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**SEXUAL OFFENSES AMENDMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Jon Hawkins**  
Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**General Description:**

This bill addresses certain sexual crimes committed against children.

**Highlighted Provisions:**

This bill:

- defines terms;
- clarifies the conduct required for an actor to be guilty of:
  - unlawful adolescent sexual activity;
  - rape of a child;
  - object rape of a child;
  - sexual abuse of a child; and
  - aggravated sexual abuse of a child; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 76-5-401.3**, as last amended by Laws of Utah 2023, Chapters 123, 161
- 76-5-402.1**, as last amended by Laws of Utah 2022, Chapter 181
- 76-5-402.3**, as last amended by Laws of Utah 2022, Chapter 181
- 76-5-404.1**, as last amended by Laws of Utah 2022, Chapter 181
- 76-5-404.3**, as enacted by Laws of Utah 2022, Chapter 181

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

29 Section 1. Section **76-5-401.3** is amended to read:

30 **76-5-401.3 . Unlawful adolescent sexual activity -- Penalties -- Limitations.**

31 (1) (a) As used in this section, "adolescent" means an individual in the transitional phase  
32 of human physical and psychological growth and development between childhood  
33 and adulthood who is 12 years old or older, but younger than 18 years old.

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

35 (2) Under circumstances not amounting to an offense listed in Subsection [(4)] (5), an actor  
36 commits unlawful sexual activity if[~~the actor~~]:

37 (a) the actor is an adolescent;[~~and~~]

38 (b) [~~has~~] the actor engages in sexual activity with another adolescent;

39 (c) the actor is not a biological sibling of the other adolescent; and

40 (d) both the actor and the other adolescent mutually agree to the sexual activity.

41 (3) A violation of Subsection (2) is a:

42 (a) third degree felony if an actor who is 17 years old engages in unlawful adolescent  
43 sexual activity with an adolescent who is [~~12 or~~]13 years old;

44 (b) third degree felony if an actor who is 16 years old engages in unlawful adolescent  
45 sexual activity with an adolescent who is 12 years old;

46 (c) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent  
47 sexual activity with an adolescent who is 13 years old;

48 (d) class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful  
49 adolescent sexual activity with an adolescent who is 12 years old;

50 (e) class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent  
51 sexual activity with an adolescent who is 14 years old;

52 (f) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent  
53 sexual activity with an adolescent who is 13 years old;

54 (g) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful  
55 adolescent sexual activity with an adolescent who is 12 or 13 years old; and

56 (h) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent  
57 sexual activity with an adolescent who is 13 years old.

58 (4) The actor and the other adolescent do not mutually agree to the sexual activity under  
59 Subsection (2) if:

60 (a) the other adolescent expresses lack of agreement to the sexual activity through words  
61 or conduct;

62 (b) the actor overcomes the other adolescent's will through:

- 63 (i) threats to the other adolescent or any other individual;
- 64 (ii) force;
- 65 (iii) coercion; or
- 66 (iv) enticement;
- 67 (c) the actor is able to overcome the other adolescent through concealment or by the
- 68 element of surprise;
- 69 (d) the actor knows, or reasonably should know, that the other adolescent has a mental
- 70 disease or defect, which renders the other adolescent unable to:
  - 71 (i) appraise the nature of the act;
  - 72 (ii) resist the act;
  - 73 (iii) understand the possible consequences to the adolescent's health or safety; or
  - 74 (iv) appraise the nature of the relationship between the actor and the adolescent;
- 75 (e) the actor knows that the other adolescent participates in the sexual activity because
- 76 the other adolescent erroneously believes that the actor is someone else; or
- 77 (f) the actor intentionally impaired the power of the other adolescent to appraise or
- 78 control the other adolescent's conduct by administering any substance without the
- 79 victim's knowledge.

80 [(4)] (5) The offenses referred to in Subsection (2) are:

- 81 (a) rape, in violation of Section 76-5-402;
- 82 [~~(b)~~] ~~rape of a child, in violation of Section 76-5-402.1;~~
- 83 [~~(e)~~] (b) object rape, in violation of Section 76-5-402.2;
- 84 [~~(d)~~] ~~object rape of a child, in violation of Section 76-5-402.3;~~
- 85 [~~(e)~~] (c) forcible sodomy, in violation of Section 76-5-403;
- 86 [~~(f)~~] ~~sodomy on a child, in violation of Section 76-5-403.1;~~
- 87 [~~(g)~~] ~~sexual abuse of a child, in violation of Section 76-5-404;~~
- 88 [~~(h)~~] (d) aggravated sexual assault, in violation of Section 76-5-405;
- 89 [~~(i)~~] (e) incest, in violation of Section 76-7-102; or
- 90 [~~(j)~~] (f) an attempt to commit any offense listed in Subsections [~~(4)(a)~~] (5)(a) through [
- 91 ~~(4)(i)~~] (5)(e).

92 [(5)] (6) An offense under this section is not eligible for a nonjudicial adjustment under  
 93 Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.

94 [(6)] (7) Except for an offense that is transferred to a district court by the juvenile court in  
 95 accordance with Section 80-6-504, the district court may enter any sentence or  
 96 combination of sentences that would have been available in juvenile court but for the

97 delayed reporting or delayed filing of the information in the district court.  
 98 [(7)] (8) An offense under this section is not subject to registration under Subsection  
 99 77-41-102(18).

100 Section 2. Section **76-5-402.1** is amended to read:

101 **76-5-402.1 . Rape of a child -- Penalties.**

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

103 (i) "Child" means an individual who is younger than 14 years old.

104 (ii) "Sexual intercourse" means:

105 (A) any touching skin-to-skin, however slight, of an individual's genitals to  
 106 another individual's genitals; or

107 (B) any penetration, however slight, of an individual's genitals by another  
 108 individual's genitals, whether over or under the clothing.

109 (iii) "Simulated intercourse" means rubbing or otherwise stimulating or attempting to  
 110 stimulate an individual's genitals or pubic area by another individual's genitals or  
 111 pubic area whether over or under the clothing.

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

113 (2) [(a)] An actor commits rape of a child if the actor[-] :

114 (a) has sexual intercourse with [an individual who is younger than 14 years old] a child;  
 115 or

116 (b) intentionally engages in simulated intercourse with a child.

117 [(b) Any touching, however slight, is sufficient to constitute the relevant element of a  
 118 violation of Subsection (2)(a).]

119 (3) A violation of Subsection (2) is a first degree felony punishable by a term of  
 120 imprisonment of:

121 (a) except as provided in Subsections (3)(b) and (5), not less than 25 years and which  
 122 may be for life; or

123 (b) life without parole, if the trier of fact finds that:

124 (i) during the course of the commission of the rape of a child, the defendant caused  
 125 serious bodily injury to the victim; or

126 (ii) at the time of the commission of the rape of a child the defendant was previously  
 127 convicted of a grievous sexual offense.

128 (4) Subsection (3)(b) does not apply if the defendant was younger than 18 years old at the  
 129 time of the offense.

130 (5) (a) When imposing a sentence under Subsections (3)(a) and (5)(b), a court may

- 131 impose a term of imprisonment under Subsection (5)(b) if:
- 132 (i) it is a first time offense for the defendant under this section;
- 133 (ii) the defendant was younger than 21 years old at the time of the offense; and
- 134 (iii) the court finds that a lesser term than the term described in Subsection (3)(a) is in
- 135 the interests of justice under the facts and circumstances of the case, including the
- 136 age of the victim, and states the reasons for this finding on the record.
- 137 (b) If the conditions of Subsection (5)(a) are met, the court may impose a term of
- 138 imprisonment of not less than:
- 139 (i) 15 years and which may be for life;
- 140 (ii) 10 years and which may be for life; or
- 141 (iii) six years and which may be for life.
- 142 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
- 143 Section 3. Section **76-5-402.3** is amended to read:
- 144 **76-5-402.3 . Object rape of a child -- Penalty.**
- 145 (1) (a) As used in this section:
- 146 (i) "Child" means an individual who is younger than 14 years old.
- 147 (ii) "Masturbatory contact" means the stimulation or attempted stimulation of an
- 148 individual's genitals or pubic area by another individual.
- 149 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 150 (2) [(a)] An actor commits object rape of a child if:
- 151 [(†)] (a) (i) the actor causes the penetration [~~or touching~~], however slight, whether
- 152 over or under the clothing, of the [~~genital or anal opening of the individual by,~~
- 153 ~~except as provided in Subsection (2)(b)] genitals or anus of a child by:~~
- 154 (A) a foreign object;
- 155 (B) a substance;
- 156 (C) an instrument; [~~or~~]
- 157 (D) a device; or
- 158 (E) a part of the human body other than the mouth or genitals;
- 159 (ii) the actor causes the touching, however slight, of the skin of the genitals or anus of
- 160 a child by:
- 161 (A) a foreign object;
- 162 (B) a substance;
- 163 (C) an instrument;
- 164 (D) a device; or

- 165            (E) a part of the human body other than the mouth or genitals; or  
 166            (iii) the actor causes the masturbatory contact over or under the clothing of the  
 167            genitals or anus of a child by:  
 168            (A) a foreign object;  
 169            (B) a substance;  
 170            (C) an instrument;  
 171            (D) a device; or  
 172            (E) a part of the human body other than the mouth or genitals; and  
 173            ~~[(ii)]~~ (b) the actor:  
 174            ~~[(A)]~~ (i) intends to cause substantial emotional or bodily pain to the ~~[individual]~~ child;  
 175            or  
 176            ~~[(B)]~~ (ii) intends to arouse or gratify the sexual desire of any individual~~[-and]~~ .  
 177            ~~[(iii) the individual described in Subsection (2)(a)(i) is younger than 14 years old.]~~  
 178            ~~[(b) Subsection (2)(a) does not include penetration or touching by a part of the human~~  
 179            ~~body.]~~  
 180            (3) (a) A violation of Subsection (2) is a first degree felony punishable by a term of  
 181            imprisonment of:  
 182            (i) except as provided in Subsections (3)(a)(ii) and (4), not less than 25 years and  
 183            which may be for life; or  
 184            (ii) life without parole, if the trier of fact finds that:  
 185            (A) during the course of the commission of the object rape of a child the  
 186            defendant caused serious bodily injury to the victim; or  
 187            (B) at the time of the commission of the object rape of a child the defendant was  
 188            previously convicted of a grievous sexual offense.  
 189            (b) Subsection (3)(a)(ii) does not apply if the defendant was younger than 18 years old at  
 190            the time of the offense.  
 191            (4) (a) When imposing a sentence under Subsections (3)(a)(i) and (4)(b), a court may  
 192            impose a term of imprisonment under Subsection (4)(b) if:  
 193            (i) it is a first time offense for the defendant under this section;  
 194            (ii) the defendant was younger than 21 years old at the time of the offense; and  
 195            (iii) the court finds that a lesser term than the term described in Subsection (3)(a)(i) is  
 196            in the interests of justice under the facts and circumstances of the case, including  
 197            the age of the victim, and states the reasons for this finding on the record.  
 198            (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of

- 199 imprisonment of not less than:
- 200 (i) 15 years and which may be for life;
- 201 (ii) 10 years and which may be for life; or
- 202 (iii) six years and which may be for life.
- 203 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
- 204 Section 4. Section **76-5-404.1** is amended to read:
- 205 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**
- 206 (1) (a) As used in this section:
- 207 (i) "Adult" means an individual 18 years old or older.
- 208 (ii) "Child" means an individual younger than 14 years old.
- 209 (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
- 210 (iv) "Position of special trust" means:
- 211 (A) an adoptive parent;
- 212 (B) an athletic manager who is an adult;
- 213 (C) an aunt;
- 214 (D) a babysitter;
- 215 (E) a coach;
- 216 (F) a cohabitant of a parent if the cohabitant is an adult;
- 217 (G) a counselor;
- 218 (H) a doctor or physician;
- 219 (I) an employer;
- 220 (J) a foster parent;
- 221 (K) a grandparent;
- 222 (L) a legal guardian;
- 223 (M) a natural parent;
- 224 (N) a recreational leader who is an adult;
- 225 (O) a religious leader;
- 226 (P) a sibling or a stepsibling who is an adult;
- 227 (Q) a scout leader who is an adult;
- 228 (R) a stepparent;
- 229 (S) a teacher or any other individual employed by or volunteering at a public or
- 230 private elementary school or secondary school, and who is 18 years old or
- 231 older;
- 232 (T) an instructor, professor, or teaching assistant at a public or private institution

233 of higher education;  
 234 (U) an uncle;  
 235 (V) a youth leader who is an adult; or  
 236 (W) any individual in a position of authority, other than those individuals listed in  
 237 Subsections (1)(a)(iv)(A) through (V), which enables the individual to exercise  
 238 undue influence over the child.

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

240 (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an  
 241 actor commits sexual abuse of a child if the actor:

242 (i) (A) touches~~[the anus], whether over or under the clothing, the buttocks[,] or~~  
 243 ~~pubic area[, or genitalia]~~ of [any] a child;

244 (B) touches, whether over or under the clothing, the breast of a female child;~~[or]~~  
 245 ~~[(C) otherwise takes indecent liberties with a child;]~~

246 (C) touches the anus or genitals of a child over the clothing; or

247 (D) otherwise takes indecent liberties with a child whether over or under the  
 248 clothing; and

249 (ii) the actor's conduct is with intent to:

250 (A) cause substantial emotional or bodily pain to any individual; or

251 (B) ~~[to]~~arouse or gratify the sexual desire of any individual.

252 (b) Any touching, ~~[even if accomplished through clothing]~~ however slight, is sufficient to  
 253 constitute the relevant element of a violation of Subsection (2)(a).

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

255 (4) The offenses referred to in Subsection (2)(a) are:

256 (a) rape of a child, in violation of Section 76-5-402.1;

257 (b) object rape of a child, in violation of Section 76-5-402.3;

258 (c) sodomy on a child, in violation of Section 76-5-403.1; or

259 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).

260 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

261 Section 5. Section **76-5-404.3** is amended to read:

262 **76-5-404.3 . Aggravated sexual abuse of a child -- Penalties.**

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

264 (i) "Adult" means the same as that term is defined in Section 76-5-404.1.

265 (ii) "Child" means the same as that term is defined in Section 76-5-404.1.

266 (iii) "Position of special trust" means the same as that term is defined in Section



- 267 76-5-404.1.
- 268 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 269 (2) ~~[(a)]~~ An actor commits aggravated sexual abuse of a child if, in conjunction with the  
 270 offense described in Subsection 76-5-404.1(2)(a), any of the following circumstances  
 271 have been charged and admitted or found true in the action for the offense:
- 272 ~~[(i)]~~ (a) the actor committed the offense:
- 273 ~~[(A)]~~ (i) by the use of a dangerous weapon;
- 274 ~~[(B)]~~ (ii) by force, duress, violence, intimidation, coercion, menace, or threat of harm;
- 275 or
- 276 ~~[(C)]~~ (iii) during the course of a ~~[kidnaping]~~ kidnapping;
- 277 ~~[(ii)]~~ (b) the actor caused bodily injury or severe psychological injury to the child during  
 278 or as a result of the offense;
- 279 ~~[(iii)]~~ (c) the actor was a stranger to the child or made friends with the child for the  
 280 purpose of committing the offense;
- 281 ~~[(iv)]~~ (d) the actor used, showed, or displayed pornography or caused the child to be  
 282 photographed in a lewd condition during the course of the offense;
- 283 ~~[(v)]~~ (e) the actor, prior to sentencing for this offense, was previously convicted of any  
 284 sexual offense;
- 285 ~~[(vi)]~~ (f) the actor committed the same or similar sexual act upon two or more individuals  
 286 at the same time or during the same course of conduct;
- 287 ~~[(vii)]~~ (g) the actor committed, in Utah or elsewhere, more than five separate acts, which  
 288 if committed in Utah would constitute an offense described in this chapter, and were  
 289 committed at the same time, or during the same course of conduct, or before or after  
 290 the instant offense;
- 291 ~~[(viii)]~~ (h) the actor occupied a position of special trust in relation to the child; or
- 292 ~~[(ix)]~~ (i) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or  
 293 sexual acts by the child with any other individual, sexual performance by the child  
 294 before any other individual, human trafficking, or human smuggling~~[-; or]~~ .
- 295 ~~[(x) the actor caused the penetration, however slight, of the genital or anal opening of  
 296 the child by any part or parts of the human body other than the genitals or mouth.]~~
- 297 ~~[(b) Any touching, even if accomplished through clothing, is sufficient to constitute the  
 298 relevant element of a violation of Subsection (2)(a).]~~
- 299 (3) Except as provided in Subsection (6), a violation of Subsection (2) is a first degree  
 300 felony punishable by a term of imprisonment of:

- 301 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and  
302 which may be for life;
- 303 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact  
304 finds that during the course of the commission of the aggravated sexual abuse of a  
305 child the defendant caused serious bodily injury to another; or
- 306 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
307 aggravated sexual abuse of a child, the defendant was previously convicted of a  
308 grievous sexual offense.
- 309 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser  
310 term than the term described in Subsection (3)(a) or (b) is in the interests of justice and  
311 states the reasons for this finding on the record, the court may impose a term of  
312 imprisonment of not less than:
- 313 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or  
314 (b) for purposes of Subsection (3)(a) or (b):
- 315 (i) 10 years and which may be for life; or  
316 (ii) six years and which may be for life.
- 317 (5) The provisions of Subsection (4) do not apply if a defendant is sentenced under  
318 Subsection (3)(c).
- 319 (6) Subsection (3)(b) or (3)(c) does not apply if the defendant was younger than 18 years  
320 old at the time of the offense.
- 321 (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
- 322 **Section 6. Effective date.**
- 323 This bill takes effect on May 1, 2024.