

## HB0016S02 compared with HB0016S01

~~text~~ shows text that was in HB0016S01 but was deleted in HB0016S02.

text shows text that was not in HB0016S01 but was inserted into HB0016S02.

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Senator Todd D. Weiler proposes the following substitute bill:

### SEXUAL OFFENSES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** ~~Jon~~ Jon Hawkins

Senate Sponsor: ~~Todd D.~~ 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.

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### 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:*

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

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

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

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

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

(a) the actor is an adolescent; ~~and~~

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

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

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

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

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

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

(c) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent

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sexual activity with an adolescent who is 13 years old;

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

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

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

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

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

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

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

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

(i) threats;

(ii) force;

(iii) coercion; or

(iv) enticement.

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

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

~~[(b) rape of a child, in violation of Section 76-5-402.1;]~~

~~[(c)]~~ (b) object rape, in violation of Section 76-5-402.2;

~~[(d) object rape of a child, in violation of Section 76-5-402.3;]~~

~~[(e)]~~ (c) forcible sodomy, in violation of Section 76-5-403;

~~[(f) sodomy on a child, in violation of Section 76-5-403.1;]~~

~~[(g) sexual abuse of a child, in violation of Section 76-5-404;]~~

~~[(h)]~~ (d) aggravated sexual assault, in violation of Section 76-5-405;

~~[(i)]~~ (e) incest, in violation of Section 76-7-102; or

~~[(f)]~~ (f) an attempt to commit any offense listed in Subsections ~~[(4)(a)]~~ (5)(a) through

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~~[(4)(i)]~~ (5)(e).

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

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

~~[(7)]~~ (8) An offense under this section is not subject to registration under Subsection 77-41-102(18).

Section ~~[(1)]~~ 2. Section **76-5-402.1** is amended to read:

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

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

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

(ii) "Sexual intercourse" means:

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

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

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

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

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

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

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

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

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

(a) except as provided in Subsections (3)(b) and (5), not less than 25 years and which

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may be for life; or

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

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

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

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

(5) (a) When imposing a sentence under Subsections (3)(a) and (5)(b), a court may impose a term of imprisonment under Subsection (5)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years old at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (3)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (5)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

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

(iii) six years and which may be for life.

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

Section ~~{2}~~3. Section **76-5-402.3** is amended to read:

### **76-5-402.3. Object rape of a child -- Penalty.**

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

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

(ii) "Masturbatory contact" means the stimulation or attempted stimulation of an individual's genitals or pubic area by another individual.

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

(2) ~~{a}~~ An actor commits object rape of a child if:

~~{i}~~ (a) (i) the actor causes the penetration ~~[or touching]~~, however slight, whether over or under the clothing, of the ~~[genital or anal opening of the individual by, except as provided in~~

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~~Subsection (2)(b)]~~ genitals or anus of a child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument; ~~[or]~~
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals;
- (ii) the actor causes the touching, however slight, of the skin of the genitals or anus of a

child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument;
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals; or
- (iii) the actor causes the masturbatory contact over or under the clothing of the genitals

or anus of a child by:

- (A) a foreign object;
- (B) a substance;
- (C) an instrument;
- (D) a device; or
- (E) a part of the human body other than the mouth or genitals; and

~~[(ii)]~~ (b) the actor:

~~[(A)]~~ (i) intends to cause substantial emotional or bodily pain to the ~~[individual]~~ child;

or

~~[(B)]~~ (ii) intends to arouse or gratify the sexual desire of any individual~~[-and]~~.

~~[(iii) the individual described in Subsection (2)(a)(i) is younger than 14 years old.]~~

~~[(b) Subsection (2)(a) does not include penetration or touching by a part of the human body.]~~

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

(i) except as provided in Subsections (3)(a)(ii) and (4), not less than 25 years and which may be for life; or

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

(A) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to the victim; or

(B) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

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

(4) (a) When imposing a sentence under Subsections (3)(a)(i) and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years old at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (3)(a)(i) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

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

(iii) six years and which may be for life.

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

Section ~~76-5-404~~4. Section **76-5-404.1** is amended to read:

### **76-5-404.1. Sexual abuse of a child -- Penalties -- Limitations.**

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

(i) "Adult" means an individual 18 years old or older.

(ii) "Child" means an individual younger than 14 years old.

(iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iv) "Position of special trust" means:

(A) an adoptive parent;

(B) an athletic manager who is an adult;

(C) an aunt;

(D) a babysitter;

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- (E) a coach;
  - (F) a cohabitant of a parent if the cohabitant is an adult;
  - (G) a counselor;
  - (H) a doctor or physician;
  - (I) an employer;
  - (J) a foster parent;
  - (K) a grandparent;
  - (L) a legal guardian;
  - (M) a natural parent;
  - (N) a recreational leader who is an adult;
  - (O) a religious leader;
  - (P) a sibling or a stepsibling who is an adult;
  - (Q) a scout leader who is an adult;
  - (R) a stepparent;
  - (S) a teacher or any other individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years old or older;
  - (T) an instructor, professor, or teaching assistant at a public or private institution of higher education;
  - (U) an uncle;
  - (V) a youth leader who is an adult; or
  - (W) any individual in a position of authority, other than those individuals listed in Subsections (1)(a)(iv)(A) through (V), which enables the individual to exercise undue influence over the child.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits sexual abuse of a child if the actor:
- (i) (A) touches ~~[the anus]~~, whether over or under the clothing, the buttocks[;] or pubic area[; or genitalia] of ~~[any]~~ a child;
  - (B) touches, whether over or under the clothing, the breast of a female child; ~~[or]~~
  - ~~[(C) otherwise takes indecent liberties with a child;]~~
  - (C) touches the anus or genitals of a child over the clothing; or



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

and

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

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

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

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

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

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

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

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

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

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

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

Section ~~{4}~~5. Section **76-5-404.3** is amended to read:

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

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

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

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

(iii) "Position of special trust" means the same as that term is defined in Section 76-5-404.1.

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

(2) [~~(a)~~] An actor commits aggravated sexual abuse of a child if, in conjunction with the offense described in Subsection 76-5-404.1(2)(a), any of the following circumstances have been charged and admitted or found true in the action for the offense:

[~~(i)~~] (a) the actor committed the offense:

[~~(A)~~] (i) by the use of a dangerous weapon;

[~~(B)~~] (ii) by force, duress, violence, intimidation, coercion, menace, or threat of harm;

or

[~~(C)~~] (iii) during the course of a [~~kidnaping~~] kidnapping;

[~~(ii)~~] (b) the actor caused bodily injury or severe psychological injury to the child

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during or as a result of the offense;

~~[(iii)]~~ (c) the actor was a stranger to the child or made friends with the child for the purpose of committing the offense;

~~[(iv)]~~ (d) the actor used, showed, or displayed pornography or caused the child to be photographed in a lewd condition during the course of the offense;

~~[(v)]~~ (e) the actor, prior to sentencing for this offense, was previously convicted of any sexual offense;

~~[(vi)]~~ (f) the actor committed the same or similar sexual act upon two or more individuals at the same time or during the same course of conduct;

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

~~[(viii)]~~ (h) the actor occupied a position of special trust in relation to the child; or

~~[(ix)]~~ (i) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the child with any other individual, sexual performance by the child before any other individual, human trafficking, or human smuggling[~~;~~ or].

~~[(x) the actor caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.]~~

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

(3) Except as provided in Subsection (6), a violation of Subsection (2) is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

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

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(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) 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) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

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

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

(5) The provisions of Subsection (4) do not apply if a defendant is sentenced under Subsection (3)(c).

(6) Subsection (3)(b) or (3)(c) does not apply if the defendant was younger than 18 years old at the time of the offense.

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

Section ~~5~~6. **Effective date.**

This bill takes effect on May 1, 2024.