

HB0179S01 compared with HB0179

~~{deleted text}~~ shows text that was in HB0179 but was deleted in HB0179S01.

inserted text shows text that was not in HB0179 but was inserted into HB0179S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code regarding ~~{sexual offenses against minors}~~abuse of a minor.

Highlighted Provisions:

This bill:

- ▶ ~~{adds two additional elements to the class B offense of unlawful sexual activity with a minor;~~

→ ~~provides that the offense}~~modifies the definition of sexual abuse of a minor ~~{is a class A misdemeanor if the defendant cannot establish specified elements; and~~

→ ~~modifies the definition of "position of trust."}~~regarding the age differential between the offender and the victim.

Money Appropriated in this Bill:

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~~{ 76-5-401, as repealed and reenacted by Laws of Utah 1998, Chapter 82~~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

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

Section 1. Section **76-5-401.1** is amended to read:

76-5-401.1. ~~{Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant}~~ Sexual abuse of a minor.

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

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

~~—— (a) has sexual intercourse with the minor;~~

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

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

~~—— (3) A violation of Subsection (2) is a third degree felony [unless] except under Subsection (4):~~

~~—— (4) A violation of Subsection (2) is a class B misdemeanor if the defendant establishes by a preponderance of the evidence [the mitigating factor that] that at the time the sexual activity occurred the following mitigating factors existed:~~

~~—— (a) the defendant [is] was less than four years older than the minor [at the time the~~

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~~sexual activity occurred, in which case it is a class B misdemeanor};~~

~~———— (b) the defendant was not related to the minor by blood or legal relationship; and~~

~~———— (c) the defendant was not residing in the same household as the minor.~~

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

~~———— 76-5-401.1. Sexual abuse of a minor:~~

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

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

(3) (a) A violation of {‡} this section {‡} ~~Subsection (2)~~ is a class A misdemeanor, except under Subsection (3)(b) {‡}, ~~unless the defendant establishes by a preponderance of the evidence that at the time of the sexual activity the defendant:~~

~~———— (i) was less than four years older than the minor;~~

~~———— (ii) was not related to the minor by blood or legal relationship; and~~

~~———— (iii) was not residing in the same residence as the minor}.~~

(b) A violation of {‡} this section {‡} ~~Subsection (2), notwithstanding the exemption~~

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~~under Subsection (3)(a).~~ is a third degree felony if the ~~actor~~ ~~defendant~~ at the time of the commission of the offense:

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

~~(ii)~~ ~~(i)~~ held a position of special trust as a teacher ~~or~~ a volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(c)(xix) ~~or was any other person who was employed by or volunteering at a public or private elementary school or secondary school~~; and

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

~~†~~

Legislative Review Note

~~Office of Legislative Research and General Counsel~~