

**Senator John L. Valentine** proposes the following substitute bill:

**SEX OFFENSE AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Richard A. Greenwood**

Senate Sponsor: John L. Valentine

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding sexual offenses against children who are 16 or 17 years of age.

**Highlighted Provisions:**

This bill:

- ▶ changes the offense of unlawful sexual conduct with a minor who is 16 or 17 years of age to provide that the offense applies to a defendant who knowingly, intentionally, or recklessly commits specific sexual acts with the minor and the defendant is seven or more years older, but fewer than 10 years older than the victim; and

- ▶ modifies the provision regarding mistake regarding victim's age to provide that it is not a defense to the crime of unlawful sexual conduct with a minor who is 16 or 17 years of age, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense, if the actor is 10 or more years older than the victim.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **76-2-304.5**, as last amended by Laws of Utah 2003, Chapter 149

30 **76-5-401.2**, as last amended by Laws of Utah 2008, Chapter 275

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

33 Section 1. Section **76-2-304.5** is amended to read:

34 **76-2-304.5. Mistake as to victim's age not a defense.**

35 (1) It is not a defense to the crime of child kidnaping, a violation of Section  
36 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation  
37 of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; or sexual abuse  
38 of a child, a violation of Section 76-5-404.1; or aggravated sexual abuse of a child, a violation  
39 of Subsection 76-5-404.1(4); or an attempt to commit any of those offenses, that the actor  
40 mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense  
41 or was unaware of the victim's true age.

42 (2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation  
43 of Section 76-5-401, sexual abuse of a minor, a violation of Section 76-5-401.1, or an attempt  
44 to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years  
45 of age or older at the time of the alleged offense or was unaware of the victim's true age.

46 (3) It is not a defense to the crime of unlawful sexual activity with a minor, a violation  
47 of Section 76-5-401.2(2)(a)(ii) that the actor mistakenly believed the victim to be 18 years of  
48 age or older at the time of the alleged offense or was unaware of the victim's true age.

49 Section 2. Section **76-5-401.2** is amended to read:

50 **76-5-401.2. Unlawful sexual conduct with a 16 or 17 year old.**

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

54 (2) (a) A person commits unlawful sexual conduct with a minor if, under  
55 circumstances not amounting to an offense listed under Subsection (3), an actor who is [~~10 or~~  
56 ~~more~~];

57            (i) seven or more years older but less than 10 years older than the minor at the time of  
 58 the sexual conduct[+] knowingly, intentionally, or recklessly engages in any conduct listed in  
 59 Subsection (2)(b); or

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

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

63            [~~(a)~~] (i) has sexual intercourse with the minor;

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

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

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

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

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

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

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

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

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

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

83            (4) A violation of Subsection [~~(2)(a), (b), or (c)~~] (2)(b)(i), (ii), or (iii) is a third degree  
 84 felony.

85            (5) A violation of Subsection [~~(2)(d)~~] (2)(b)(iv) is a class A misdemeanor.