

COORDINATED PENALTIES FOR SEXUAL ABUSE

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill creates an enhancement for penalties related to sexual abuse of students.

Highlighted Provisions:

This bill:

► creates a one level enhancement for sexual abuse when the actor is a teacher, employee, or volunteer in a school and the victim is a student.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

76-3-203.13, Utah Code Annotated 1953

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

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

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



28 (1) A person convicted of a sexual offense described in Section 76-5-401.1 or
29 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of the
30 sexual offense, the actor:

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

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

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

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

38 Section 2. Section 76-5-401.1 is amended to read:

39 **76-5-401.1. Sexual abuse of a minor.**

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

42 (2) A person commits sexual abuse of a minor if the person is four years or more older
43 than the minor [~~or holds a relationship of special trust as an adult teacher, employee, or~~
44 ~~volunteer, as described in Subsection 76-5-404.1(1)(c)(xix)] and, under circumstances not
45 amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section
46 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in
47 violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section
48 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks,
49 or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise
50 takes indecent liberties with the minor, or causes a minor to take indecent liberties with the
51 actor or another person, with the intent to cause substantial emotional or bodily pain to any
52 person or with the intent to arouse or gratify the sexual desire of any person regardless of the
53 sex of any participant.~~

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

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

59 ~~[(i) is 18 years of age or older;]~~
60 ~~[(ii) held a position of special trust as a teacher or a volunteer at a school, as that~~
61 ~~position is defined in Subsection 76-5-404.1(1)(c)(xix); and]~~
62 ~~[(iii) committed the offense against an individual who at the time of the offense was~~
63 ~~enrolled as a student at the school where the actor was employed or was acting as a volunteer.]~~

64 Section 3. Section **76-5-401.2** is amended to read:

65 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

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

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

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

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

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

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

79 (i) has sexual intercourse with the minor;

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

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

86 (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the
87 breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a
88 minor to take indecent liberties with the actor or another person, with the intent to cause
89 substantial emotional or bodily pain to any person or with the intent to arouse or gratify the

90 sexual desire of any person regardless of the sex of any participant.

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel