

HB0123S03 compared with HB0123S02

~~deleted text~~ shows text that was in HB0123S02 but was deleted in HB0123S03.

Inserted text shows text that was not in HB0123S02 but was inserted into HB0123S03.

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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:

- ▶ creates a new provision for ~~wrongful~~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:

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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](#)

ENACTS:

[76-5-401.3, Utah Code Annotated 1953](#)

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

[Section 1. Section 76-3-406 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:

[\(+\)](#)[\(a\)](#) Section 76-5-202, aggravated murder;

[\(-\)](#)[\(b\)](#) Section 76-5-203, murder;

[\(-\)](#)[\(c\)](#) Section 76-5-301.1, child kidnaping;

[\(-\)](#)[\(d\)](#) Section 76-5-302, aggravated kidnaping;

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

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

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

[\(-\)](#)[\(h\)](#) Section 76-5-402.3, object rape of a child;

[\(-\)](#)[\(i\)](#) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection

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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).

(2) 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, unless the offenses are before the court pursuant to Section 78a-6-701, 78a-6-702, or 78a-6-703.

Section ~~{1}~~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 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) 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) Except under Subsection (3)(b), a violation of Subsection (2) 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

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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}~~3. Section 76-5-401.3 is enacted to read:

76-5-401.3. ~~{Wrongful}~~ Unlawful adolescent sexual activity.

(1) As used in this section:

(a) "~~{adolescent}~~Adolescent" means a person in the transitional phase of human physical and psychological growth and development between childhood and adulthood who is 12 years of age or older, but under 18 years of age ~~{; and}~~.

(b) "~~{wrongful}~~Unlawful adolescent sexual activity" means ~~{;}~~ sexual activity between adolescents under circumstances not amounting to:

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

(ii) rape of a child, in violation of 76-5-402.1;

(iii) object rape, in violation of Section 76-5-402.2 ~~{;}~~;

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

(v) forcible sodomy, in violation of Section 76-5-403;

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

(vi) aggravated sexual assault, in violation of ~~{section}~~Section 76-5-405 ~~{;}~~;

(vii) sexual abuse of a child, in violation of Section 76-5-404 ~~{;}~~; or

(viii) incest, in violation of Section 76-7-102 ~~{; an adolescent who is under 18 years of age, but 12 years of age or older:~~

(i) has sexual intercourse with another adolescent who is under 18 years of age, but 12 years of age or older;

(ii) engages in any sexual act with another adolescent who is under 18 years of age, but 12 years of age or older, involving the genitals of one adolescent and the mouth or anus of the other adolescent, regardless of the sex of either participant; or

(iii) causes the penetration, however slight, of the genitals or anal opening of another adolescent who is under 18 years of age, but 12 years of age or older, 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 either participant}.

(2) ~~{Wrongful}~~Unlawful adolescent sexual activity is punishable as a:

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

(b) third degree felony if an adolescent who is ~~17~~16 years of age engages in ~~wrongful~~ unlawful adolescent sexual activity with an adolescent who is ~~13~~12 years of age;

(c) ~~third degree felony~~ class A misdemeanor if an adolescent who is 16 years of age engages in ~~wrongful~~ unlawful adolescent sexual activity with an adolescent who is ~~12~~13 years of age;

(d) class A misdemeanor if an adolescent who is ~~16~~14 or 15 years of age engages in ~~wrongful~~ unlawful adolescent sexual activity with an adolescent who is ~~13~~12 years of age;

(e) class ~~A~~B misdemeanor if an adolescent who is ~~15~~17 years of age engages in ~~wrongful~~ unlawful adolescent sexual activity with an adolescent who is ~~12~~14 years of age;

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

(g) class ~~B~~C misdemeanor if an adolescent who is ~~14~~12 or 13 years of age engages in ~~wrongful~~ unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age;
~~and~~

~~(3) Wrongful~~ h) class C misdemeanor if an adolescent who is 14 years of age engages in unlawful adolescent sexual activity ~~is not punishable as a criminal or delinquent offense if engaged in by:~~

~~(a) }with an adolescent who is 13 years of age~~ with another adolescent who is 12 or 13 years of age; or

~~(b) an adolescent who is 12 years of age with another adolescent who is 12 years of age.~~

~~(4) Wrongful adolescent sexual activity is not punishable as a criminal or delinquent offense if both adolescents are under 18 years of age, but 14 years of age or older.~~

~~(5);~~

(3) Offenses under this section are not eligible for nonjudicial adjustment under ~~(3)~~ Section 78A-6-602 or referral to youth court under Section 78A-6-1203.

(~~6~~4) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703, the district court may enter any sentence or combination of

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sentences which would have been available in juvenile court but for the delayed reporting or delayed filing of the information in district court.

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

Section 4. 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;

(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 16, the court may enter a diversion in the matter if the court enters on the record its findings that:

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

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

~~(b)~~ (c) there is no more than two years' difference between the ages of the participants; and

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