177 or more times;
- 178 (xix) Section 76-9-702.1, sexual battery, if the person has been convicted of the
- 179 offense four or more times;
- 180 (xx) any combination of convictions of Section 76-9-702, lewdness, and of Section
- 181 76-9-702.1, sexual battery, that total four or more convictions;
- 182 (xxi) Section 76-9-702.5, lewdness involving a child;
- 183 (xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 184 (xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or
- 185 (xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in
- 186 Subsection (17)(a);
- 187 (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 188 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 189 substantially equivalent to the offenses listed in Subsection (17)(a) and who is:
- 190 (i) a Utah resident; or
- 191 (ii) not a Utah resident, but who, in any 12 month period, is in this state for a total of
- 192 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 193 (c) (i) who is required to register as a sex offender in any other jurisdiction of original
- 194 conviction, who is required to register as a sex offender by any state, federal, or military court,
- 195 or who would be required to register as a sex offender if residing in the jurisdiction of the
- 196 original conviction regardless of the date of the conviction or any previous registration
- 197 requirements; and

198 (ii) who, in any 12 month period, is in the state for a total of 10 or more days,
199 regardless of whether or not the offender intends to permanently reside in this state;

200 (d) who is a nonresident regularly employed or working in this state or who is a student
201 in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any
202 substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required
203 to register in the person's jurisdiction of residence;

204 (e) who is found not guilty by reason of insanity in this state, or in any other
205 jurisdiction of one or more offenses listed in Subsection (17)(a); or

206 (f) who is adjudicated delinquent based on one or more offenses listed in Subsection
207 (17)(a) and who has been committed to the division for secure confinement for that offense and
208 remains in the division's custody 30 days prior to the person's 21st birthday.

209 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
210 Driving Under the Influence and Reckless Driving.

211 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
212 any jurisdiction.