

HB0123S01 compared with HB0123

~~{deleted text}~~ shows text that was in HB0123 but was deleted in HB0123S01.

Inserted text shows text that was not in HB0123 but was inserted into HB0123S01.

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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: _____

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:

- ▶ describes unlawful sexual activity between minors;
- ▶ sets parameters for when unlawful sexual activity occurs between minors and both are under 18 years of age;

~~{~~ → requires the filing of petitions in juvenile court;

- ~~}~~
- ▶ creates penalties; and
 - ▶ makes technical and conforming corrections.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{76-3-406}~~ 76-5-401, as last amended by Laws of Utah ~~{2011, Chapter 366~~
~~77-2-9~~, as last amended by Laws of Utah 2009, Chapter 146

ENACTS:

~~76-5-401.3~~, Utah Code Annotated 1953
~~{2016, Chapter 372~~

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

Section 1. Section ~~{76-3-406}~~ 76-5-401 is amended to read:

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

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

~~[(1)] (a) Section 76-5-202, aggravated murder;~~

~~[(2)] (b) Section 76-5-203, murder;~~

~~[(3)] (c) Section 76-5-301.1, child kidnaping;~~

~~[(4)] (d) Section 76-5-302, aggravated kidnaping;~~

~~[(5)] (e) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);~~

~~[(6)] (f) Section 76-5-402.1, rape of a child;~~

~~[(7)] (g) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2(1)(b), (1)(c), or (2);~~

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- ~~— [(8)] (h) Section 76-5-402.3, object rape of a child;~~
- ~~— [(9)] (i) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);~~
- ~~— [(10)] (j) Section 76-5-403.1, sodomy on a child;~~
- ~~— [(11)] (k) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);~~
- ~~— [(12)] (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;~~
- ~~— [(13)] (m) Section 76-5-405, aggravated sexual assault; or~~
- ~~— [(14)] (n) any attempt to commit a felony listed in Subsection [(6), (8), or (10)] (1)(f), (h), or (j);~~
- ~~— (2) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703, the provisions of this section do not apply if the sentencing court finds that the defendant was under the age of 18 at the time of the offense and could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.~~

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

Evidence of age raised by defendant.

(1) (a) For purposes of ~~[this section]~~ Subsection (2)(a), "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.

(b) For purposes of Subsection (2)(b), "minor" is a person who is 12 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) A person 18 years of age or older 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)] (i) has sexual intercourse with the minor;

[(b)] (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; or

[(c)] (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

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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.

(b) A person under 18 years of age 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:

(i) has sexual intercourse with a minor who is at least two years younger than the actor;

(ii) engages in any sexual act with a minor who is at least two years younger than the actor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(iii) causes the penetration, however slight, of the genitals or anal opening of a minor who is at least two years younger than the actor 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) Except under Subsection (3)(b), a violation of Subsection (2)(a) is a third degree felony.

(b) If 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, the offense is a class B misdemeanor. ~~[An offense under this Subsection (3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).]~~

~~Section 2. Section 76-5-401.3 is enacted to read:~~

~~**76-5-401.3. Unlawful sexual activity between minors.**~~

~~(1) This section applies exclusively to persons charged by petition in the juvenile court who are.]~~

~~(4) A violation of Subsection (2)(b) by a person under the age of 18 ~~at the time of the offense.~~~~

~~(2) Petitions alleging one or more violations of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1 where both parties are under the age of 18 at the time of the offense shall factually distinguish the perpetrator of the offense, including that:~~

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- ~~_____ (a) the perpetrator is at least two years older than the victim;~~
- ~~_____ (b) the perpetrator did not reasonably mistake the victim's age; and~~
- ~~_____ (c) the perpetrator used manipulation, coercion, or deceit such that the victim participated in what appeared to be mutually welcome sexual activity;~~
- ~~_____ (3) Conduct that does not meet the requirements of Subsection (2) shall be punishable as unlawful sexual activity between minors as is:~~
 - ~~(a) a class ~~{B}~~A misdemeanor if the minor is under 14 and there is ~~{less}~~more than ~~{three years'}~~four years difference in the ages of the parties;~~
 - ~~(b) a class ~~{A}~~B misdemeanor if the minor is under 14 and there is ~~{more than three years'}~~ difference in the ages of the parties but ~~{less than four {years'}~~ difference; or~~
 - ~~_____ (c) a third degree felony if there is more than four years' difference in the ages of the parties;~~
- ~~_____ (4) Subsection (3) does not apply:~~
 - ~~_____ (a) if one party is under 12 years of age and there is ~~{but}~~ more than two ~~{years'}~~years difference in the ages of the parties; ~~{~~~~
 - ~~_____ (b) if the act was committed with the intent to cause substantial emotional or bodily pain;~~
 - ~~_____ (c) if the victim ~~}~~ or~~
 - ~~(c) not punishable as a criminal or delinquent offense if the minor is over 14 years of age ~~{; or~~~~
 - ~~_____ (d) if the juvenile is before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703;~~
- ~~_____ (5) Subsection 76-5-406(9) does not apply to conduct petitioned under this section.~~
- ~~Section 3. Section 77-2-9 is amended to read:~~
- ~~77-2-9. Offenses ineligible for diversion:~~
 - ~~_____ (1) Except as provided in Subsection (2), diversion may not be granted by a magistrate for:~~
 - ~~_____ (a) a capital felony;~~
 - ~~_____ (b) a felony in the first degree;~~
 - ~~_____ (c) any case involving a sexual offense against a victim who is under the age of 14;~~
 - ~~_____ (d) any motor vehicle related offense involving alcohol or drugs;~~

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- ~~(e) any case involving using a motor vehicle in the commission of a felony;~~
- ~~(f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;~~
- ~~(g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:~~
- ~~(i) manslaughter under Section 76-5-205; or~~
- ~~(ii) negligent homicide under Section 76-5-206; or~~
- ~~(h) a crime of domestic violence as defined in Section 77-36-1.~~
- ~~(2) When a person [under the age of 16] is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, while under the age of 18, the court may enter a diversion in the matter if the court enters on the record its findings that:~~
- ~~(a) unless:~~
- (5) Offenses under Subsections (2)(b), (3)(b) and (4) are not subject to registration under Subsection 77-41-102(17)(a)(iii).
- (6) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703, the ~~{offenses could}~~ district court may enter any sentence or combination of sentences which would have been ~~{adjudicated}~~ available in juvenile court but for the delayed reporting or delayed filing of the information in district court ~~{;}~~.
- ~~{~~ ~~(a) (b) the person did not use coercion or force;~~
- ~~(b) (c) there is no more than [two] three years' difference between the ages of the participants; and~~
- ~~(c) (d) it would be in the best interest of the person to grant diversion.~~

Legislative Review Note

Office of Legislative Research and General Counsel