

Representative Justin L. Fawson proposes the following substitute bill:

SEXUAL OFFENSES AND STATUTORY NONCONSENT

AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends and enacts provisions related to sexual offenses without the consent of the victim when the actor is infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus.

Highlighted Provisions:

This bill:

- ▶ enacts provisions to enhance the classification of a sexual offense if the actor was infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus;
- ▶ amends provisions related to sexual offenses without the consent of the victim; and
- ▶ enacts provisions criminalizing sexual conduct by a person infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus without informing the other person of the infection.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **76-5-406**, as last amended by Laws of Utah 2015, Chapter 57

29 ENACTS:

30 **76-3-203.12**, Utah Code Annotated 1953

31 **76-5-406.1**, Utah Code Annotated 1953



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

34 Section 1. Section **76-3-203.12** is enacted to read:

35 **76-3-203.12. Enhanced penalty for sexual offenses committed by a person with**
36 **Human Immunodeficiency Virus or Acquired Immunodeficiency Virus.**

37 (1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual
38 Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was
39 infected with Human Immunodeficiency Virus or Acquired Immunodeficiency Virus and the
40 person knew of the infection.

41 (2) (a) Except as provided in Subsection (2)(b), the enhancement of a penalty described
42 in Subsection (1) shall be an enhancement of one classification higher than the root offense for
43 which the person was convicted.

44 (b) A felony of the first degree is not enhanced under this section.

45 Section 2. Section **76-5-406** is amended to read:

46 **76-5-406. Sexual offenses against the victim without consent of victim --**
47 **Circumstances.**

48 An act of sexual intercourse~~[, rape, attempted rape, rape of a child, attempted rape of a~~
49 ~~child, object rape, attempted object rape, object rape of a child, attempted object rape of a~~
50 ~~child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a~~
51 ~~child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,~~
52 ~~sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,~~
53 ~~attempted aggravated sexual abuse of a child, or simple sexual abuse] is without consent of the~~
54 victim under any of the following circumstances:

- 55 (1) the victim expresses lack of consent through words or conduct;
- 56 (2) the actor overcomes the victim through the actual application of physical force or

57 violence;

58 (3) the actor is able to overcome the victim through concealment or by the element of
59 surprise;

60 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
61 immediate future against the victim or any other person, and the victim perceives at the time
62 that the actor has the ability to execute this threat; or

63 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
64 against the victim or any other person, and the victim believes at the time that the actor has the
65 ability to execute this threat;

66 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
67 kidnapping, or extortion;

68 (5) the actor knows the victim is unconscious, unaware that the act is occurring, or
69 physically unable to resist;

70 (6) the actor knows that as a result of mental disease or defect, or for any other reason
71 the victim is at the time of the act incapable either of appraising the nature of the act or of
72 resisting it;

73 (7) the actor knows that the victim submits or participates because the victim
74 erroneously believes that the actor is the victim's spouse;

75 (8) the actor intentionally impaired the power of the victim to appraise or control his or
76 her conduct by administering any substance without the victim's knowledge;

77 (9) the victim is younger than 14 years of age;

78 (10) the victim is younger than 18 years of age and at the time of the offense the actor
79 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
80 special trust in relation to the victim as defined in Section [76-5-404.1](#);

81 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
82 actor is more than three years older than the victim and entices or coerces the victim to submit
83 or participate, under circumstances not amounting to the force or threat required under
84 Subsection (2) or (4); or

85 (12) the actor is a health professional or religious counselor, as those terms are defined
86 in this Subsection (12), the act is committed under the guise of providing professional
87 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed

88 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
89 to the extent that resistance by the victim could not reasonably be expected to have been
90 manifested; for purposes of this Subsection (12):

91 (a) "health professional" means an individual who is licensed or who holds himself or
92 herself out to be licensed, or who otherwise provides professional physical or mental health
93 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
94 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
95 social service worker, clinical social worker, certified social worker, marriage and family
96 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
97 specialist, or substance abuse counselor; and

98 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
99 member of the clergy.

100 Section 3. Section **76-5-406.1** is enacted to read:

101 **76-5-406.1. Nonconsensual sexual conduct by person who is Human**
102 **Immunodeficiency Virus positive.**

103 (1) A person commits nonconsensual sexual conduct when the person engages in
104 sexual intercourse or any sexual act involving the genitals of one person and the mouth or anus
105 of another person, regardless of the sex of either participant, and:

106 (a) the actor knows that the actor is infected with the Human Immunodeficiency Virus
107 or Acquired Immunodeficiency Virus; and

108 (b) the actor engages in the sexual conduct knowing that the victim is unaware of the
109 actor's infected status.

110 (2) Nonconsensual sexual conduct is a class A misdemeanor.