

**Representative Marc K. Roberts** proposes the following substitute bill:

**JUVENILE OFFENSES AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marc K. Roberts**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill makes changes to juvenile sex offenses when both juveniles are under 18 years of age.

**Highlighted Provisions:**

This bill:

- ▶ creates a new provision for unlawful adolescent sexual activity between persons under 18 years of age;
- ▶ creates penalties; and
- ▶ makes technical and conforming corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-406**, as last amended by Laws of Utah 2011, Chapter 366

**76-5-401**, as last amended by Laws of Utah 2016, Chapter 372

**77-2-9**, as last amended by Laws of Utah 2009, Chapter 146



26 ENACTS:

27 **76-5-401.3**, Utah Code Annotated 1953



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

30 Section 1. Section **76-3-406** is amended to read:

31 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**  
32 **offense, or hospitalization may not be granted.**

33 (1) Notwithstanding Sections **76-3-201** and **77-18-1** and Title 77, Chapter 16a,  
34 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section  
35 **76-5-406.5**, probation ~~shall~~ may not be granted, the execution or imposition of sentence  
36 ~~shall~~ may not be suspended, the court ~~shall~~ may not enter a judgment for a lower category  
37 of offense, and hospitalization ~~shall~~ may not be ordered, the effect of which would in any way  
38 shorten the prison sentence for any person who commits a capital felony or a first degree felony  
39 involving:

- 40 ~~(1)~~ (a) Section **76-5-202**, aggravated murder;
- 41 ~~(2)~~ (b) Section **76-5-203**, murder;
- 42 ~~(3)~~ (c) Section **76-5-301.1**, child kidnaping;
- 43 ~~(4)~~ (d) Section **76-5-302**, aggravated kidnaping;
- 44 ~~(5)~~ (e) Section **76-5-402**, rape, if the person is sentenced under Subsection  
45 **76-5-402(3)(b)**, (3)(c), or (4);
- 46 ~~(6)~~ (f) Section **76-5-402.1**, rape of a child;
- 47 ~~(7)~~ (g) Section **76-5-402.2**, object rape, if the person is sentenced under Subsection  
48 **76-5-402.2(1)(b)**, (1)(c), or (2);
- 49 ~~(8)~~ (h) Section **76-5-402.3**, object rape of a child;
- 50 ~~(9)~~ (i) Section **76-5-403**, forcible sodomy, if the person is sentenced under Subsection  
51 **76-5-403(4)(b)**, (4)(c), or (5);
- 52 ~~(10)~~ (j) Section **76-5-403.1**, sodomy on a child;
- 53 ~~(11)~~ (k) Section **76-5-404**, forcible sexual abuse, if the person is sentenced under  
54 Subsection **76-5-404(2)(b)** or (3);
- 55 ~~(12)~~ (l) Subsections **76-5-404.1(4)** and (5), aggravated sexual abuse of a child;
- 56 ~~(13)~~ (m) Section **76-5-405**, aggravated sexual assault; or

57           ~~[(14)]~~ (n) any attempt to commit a felony listed in Subsection (6), (8), or (10).

58           (2) The provisions of this section do not apply if the sentencing court finds that the  
59 defendant was under the age of 18 at the time of the offense and could have been adjudicated in  
60 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the  
61 offenses are before the court pursuant to Section [78a-6-701](#), [78a-6-702](#), or [78a-6-703](#).

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

63           **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**  
64 **Evidence of age raised by defendant.**

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

67           (2) A person 18 years of age or older commits unlawful sexual activity with a minor if,  
68 under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in  
69 violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or  
70 aggravated sexual assault, in violation of Section 76-5-405, the actor:

71           (a) has sexual intercourse with the minor;

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

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

78           (3) (a) Except under Subsection (3)(b), a violation of Subsection (2) is a third degree  
79 felony.

80           (b) If the defendant establishes by a preponderance of the evidence the mitigating  
81 factor that the defendant is less than four years older than the minor at the time the sexual  
82 activity occurred, the offense is a class B misdemeanor. An offense under this Subsection  
83 (3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).

84           Section 3. Section **76-5-401.3** is enacted to read:

85           **76-5-401.3. Unlawful adolescent sexual activity.**

86           (1) As used in this section:

87           (a) "Adolescent" means a person in the transitional phase of human physical and

88 psychological growth and development between childhood and adulthood who is 12 years of  
89 age or older, but under 18 years of age.

90 (b) "Unlawful adolescent sexual activity" means sexual activity between adolescents  
91 under circumstances not amounting to:

92 (i) rape, in violation of Section [76-5-402](#);

93 (ii) rape of a child, in violation of [76-5-402.1](#);

94 (iii) object rape, in violation of Section [76-5-402.2](#);

95 (iv) object rape of a child, in violation of Section [76-5-402.3](#);

96 (v) forcible sodomy, in violation of Section [76-5-403](#);

97 (vi) sodomy on a child, in violation of Section [76-5-403.1](#);

98 (vi) aggravated sexual assault, in violation of Section [76-5-405](#);

99 (vii) sexual abuse of a child, in violation of Section [76-5-404](#); or

100 (viii) incest, in violation of Section [76-7-102](#).

101 (2) Unlawful adolescent sexual activity is punishable as a:

102 (a) third degree felony if an adolescent who is 17 years of age engages in unlawful  
103 adolescent sexual activity with an adolescent who is 12 or 13 years of age;

104 (b) third degree felony if an adolescent who is 16 years of age engages in unlawful  
105 adolescent sexual activity with an adolescent who is 12 years of age;

106 (c) class A misdemeanor if an adolescent who is 16 years of age engages in unlawful  
107 adolescent sexual activity with an adolescent who is 13 years of age;

108 (d) class A misdemeanor if an adolescent who is 14 or 15 years of age engages in  
109 unlawful adolescent sexual activity with an adolescent who is 12 years of age;

110 (e) class B misdemeanor if an adolescent who is 17 years of age engages in unlawful  
111 adolescent sexual activity with an adolescent who is 14 years of age;

112 (f) class B misdemeanor if an adolescent who is 15 years of age engages in unlawful  
113 adolescent sexual activity with an adolescent who is 13 years of age;

114 (g) class C misdemeanor if an adolescent who is 12 or 13 years of age engages in  
115 unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age; and

116 (h) class C misdemeanor if an adolescent who is 14 years of age engages in unlawful  
117 adolescent sexual activity with an adolescent who is 13 years of age.

118 (3) Offenses under this section are not eligible for nonjudicial adjustment under

119 Section 78A-6-602 or referral to youth court under Section 78A-6-1203.

120 (4) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702,  
 121 or 78A-6-703, the district court may enter any sentence or combination of sentences which  
 122 would have been available in juvenile court but for the delayed reporting or delayed filing of  
 123 the information in district court.

124 (5) An offense under this section is not subject to registration under Subsection  
 125 77-41-102(17).

126 Section 4. Section 77-2-9 is amended to read:

127 **77-2-9. Offenses ineligible for diversion.**

128 (1) Except as provided in Subsection (2), diversion may not be granted by a magistrate  
 129 for:

130 (a) a capital felony;

131 (b) a felony in the first degree;

132 (c) any case involving a sexual offense against a victim who is under the age of 14;

133 (d) any motor vehicle related offense involving alcohol or drugs;

134 (e) any case involving using a motor vehicle in the commission of a felony;

135 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended  
 136 license;

137 (g) any case involving operating a commercial motor vehicle in a negligent manner  
 138 causing the death of another including the offenses of:

139 (i) manslaughter under Section 76-5-205; or

140 (ii) negligent homicide under Section 76-5-206; or

141 (h) a crime of domestic violence as defined in Section 77-36-1.

142 (2) When a person [~~under the age of 16~~] is alleged to have committed any violation of  
 143 Title 76, Chapter 5, Part 4, Sexual Offenses, while under the age of 16, the court may enter a  
 144 diversion in the matter if the court enters on the record its findings that:

145 (a) the offenses could have been adjudicated in juvenile court but for the delayed  
 146 reporting or delayed filing of the information in district court, unless the offenses are before the  
 147 court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703;

148 [~~(a)~~] (b) the person did not use coercion or force;

149 [~~(b)~~] (c) there is no more than ~~16~~ → **two** ← ~~16~~ three years' difference between the  
 149a ages of the

150 participants; and

151 ~~(e)~~ (d) it would be in the best interest of the person to grant diversion.