

HB0369S01 compared with HB0369

~~{deleted text}~~ shows text that was in HB0369 but was deleted in HB0369S01.

Inserted text shows text that was not in HB0369 but was inserted into HB0369S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

LONG TITLE

General Description:

This bill amends and enacts provisions related to sexual offenses without the consent of the victim ~~{to include sexual contact without disclosing infection of}~~ when the actor is infected with Human Immunodeficiency Virus ~~{(HIV)}~~ or Acquired Immunodeficiency ~~{Syndrome (AIDS)}~~ Virus.

Highlighted Provisions:

This bill:

- ▶ ~~{amends statutory nonconsent to sexual activity to include sexual contact in situations where:~~

• ~~the actor knows that the actor is}~~ enacts provisions to enhance the classification

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- ~~of a sexual offense if the actor was~~ infected with ~~{HIV or AIDS; and~~
 - ~~the victim is unaware}~~ 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~~;~~
- ▶ ~~expands the definitions of rape and other criminal sexual offenses to include nonconsensual sexual contact by an actor infected with HIV or AIDS;~~
- ▶ ~~includes conduct in the definition of "harmful sexual conduct"; and~~
- ▶ ~~makes technical changes}~~.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{62A-15-602, as last amended by Laws of Utah 2012, Chapter 248~~

— ~~}76-5-406, as last amended by Laws of Utah 2015, Chapter 57~~

ENACTS:

76-3-203.12, Utah Code Annotated 1953

76-5-406.1, Utah Code Annotated 1953

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

Section 1. Section ~~{62A-15-602 is amended to read:~~

— ~~62A-15-602. Definitions.~~

— ~~As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:~~

— ~~(1) "Adult" means a person 18 years of age or older.~~

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~~—— (2) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.~~

~~—— (3) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.~~

~~—— (4) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.~~

~~—— (5) "Harmful sexual conduct" means any of the following conduct upon an individual without the individual's consent, or upon an individual who cannot legally consent to the conduct including under the circumstances;~~ 76-3-203.12 is enacted to read:

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

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

(2) (a) Except as provided in Subsection (2)(b), the enhancement of a penalty described in {Subsections 76-5-406(1) through [(12)] (13):

~~—— (a) sexual intercourse;~~

~~—— (b) penetration, however slight, of the genital or anal opening of the individual;~~

~~—— (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or~~

~~—— (d) any sexual act causing substantial emotional injury or bodily pain.~~

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~~—— (6) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.~~

~~—— (7) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.~~

~~—— (8) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.~~

~~—— (9) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.~~

~~—— (10) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.~~

~~—— (11) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.~~

~~—— (12) "Patient" means an individual under commitment to the custody or to the treatment services of a local mental health authority.~~

~~—— (13) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.~~

~~—— (14) "Substantial danger" means the person, by his or her behavior, due to mental illness:~~

~~—— (a) is at serious risk to:~~

~~—— (i) commit suicide;~~

~~—— (ii) inflict serious bodily injury on himself or herself; or~~

~~—— (iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or~~

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~~_____ (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in harmful sexual conduct.~~

~~_____ (15) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.~~

Subsection (1) shall be an enhancement of one classification higher than the root offense for which the person was convicted.

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

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

76-5-406. Sexual offenses against the victim without consent of victim --

Circumstances.

An act of sexual intercourse~~], rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse]~~ is without consent of the victim under any of the following circumstances:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;
- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
- (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,

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kidnapping, or extortion;

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

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

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

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

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

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

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

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

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

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(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy ~~{[.]~~; or

~~(13)~~;

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

76-5-406.1. Nonconsensual sexual conduct by person who is Human

Immunodeficiency Virus positive.

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

(a) the actor knows that the actor is infected with the Human Immunodeficiency Virus or Acquired Immunodeficiency ~~{Syndrome}~~ Virus; and

(b) the actor engages in the sexual ~~{act}~~ conduct knowing that the victim is unaware of the ~~{infection}~~.

Legislative Review Note

Office of Legislative Research and General Counsel ~~actor's infected status.~~

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