

**Representative Ken Ivory** proposes the following substitute bill:

**SEX OFFENSE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

This bill adds to the definition of position of special trust.

**Highlighted Provisions:**

This bill:

- ▶ expands the definition of "position of special trust" to a professor, instructor, or teaching assistant at an institution of higher education; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-404.1**, as last amended by Laws of Utah 2018, Chapter 192

**76-5-406**, as last amended by Laws of Utah 2018, Chapter 176

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

Section 1. Section **76-5-404.1** is amended to read:



- 26           **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**  
27           (1) As used in this section:  
28           (a) "Adult" means an individual 18 years of age or older.  
29           (b) "Child" means an individual under the age of 14.  
30           (c) "Position of special trust" means:  
31           (i) an adoptive parent;  
32           (ii) an athletic manager who is an adult;  
33           (iii) an aunt;  
34           (iv) a babysitter;  
35           (v) a coach;  
36           (vi) a cohabitant of a parent if the cohabitant is an adult;  
37           (vii) a counselor;  
38           (viii) a doctor or physician;  
39           (ix) an employer;  
40           (x) a foster parent;  
41           (xi) a grandparent;  
42           (xii) a legal guardian;  
43           (xiii) a natural parent;  
44           (xiv) a recreational leader who is an adult;  
45           (xv) a religious leader;  
46           (xvi) a sibling or a stepsibling who is an adult;  
47           (xvii) a scout leader who is an adult;  
48           (xviii) a stepparent;  
49           (xix) a teacher or any other individual employed by or volunteering at a public or  
50 private elementary school or secondary school, and who is 18 years of age or older;  
51           (xx) an instructor, professor, or teaching assistant at a public or private institution of  
52 higher education;  
53           ~~[(xx)]~~ (xxi) an uncle;  
54           ~~[(xxi)]~~ (xxii) a youth leader who is an adult; or  
55           ~~[(xxii)]~~ (xxiii) any individual in a position of authority, other than those individuals  
56 listed in Subsections (1)(c)(i) through ~~[(xxi)]~~ (xxiii), which enables the individual to exercise

57 undue influence over the child.

58 (2) An individual commits sexual abuse of a child if, under circumstances not  
59 amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit  
60 any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child,  
61 the breast of a female child, or otherwise takes indecent liberties with a child, with intent to  
62 cause substantial emotional or bodily pain to any individual or with the intent to arouse or  
63 gratify the sexual desire of any individual regardless of the sex of any participant.

64 (3) Sexual abuse of a child is a second degree felony.

65 (4) An individual commits aggravated sexual abuse of a child when in conjunction  
66 with the offense described in Subsection (2) any of the following circumstances have been  
67 charged and admitted or found true in the action for the offense:

68 (a) the offense was committed by the use of a dangerous weapon as defined in Section  
69 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or  
70 was committed during the course of a kidnapping;

71 (b) the accused caused bodily injury or severe psychological injury to the victim during  
72 or as a result of the offense;

73 (c) the accused was a stranger to the victim or made friends with the victim for the  
74 purpose of committing the offense;

75 (d) the accused used, showed, or displayed pornography or caused the victim to be  
76 photographed in a lewd condition during the course of the offense;

77 (e) the accused, prior to sentencing for this offense, was previously convicted of any  
78 sexual offense;

79 (f) the accused committed the same or similar sexual act upon two or more victims at  
80 the same time or during the same course of conduct;

81 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if  
82 committed in Utah would constitute an offense described in this chapter, and were committed  
83 at the same time, or during the same course of conduct, or before or after the instant offense;

84 (h) the offense was committed by an individual who occupied a position of special  
85 trust in relation to the victim;

86 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or  
87 sexual acts by the victim with any other individual, or sexual performance by the victim before

88 any other individual, human trafficking, or human smuggling; or

89 (j) the accused caused the penetration, however slight, of the genital or anal opening of  
90 the child by any part or parts of the human body other than the genitals or mouth.

91 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of  
92 imprisonment of:

93 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and  
94 which may be for life;

95 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact  
96 finds that during the course of the commission of the aggravated sexual abuse of a child the  
97 defendant caused serious bodily injury to another; or

98 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
99 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous  
100 sexual offense.

101 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a  
102 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and  
103 states the reasons for this finding on the record, the court may impose a term of imprisonment  
104 of not less than:

105 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

106 (b) for purposes of Subsection (5)(a) or (b):

107 (i) 10 years and which may be for life; or

108 (ii) six years and which may be for life.

109 (7) The provisions of Subsection (6) do not apply when an individual is sentenced  
110 under Subsection (5)(c).

111 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18  
112 years of age at the time of the offense.

113 (9) Imprisonment under this section is mandatory in accordance with Section [76-3-406](#).

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

115 **76-5-406. Sexual offenses against the victim without consent of victim --**

116 **Circumstances.**

117 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a  
118 child, object rape, attempted object rape, object rape of a child, attempted object rape of a

119 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a  
120 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,  
121 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,  
122 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the  
123 victim under any of the following circumstances:

124 (1) the victim expresses lack of consent through words or conduct;

125 (2) the actor overcomes the victim through the actual application of physical force or  
126 violence;

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

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

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

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

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

139 (6) the actor knows or reasonably should know that the victim has a mental disease or  
140 defect, which renders the victim unable to:

141 (a) appraise the nature of the act;

142 (b) resist the act;

143 (c) understand the possible consequences to the victim's health or safety; or

144 (d) appraise the nature of the relationship between the actor and the victim.

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

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

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

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

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

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

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

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