

SB0113S01 compared with SB0113

~~text~~ shows text that was in SB0113 but was deleted in SB0113S01.

text shows text that was not in SB0113 but was inserted into SB0113S01.

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Senator Todd Weiler proposes the following substitute bill:

SUBJECTING A MINOR TO SEXUAL MATERIAL

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code ~~regarding~~ an aggravating factor in sentencing.

Highlighted Provisions:

This bill:

- ▶ provides that ~~the penalties regarding sexual offenses against children are increased by one degree if the victim was exposed to pornography during the course of the commission of the offense; and~~
- ▶ provides that a first degree felony child kidnapping offense or a sexual offense against a child include the commission of the offenses when the victim is exposed to pornography; if the defendant in specified offenses exposes the victim to pornography, the courts and the Utah Board of Pardons and Parole shall consider

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the defendant's act as an aggravating factor in their deliberations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~{AMENDS}~~ ENACTS:

~~{76-5-301.1, as last amended by Laws of Utah 2013, Chapter 81~~

~~—— 76-5-401, as repealed and reenacted by Laws of Utah 1998, Chapter 82~~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

~~—— 76-5-401.2, as last amended by Laws of Utah 2014, Chapter 135~~

~~—— 76-5-404, as last amended by Laws of Utah 2010, Chapter 218~~

~~—— 76-5-404.1, as last amended by Laws of Utah 2014, Chapters 135 and~~

~~141}~~ 76-3-203.12, Utah Code Annotated 1953

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

Section 1. Section ~~{76-5-301.1 is amended to read:~~

~~—— 76-5-301.1. Child kidnapping.~~

~~—— (1) An actor commits child kidnapping if the actor intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis.~~

~~—— (2) Violation of Section 76-5-303 is not a violation of this section.~~

~~—— (3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:~~

~~—— (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;~~

~~—— (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during}~~ 76-3-203.12 is enacted to read:

76-3-203.12. Exposing minor to pornography in course of committing offense - Aggravating factor.

(1) The sentencing judge or the Board of Pardons and Parole shall consider as an

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aggravating factor in their deliberations regarding the sentence or the terms of probation or parole that in the course of the commission of ~~the child kidnapping the defendant:~~

~~— (i) caused serious bodily injury to another; or~~

~~— (ii) exposed the~~ an offense under Subsection (2), the defendant exposed a victim to pornography ~~during the course of the kidnapping; or~~

~~— (c) life without parole, if the trier of fact finds that at the time of the commission of the child kidnapping the defendant was previously convicted of a grievous sexual offense.~~

~~— (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:~~

~~— (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or~~

~~— (b) for purposes of Subsection (3)(a) or (b):~~

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

~~— (ii) six years and which may be for life;~~

~~— (5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c):~~

~~— (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.~~

~~— (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.~~

~~Section 2. Section 76-5-401 is amended to read:~~

~~76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --~~

Evidence of age raised by defendant:

~~— (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~~

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~~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 the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.~~

~~— (4) If the defendant exposes the minor to pornography during the course of a violation of Subsection (2):~~

~~— (a) a third degree felony under Subsection (3) is a second degree felony; and~~

~~— (b) a class B misdemeanor under Subsection (3) is a class A misdemeanor.~~

~~— Section 3. Section 76-5-401.1 is amended to read:~~

~~— **76-5-401.1. 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 sexual abuse of a minor if the person is seven 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, 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 is a class A misdemeanor, except under Subsection (3)(b):~~

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

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

~~(ii) 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); and~~

~~(iii) 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.~~

~~(4) If the defendant exposes the minor to pornography during the course of a violation of Subsection (2):~~

~~(a) a third degree felony under Subsection (3) is a second degree felony; and~~

~~(b) a class A misdemeanor under Subsection (3) is a third degree felony.~~

~~Section 4. Section 76-5-401.2 is amended to read:~~

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

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

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

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

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

~~(iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix).~~

~~(b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:~~

~~(i) has sexual intercourse with the minor;~~

~~(ii) 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;~~

~~(iii) 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;~~

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~~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, or~~
~~—— (iv) 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).~~

~~(2) The offenses referred to in Subsection (2) are:~~

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

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

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

~~—— (iv) }~~

~~(a) 76-5-301.1, child kidnapping;~~

~~(b) 76-5-401, unlawful sexual activity with a minor;~~

~~(c) 76-5-401.1, sexual abuse of a minor;~~

~~(d) 76-5-401.2, unlawful sexual conduct with 16- or 17- year-old;~~

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

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

~~—— (b) an attempt to commit any offense under Subsection (3)(a):~~

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

~~—— (5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under Subsection (5)(b):~~

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

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

~~—— (ii) 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); and~~

~~—— (iii) 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.~~

~~—— (6) If the defendant exposes the minor to pornography during the course of a violation~~

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of Subsection (2):

~~— (a) a third degree felony under Subsection (4) is a second degree felony;~~

~~— (b) a class A misdemeanor under Subsection (5)(a) is a third degree felony; and~~

~~— (c) a third degree felony under Subsection (5)(b) is a second degree felony.~~

~~— Section 5. Section ~~76-5-404~~ is amended to read:~~

~~— **76-5-404. Forcible sexual abuse:**~~

~~— (1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with 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, without the consent of the other, regardless of the sex of any participant.~~

~~— (2) Forcible sexual abuse is:~~

~~— (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or~~

~~— (b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant:~~

~~— (i) caused serious bodily injury to another; or~~

~~— (ii) exposed the victim to pornography during the course of a violation of Subsection (1):~~

~~— (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:~~

~~— (a) 10 years and which may be for life; or~~

~~— (b) six years and which may be for life.~~

~~— (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.~~

~~— Section 6. Section ~~76-5-404.1~~ is amended to read:~~

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- ~~76-5-404.1. Sexual abuse of a child -- Aggravated}; and~~
~~(f) 76-5-404.1, sexual abuse and aggravated~~ sexual abuse of a child.
- ~~(1) As used in this section:~~
- ~~(a) "Adult" means an individual 18 years of age or older.~~
 - ~~(b) "Child" means an individual under the age of 14.~~
 - ~~(c) "Position of special trust" means:~~
 - ~~(i) an adoptive parent;~~
 - ~~(ii) an athletic manager who is an adult;~~
 - ~~(iii) an aunt;~~
 - ~~(iv) a babysitter;~~
 - ~~(v) a coach;~~
 - ~~(vi) a cohabitant of a parent if the cohabitant is an adult;~~
 - ~~(vii) a counselor;~~
 - ~~(viii) a doctor or physician;~~
 - ~~(ix) an employer;~~
 - ~~(x) a foster parent;~~
 - ~~(xi) a grandparent;~~
 - ~~(xii) a legal guardian;~~
 - ~~(xiii) a natural parent;~~
 - ~~(xiv) a recreational leader who is an adult;~~
 - ~~(xv) a religious leader;~~
 - ~~(xvi) a sibling or a stepsibling who is an adult;~~
 - ~~(xvii) a scout leader who is an adult;~~
 - ~~(xviii) a stepparent;~~
 - ~~(xix) a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;~~
 - ~~(xx) an uncle;~~
 - ~~(xxi) a youth leader who is an adult; or~~
 - ~~(xxii) any person in a position of authority, other than those persons listed in Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over the child.~~

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~~—— (2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with 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) Sexual abuse of a child is a second degree felony.~~

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

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

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

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

~~—— (d) the accused [used, showed, or displayed] exposed the victim to pornography or caused the victim to be photographed in a lewd condition during the course of the offense;~~

~~—— (e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;~~

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

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

~~—— (h) the offense was committed by a person who occupied a position of special trust in relation to the victim;~~

~~—— (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any~~

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~~other person, human trafficking, or human smuggling; or~~

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

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

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

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

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

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

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

~~—— (b) for purposes of Subsection (5)(a) or (b):~~

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

~~—— (ii) six years and which may be for life;~~

~~—— (7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c):~~

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

~~—— (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406;~~

Legislative Review Note

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~~Office of Legislative Research and General Counsel~~³⁾ The sentencing judge or the Board of Pardons and Parole shall also consider whether the penalty for the offense is already increased by other existing provisions of law.

(4) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

(5) This section does not affect or restrict the exercise of judicial discretion under any other provision of Utah law.