

## HB0222S02 compared with HB0222

~~text~~ shows text that was in HB0222 but was deleted in HB0222S02.

Inserted text shows text that was not in HB0222 but was inserted into HB0222S02.

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Representative Stephen G. Handy proposes the following substitute bill:

### CRIMINAL OFFENSES MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to criminal offenses including registration on the Sex and Kidnap Offender Registry.

##### Highlighted Provisions:

This bill:

- ▶ authorizes a court to impose a lesser term for certain offenses under certain circumstances;
- ▶ prohibits lifetime registration for persons who are under 21 years of age under certain circumstances; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**76-5-402.1**, as last amended by Laws of Utah 2013, Chapter 81

**76-5-402.3**, as last amended by Laws of Utah 2013, Chapter 81

**76-5-403.1**, as last amended by Laws of Utah 2013, Chapter 81

**77-41-105**, as last amended by Laws of Utah 2016, Chapter 185

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

Section 1. Section **76-5-402.1** is amended to read:

**76-5-402.1. Rape of a child.**

(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.

(2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in ~~[Subsection]~~ Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) ~~If, when~~ (a) When imposing a sentence under Subsection (2)(a) ~~f, a~~ and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

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(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(~~fa~~i) 15 years and which may be for life;

(~~fb~~ii) 10 years and which may be for life; or

(~~fc~~iii) six years and which may be for life.

[~~(4)~~] (5) ~~{}~~Imprisonment~~{}~~ Subject to Subsection (4), imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 2. Section **76-5-402.3** is amended to read:

### **76-5-402.3. Object rape of a child -- Penalty.**

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in [~~Subsection~~] Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) ~~{ If, when }~~ (a) When imposing a sentence under Subsection (2)(a) ~~{, a}~~ and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the

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victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

~~(fa)~~ (i) 15 years and which may be for life;

~~(fb)~~ ii 10 years and which may be for life; or

~~(fc)~~ iii six years and which may be for life.

~~(4)~~ (5) ~~{}~~ Imprisonment ~~{}~~ Subject to Subsection (4), imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 3. Section **76-5-403.1** is amended to read:

### **76-5-403.1. Sodomy on a child.**

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in ~~[Subsection]~~ Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

~~(4) If, when~~ (a) When imposing a sentence under Subsection (2)(a) ~~and~~ (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

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(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(~~f~~a*i*) 15 years and which may be for life;

(~~f~~b*ii*) 10 years and which may be for life; or

(~~f~~c*iii*) six years and which may be for life.

~~[(4)] (5) ~~{}~~Imprisonment~~{}~~ Subject to Subsection (4), imprisonment under this section is mandatory in accordance with Section 76-3-406.~~

Section 4. Section **77-41-105** is amended to read:

### **77-41-105. Registration of offenders -- Offender responsibilities.**

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(9) or (17). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (17) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106, an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(b) Except as provided in Subsections (4) and (5), and Section 77-41-106, an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency

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requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (3)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any of the offenses listed in Section 77-41-106 shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(ii) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime, unless a petition is granted under Section 77-41-112.

(iii) If the offense does not involve force or coercion, lifetime registration under this Subsection (3)(c) does not apply to an offender who commits the offense when the offender is under 21 years of age. For an offense listed in Section 77-41-106, an offender who commits the offense when the offender is under 21 years of age is required to register in accordance with this chapter for 10 years after termination of sentence or custody of the division, unless a petition is granted under Section 77-41-112.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and

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required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Sex Offender and Kidnap Offender Registration website.

(6) An offender who is required to register under Subsection (3) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

(7) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years subsequent to the registration period otherwise required under this chapter.

(8) An offender shall provide the department or the registering entity with the following information:

- (a) all names and aliases by which the offender is or has been known;
- (b) the addresses of the offender's primary and secondary residences;
- (c) a physical description, including the offender's date of birth, height, weight, eye and hair color;
- (d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;
- (e) a current photograph of the offender;
- (f) a set of fingerprints, if one has not already been provided;
- (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;
- (h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;
- (i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;
- (j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;
- (k) a copy of the offender's passport, if a passport has been issued to the offender;

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(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name, the telephone number, and the address of any place where the offender is employed or will be employed;

(p) the name, the telephone number, and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's social security number.

(9) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection [~~77-41-105~~] (3)(c).

(10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**