

## HB0439S01 compared with HB0439

~~deleted text~~ shows text that was in HB0439 but was deleted in HB0439S01.

Inserted text shows text that was not in HB0439 but was inserted into HB0439S01.

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Representative LaVar Christensen proposes the following substitute bill:

### COORDINATED PENALTIES FOR SEXUAL ABUSE

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

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

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#### LONG TITLE

##### General Description:

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

##### 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 ~~and~~; and
- ▶ makes a technical correction to the enticing a minor statute.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

None

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### Utah Code Sections Affected:

#### AMENDS:

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

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

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*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.**

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

(a) was 18 years of age or older;

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

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

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

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

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

(1) As used in this section:

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

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

(2) (a) A person commits enticement of a minor when the person knowingly uses the

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Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.

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

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

(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

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

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

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

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

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

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

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

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

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

(5) (a) When a person who commits a felony violation of this section has been

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previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

- (i) grant probation;
- (ii) suspend the execution or imposition of the sentence;
- (iii) enter a judgment for a lower category of offense; or
- (iv) order hospitalization.

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

- (i) Section 76-4-401, enticing a minor;
- (ii) Section 76-5-301.1, child kidnapping;
- (iii) Section 76-5-402, rape;
- (iv) Section 76-5-402.1, rape of a child;
- (v) Section 76-5-402.2, object rape;
- (vi) Section 76-5-402.3, object rape of a child;
- (vii) Subsection 76-5-403(2), forcible sodomy;
- (viii) Section 76-5-403.1, sodomy on a child;
- (ix) Section 76-5-404, forcible sexual abuse;
- (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
- (xi) Section 76-5-405, aggravated sexual assault;
- (xii) any offense in any other state or federal jurisdiction which constitutes or would

constitute a crime in Subsections (5)(b)(i) through (xi); or

(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through (xii).

Section ~~2~~3. Section **76-5-401.1** is amended to read:

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

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

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

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violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

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

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

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

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

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

Section ~~3}4~~4. Section **76-5-401.2** is amended to read:

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

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

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

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

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

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

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

(i) has sexual intercourse with the minor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**

**Office of Legislative Research and General Counsel**