

1 **COORDINATED PENALTIES FOR SEXUAL ABUSE**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill creates an enhancement for penalties related to sexual abuse of students and
10 makes a technical correction to the enticing a minor statute.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ creates a one level enhancement for sexual abuse when the actor is a teacher,
14 employee, or volunteer in a school and the victim is a student; and
- 15 ▶ makes a technical correction to the enticing a minor statute.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **76-4-401**, as last amended by Laws of Utah 2013, Chapters 175 and 278

23 **76-5-401.1**, as last amended by Laws of Utah 2016, Chapter 372

24 **76-5-401.2**, as last amended by Laws of Utah 2014, Chapter 135

25 ENACTS:

26 **76-3-203.13**, Utah Code Annotated 1953

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

29 Section 1. Section **76-3-203.13** is enacted to read:

30 **76-3-203.13. Enhanced penalty for unlawful sexual contact with a student.**

31 (1) A person convicted of a sexual offense described in Section 76-5-401.1 or
32 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of the
33 sexual offense, the actor:

34 (a) was 18 years of age or older;

35 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as
36 that position is defined in Subsection 76-5-404.1(1)(c)(xix); and

37 (c) committed the offense against an individual who at the time of the offense was
38 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

39 (2) The enhancement of a penalty described in Subsection (1) shall be an enhancement
40 of one classification higher than the offense of which the person was convicted.

41 Section 2. Section **76-4-401** is amended to read:

42 **76-4-401. Enticing a minor -- Elements -- Penalties.**

43 (1) As used in this section:

44 (a) "Minor" means a person who is under the age of 18.

45 (b) "Text messaging" means a communication in the form of electronic text or one or
46 more electronic images sent by the actor from a telephone, computer, or other electronic
47 communication device to another person's telephone, computer, or other electronic
48 communication device by addressing the communication to the person's telephone number or
49 other electronic communication access code or number.

50 (2) (a) A person commits enticement of a minor when the person knowingly uses the
51 Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit,
52 seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to
53 engage in any sexual activity which is a violation of state criminal law.

54 (b) A person commits enticement of a minor when the person knowingly uses the
55 Internet or text messaging to:

56 (i) initiate contact with a minor or a person the actor believes to be a minor; and

57 (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written

58 means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the
59 minor or a person the actor believes to be the minor to engage in any sexual activity which is a
60 violation of state criminal law.

61 (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an
62 attempt to commit this offense, that a law enforcement officer or an undercover operative who
63 is [~~working with~~] employed by a law enforcement agency was involved in the detection or
64 investigation of the offense.

65 (4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

66 (a) enticement to engage in sexual activity which would be a first degree felony for the
67 actor is a:

68 (i) second degree felony upon the first conviction for violation of this Subsection
69 (4)(a); and

70 (ii) first degree felony punishable by imprisonment for an indeterminate term of not
71 fewer than three years and which may be for life, upon a second or any subsequent conviction
72 for a violation of this Subsection (4)(a);

73 (b) enticement to engage in sexual activity which would be a second degree felony for
74 the actor is a third degree felony;

75 (c) enticement to engage in sexual activity which would be a third degree felony for the
76 actor is a class A misdemeanor;

77 (d) enticement to engage in sexual activity which would be a class A misdemeanor for
78 the actor is a class B misdemeanor; and

79 (e) enticement to engage in sexual activity which would be a class B misdemeanor for
80 the actor is a class C misdemeanor.

81 (5) (a) When a person who commits a felony violation of this section has been
82 previously convicted of an offense under Subsection (5)(b), the court may not in any way
83 shorten the prison sentence, and the court may not:

84 (i) grant probation;

85 (ii) suspend the execution or imposition of the sentence;

86 (iii) enter a judgment for a lower category of offense; or
87 (iv) order hospitalization.

88 (b) The sections referred to in Subsection (5)(a) are:

- 89 (i) Section 76-4-401, enticing a minor;
- 90 (ii) Section 76-5-301.1, child kidnapping;
- 91 (iii) Section 76-5-402, rape;
- 92 (iv) Section 76-5-402.1, rape of a child;
- 93 (v) Section 76-5-402.2, object rape;
- 94 (vi) Section 76-5-402.3, object rape of a child;
- 95 (vii) Subsection 76-5-403(2), forcible sodomy;
- 96 (viii) Section 76-5-403.1, sodomy on a child;
- 97 (ix) Section 76-5-404, forcible sexual abuse;
- 98 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
- 99 (xi) Section 76-5-405, aggravated sexual assault;
- 100 (xii) any offense in any other state or federal jurisdiction which constitutes or would
- 101 constitute a crime in Subsections (5)(b)(i) through (xi); or
- 102 (xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in
- 103 Subsections (5)(b)(i) through (xii).

104 Section 3. Section 76-5-401.1 is amended to read:

105 **76-5-401.1. Sexual abuse of a minor.**

106 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but
107 younger than 16 years of age, at the time the sexual activity described in this section occurred.

108 (2) A person commits sexual abuse of a minor if the person is four years or more older
109 than the minor [~~or holds a relationship of special trust as an adult teacher, employee, or~~
110 ~~volunteer, as described in Subsection 76-5-404.1(1)(c)(xix)] and, under circumstances not
111 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
112 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in
113 violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section~~

114 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks,
115 or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise
116 takes indecent liberties with the minor, or causes a minor to take indecent liberties with the
117 actor or another person, with the intent to cause substantial emotional or bodily pain to any
118 person or with the intent to arouse or gratify the sexual desire of any person regardless of the
119 sex of any participant.

120 (3) ~~[(a) Except under Subsection (3)(b), a]~~ A violation of this section is a class A
121 misdemeanor and is not subject to registration under Subsection 77-41-102(17)(a)(iv) on a first
122 offense if the offender was younger than 21 years of age at the time of the offense.

123 ~~[(b) A violation of this section is a third degree felony if the actor at the time of the~~
124 ~~commission of the offense:]~~

125 ~~[(i) is 18 years of age or older;]~~

126 ~~[(ii) held a position of special trust as a teacher or a volunteer at a school, as that~~
127 ~~position is defined in Subsection 76-5-404.1(1)(c)(xix); and]~~

128 ~~[(iii) committed the offense against an individual who at the time of the offense was~~
129 ~~enrolled as a student at the school where the actor was employed or was acting as a volunteer.]~~

130 Section 4. Section 76-5-401.2 is amended to read:

131 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

132 (1) As used in this section, "minor" means a person who is 16 years of age or older, but
133 younger than 18 years of age, at the time the sexual conduct described in Subsection (2)
134 occurred.

135 (2) (a) A person commits unlawful sexual conduct with a minor if, under
136 circumstances not amounting to an offense listed under Subsection (3), a person who is:

137 (i) seven or more years older but less than 10 years older than the minor at the time of
138 the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or
139 reasonably should have known the age of the minor; or

140 (ii) 10 or more years older than the minor at the time of the sexual conduct and engages
141 in any conduct listed in Subsection (2)(b)~~;~~or.

142 ~~[(iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as~~
143 ~~described in Subsection 76-5-404.1(1)(c)(xix).]~~

144 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:

145 (i) has sexual intercourse with the minor;

146 (ii) engages in any sexual act with the minor involving the genitals of one person and
147 the mouth or anus of another person, regardless of the sex of either participant;

148 (iii) causes the penetration, however slight, of the genital or anal opening of the minor
149 by any foreign object, substance, instrument, or device, including a part of the human body,
150 with the intent to cause substantial emotional or bodily pain to any person or with the intent to
151 arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or

152 (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the
153 breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a
154 minor to take indecent liberties with the actor or another person, with the intent to cause
155 substantial emotional or bodily pain to any person or with the intent to arouse or gratify the
156 sexual desire of any person regardless of the sex of any participant.

157 (3) The offenses referred to in Subsection (2) are:

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

159 (ii) object rape, in violation of Section 76-5-402.2;

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

161 (iv) forcible sexual abuse, in violation of Section 76-5-404; or

162 (v) aggravated sexual assault, in violation of Section 76-5-405; or

163 (b) an attempt to commit any offense under Subsection (3)(a).

164 (4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

165 (5) ~~[(a)]~~ A violation of Subsection (2)(b)(iv) is a class A misdemeanor~~[-except under~~
166 ~~Subsection (5)(b)].~~

167 ~~[(b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time~~
168 ~~of the commission of the offense:]~~

169 ~~[(i) is 18 years of age or older;]~~

170 ~~[(ii) held a position of special trust as a teacher or a volunteer at a school, as that~~
171 ~~position is defined in Subsection 76-5-404.1(1)(c)(xix); and]~~
172 ~~[(iii) committed the offense against an individual who at the time of the offense was~~
173 ~~enrolled as a student at the school where the actor was employed or was acting as a volunteer.]~~