

## HB0027S01 compared with HB0027

~~{deleted text}~~ shows text that was in HB0027 but was deleted in HB0027S01.

inserted text shows text that was not in HB0027 but was inserted into HB0027S01.

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Representative Matthew H. Gwynn proposes the following substitute bill:

### CRIMINAL CODE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

Senate Sponsor: Keith Grover

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#### LONG TITLE

~~{Committee Note:~~

~~——— The Law Enforcement and Criminal Justice Interim Committee recommended this bill.~~

~~——— Legislative Vote: 11 voting for 0 voting against 7 absent~~

~~{General Description:~~

This bill makes changes to criminal offenses in Title 76, Utah Criminal Code.

#### Highlighted Provisions:

This bill:

- ▶ amends the penalty for attempted murder;
- ▶ amends the crime of interference with a public servant;
- ▶ makes it a crime for an individual occupying a position of special trust in a high school to engage in certain sexual conduct with an adult high school student;
- ▶ makes it a crime for an individual to remove the clothing of another individual

## HB0027S01 compared with HB0027

without the individual's consent in certain circumstances;

- ▶ repeals Title 76, Chapter 8, Part 8, Sabotage Prevention; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

#### AMENDS:

**76-4-102**, as last amended by Laws of Utah 2013, Chapter 93

**76-5-203**, as last amended by Laws of Utah 2022, Chapter 181

**76-8-301**, as last amended by Laws of Utah 2020, Chapter 165

#### ENACTS:

**76-5-417**, Utah Code Annotated 1953

**76-9-702.9**, Utah Code Annotated 1953

#### REPEALS:

**76-8-801**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-802**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-803**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-804**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-805**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-806**, as last amended by Laws of Utah 1997, Chapter 296

**76-8-807**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-808**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-809**, as last amended by Laws of Utah 2023, Chapter 435

**76-8-810**, as enacted by Laws of Utah 1973, Chapter 196

**76-8-811**, as last amended by Laws of Utah 1995, Chapter 20

### Utah Code Sections Affected by Coordination Clause:

**76-8-301**, as last amended by Laws of Utah 2020, Chapter 165

**76-8-301.2**, Utah Code Annotated 1953

## HB0027S01 compared with HB0027

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

Section 1. Section **76-4-102** is amended to read:

### **76-4-102. Attempt -- Classification of offenses.**

(1) [~~Criminal attempt~~] A violation of Section 76-4-101 where the actor attempts to commit:

(a) (i) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(ii) except as provided in Subsection (2), [~~an attempt to commit~~] aggravated murder[;] under Section 76-5-202, which results in serious bodily injury, is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life;

(b) except as provided in Subsection (1)(c) [~~or~~], (d), or (e), a first degree felony is a second degree felony;

(c) murder under Subsection 76-5-203(2)(a) is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than five years and which may be for life;

[(e)] (d) [any of] one of the the following offenses is a first degree felony that is punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

[(i) murder, Subsection 76-5-203(2)(a);]

[(ii)] (i) child kidnapping[;] under Section 76-5-301.1; or

[(iii)] (ii) except as provided in Subsection [(1)(d), any of the felonies] (1)(e), a felony described in Title 76, Chapter 5, Part 4, Sexual Offenses, that [are first degree felonies] is a first degree felony;

[(d)] (e) except as provided in Subsection (3), [any] one of the following offenses is a first degree felony[;] that is punishable by [a term of] imprisonment for an indeterminate term of not [less] fewer than 15 years and which may be for life:

(i) rape of a child[;] under Section 76-5-402.1;

(ii) object rape of a child[;] under Section 76-5-402.3; or

(iii) sodomy on a child[;] under Section 76-5-403.1;

[(e)] (f) a second degree felony is a third degree felony;

[(f)] (g) a third degree felony is a class A misdemeanor;

[(g)] (h) a class A misdemeanor is a class B misdemeanor;

## **HB0027S01 compared with HB0027**

~~[(h)]~~ (i) a class B misdemeanor is a class C misdemeanor; and

~~[(i)]~~ (j) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life; or
- (b) six years and which may be for life.

(3) If, when imposing a sentence under Subsection ~~[(1)(d)]~~, (1)(e), a court finds that a lesser term than the term described in Subsection ~~[(1)(d)]~~ (1)(e) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) 10 years and which may be for life;
- (b) six years and which may be for life; or
- (c) three years and which may be for life.

Section 2. Section **76-5-203** is amended to read:

**76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation --**

### **Separate offenses.**

(1) (a) As used in this section, "predicate offense" means:

- (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused individual is younger than 18 years old;
- (iii) kidnapping under Section 76-5-301;
- (iv) child kidnapping under Section 76-5-301.1;
- (v) aggravated kidnapping under Section 76-5-302;
- (vi) rape under Section 76-5-402;
- (vii) rape of a child under Section 76-5-402.1;
- (viii) object rape under Section 76-5-402.2;
- (ix) object rape of a child under Section 76-5-402.3;
- (x) forcible sodomy under Section 76-5-403;

## **HB0027S01 compared with HB0027**

(xi) sodomy upon a child under Section 76-5-403.1;  
(xii) forcible sexual abuse under Section 76-5-404;  
(xiii) sexual abuse of a child under Section 76-5-404.1;  
(xiv) aggravated sexual abuse of a child under Section 76-5-404.3;  
(xv) aggravated sexual assault under Section 76-5-405;  
(xvi) arson under Section 76-6-102;  
(xvii) aggravated arson under Section 76-6-103;  
(xviii) burglary under Section 76-6-202;  
(xix) aggravated burglary under Section 76-6-203;  
(xx) robbery under Section 76-6-301;  
(xxi) aggravated robbery under Section 76-6-302;  
(xxii) escape or aggravated escape under Section 76-8-309; or  
(xxiii) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits murder if:

(a) the actor intentionally or knowingly causes the death of another individual;

(b) intending to cause serious bodily injury to another individual, the actor commits an act clearly dangerous to human life that causes the death of the other individual;

(c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct that creates a grave risk of death to another individual and thereby causes the death of the other individual;

(d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;

(ii) an individual other than a party described in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and

(iii) the actor acted with the intent required as an element of the predicate offense;

(e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:

## **HB0027S01 compared with HB0027**

(i) an assault against a peace officer under Section 76-5-102.4;  
(ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against the peace officer; or  
(iii) an assault against a military service member in uniform under Section 76-5-102.4;  
or

(f) the actor commits a homicide that would be aggravated murder, but the offense is reduced in accordance with Subsection 76-5-202(4).

(3) (a) (i) A violation of Subsection (2) is a first degree felony.

(ii) A defendant who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:

(i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or

(ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or [~~76-4-102(1)(c)(i)~~] 76-4-102(1)(c), enter a judgment of conviction for attempted manslaughter.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another individual or attempted to cause the death of another individual under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:

## **HB0027S01 compared with HB0027**

(i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or

(ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.

(5) (a) Any predicate offense that constitutes a separate offense does not merge with the crime of murder.

(b) An actor who is convicted of murder, based on a predicate offense that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 3. Section **76-5-417** is enacted to read:

### **76-5-417. Sexual relations with an adult high school student.**

(1) (a) As used in this section:

(i) "Actor" means an individual who is 21 years old or older.

(ii) "Adult high school student" means an individual who is 18 to 21 years old and enrolled at a high school.

(iii) "High school" means a district, charter, or private school that is comprised of grade 9, 10, 11, or 12.

(iv) "Position of special trust" means the following positions in a high school:

(A) a teacher;

(B) an administrator;

(C) a coach;

(D) a counselor; or

(E) an individual other than an individual listed in Subsections (1)(a)(iii)(A) through (1)(a)(iii)(D) who occupies a position of authority that enables the individual to exercise undue influence over an adult high school student.

(v) "Sexual intercourse" means any penetration, however slight, of:

(A) the genitals or anus of an individual by another individual using any body part, object, or substance; or

(B) the mouth of an individual by another individual's genitals.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits sexual relations with an adult high school student if the actor:

(a) (i) has sexual intercourse with an adult high school student; or

## HB0027S01 compared with HB0027

(ii) with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual:

(A) touches the anus, buttocks, pubic area, or any part of the genitals of an adult high school student;

(B) touches the breast of a female adult high school student; or

(C) otherwise takes indecent liberties with an adult high school student;

(b) occupies a position of special trust in relation to the adult high school student described in Subsection (2)(a); and

(c) knows or should have known that the individual with which the actor committed the acts described in Subsection (2)(a) was an adult high school student.

(3) A violation of Subsection (2) is a third degree felony.

~~{ (4) Subsection (2) does not apply to an actor who engages in conduct that constitutes a violation of this section to the extent that the actor is chargeable, for the same conduct, under:~~

~~— (a) Section 76-5-402, rape;~~

~~— (b) Section 76-5-402.2, object rape;~~

~~— (c) Section 76-5-403, forcible sodomy;~~

~~— (d) Section 76-5-404, forcible sexual abuse; or~~

~~— (e) Section 76-5-405, aggravated sexual assault.~~

~~‡~~ ~~(~~15~~4)~~ Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a)(ii).

~~(~~16~~5)~~ Consent of an adult high school student to an act described in Subsection (2) is not a defense to prosecution under this section.

Section 4. Section **76-8-301** is amended to read:

### **76-8-301. Interference with public servant.**

(1) An individual is guilty of interference with a public servant if, under circumstances not amounting to unlawful detention and unlawful detention of a minor as described in Section 76-5-304, the individual:

(a) uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function;

(b) obstructs, hinders, conceals, or prevents the lawful service of any legal process,



## HB0027S01 compared with HB0027

civil or criminal, by any sheriff, constable, deputy sheriff, deputy constable, peace officer, private investigator, or any other person authorized to serve legal process; or

(c) on property that is owned, operated, or controlled by the state or a political subdivision of the state, willfully denies to a public servant lawful:

- (i) freedom of movement;
- (ii) use of the property or facilities; or
- (iii) entry into or exit from the facilities.

(2) Interference with a public servant:

- (a) under Subsection (1)(a) or (b) is a class B misdemeanor; and
- (b) under Subsection (1)(c) is a class C misdemeanor.

(3) For purposes of this section, "public servant" does not include jurors.

~~{ (4) Subsection (1)(c) does not apply to an actor who engages in conduct that constitutes a violation of this section to the extent that the actor is chargeable, for the same conduct, under Section 76-5-304, unlawful detention and unlawful detention of a minor.~~

‡ Section 5. Section **76-9-702.9** is enacted to read:

### **76-9-702.9. Indecent exposure of another individual.**

(1) (a) As used in this section:

(i) "Health care professional" means the same as that term is defined in Section 53-3-207.

(ii) "First responder" means the same as that term is defined in Section 34A-2-102.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits indecent exposure of another individual if the actor exposes in a public place, without the individual's consent, the individual's:

(a) undergarments intended to cover the individual's genitals, breasts if the individual is female, buttocks, anus, or pubic area; or

(b) genitals, breast below the top of the areola if the individual is female, buttocks, anus, or pubic area.

(3) (a) A violation of Subsection (2)(a) is a class B misdemeanor.

(b) A violation of Subsection (2)(b) is a class A misdemeanor.

~~{ (4) Subsection (2) does not apply to an actor who engages in conduct that constitutes a violation of this section to the extent that the actor's conduct is also chargeable for an offense~~

## HB0027S01 compared with HB0027

that carries a greater penalty under Chapter 5, Offenses Against the Individual.

† ~~(15)~~4 An actor under the age of 18 years old may not be referred to the juvenile court or prosecuting attorney under this section unless the actor has previously received a written warning from a law enforcement officer for conduct described in Subsection (2).

~~(16)~~5 This section does not apply to a first responder or health care professional who removes the clothing of another individual during an emergency to provide medical care to that individual resulting in the exposure of that individual described in Subsection (2).

### Section 6. **Repealer.**

This bill repeals:

Section **76-8-801, Definitions.**

Section **76-8-802, Destruction of property to interfere with preparation for defense or war.**

Section **76-8-803, Causing or omitting to note defects in articles used in preparation for defense or war.**

Section **76-8-804, Attempts to commit crimes of sabotage.**

Section **76-8-805, Conspiracy to commit crimes of sabotage.**

Section **76-8-806, Facts kept secret until complaint filed.**

Section **76-8-807, Posting of signs at war or defense facilities -- Entering posted premises without permission.**

Section **76-8-808, Detention and arrest without warrant of unauthorized persons on posted premises.**

Section **76-8-809, Closing or restricting use of highways abutting defense or war facilities -- Posting of notices.**

Section **76-8-810, Violation of order relating to use of highways -- Classification of offense.**

Section **76-8-811, Bargaining rights of employees not impaired by sabotage prevention laws.**

### Section 7. **Effective date.**

This bill takes effect on May 1, 2024.

**Section 8. Coordinating H.B. 27 with H.B. 15.**

**If this H.B. 27, Criminal Code Amendments, and H.B. 15, Criminal Code**

## HB0027S01 compared with HB0027

Recodification and Cross References, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) not making the changes in H.B. 27, Criminal Code Amendments, to Section 76-8-301; and

(2) amending Section 76-8-301.2 in H.B. 15, Criminal Code Recodification and Cross References, to read:

**"76-8-301.2. Denial of public servant's use of public property.**

(1) (a) As used in this section, "public servant" does not include a juror.

(b) Terms defined in Sections 76-1-101.5 and 76-8-101 apply to this section.

(2) An actor commits denial of public servant's use of public property if, under circumstances not amounting to unlawful detention and unlawful detention of a minor as described in Section 76-5-304, the actor, on property that is owned, operated, or controlled by the state or a political subdivision of the state, willfully denies to a public servant lawful:

(a) freedom of movement;

(b) use of the property or facility; or

(c) entry into or exit from the facility.

(3) A violation of Subsection (2) is a class C misdemeanor."