

SEXUAL OFFENSES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: Todd D. Weiler

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

Legislative Vote: 14 voting for 0 voting against 3 absent

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:
 - rape of a child;
 - object rape 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:

76-5-402.1, as last amended by Laws of Utah 2022, Chapter 181



28 [76-5-402.3](#), as last amended by Laws of Utah 2022, Chapter 181

29 [76-5-404.3](#), as enacted by Laws of Utah 2022, Chapter 181



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

32 Section 1. Section [76-5-402.1](#) is amended to read:

33 **[76-5-402.1](#). Rape of a child -- Penalties.**

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

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

36 (ii) "Sexual intercourse" means:

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

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

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

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

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

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

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

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

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

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

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

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

58 (ii) at the time of the commission of the rape of a child the defendant was previously

59 convicted of a grievous sexual offense.

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

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

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

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

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

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

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

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

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

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

75 Section 2. Section [76-5-402.3](#) is amended to read:

76 **[76-5-402.3](#). Object rape of a child -- Penalty.**

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

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

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

81 (B) "Masturbatory contact" does not include sexual intercourse as that term is defined
82 in Section [76-5-402.1](#).

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

84 (2) [(a)] An actor commits object rape of a child if:

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

87 Subsection (2)(b)] a child by:

88 (A) a foreign object;

89 (B) a substance;

90 (C) an instrument; ~~[or]~~

91 (D) a device; or

92 (E) a part of the human body other than the mouth or genitals;

93 (ii) the actor causes the touching, however slight, of the skin of the genital or anal

94 opening of a child by:

95 (A) a foreign object;

96 (B) a substance;

97 (C) an instrument; or

98 (D) a device; or

99 (iii) the actor causes the masturbatory contact over or under the clothing of the genital

100 or anal opening of a child by:

101 (A) a foreign object;

102 (B) a substance;

103 (C) an instrument;

104 (D) a device; or

105 (E) a part of the human body other than the mouth or genitals; and

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

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

108 or

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

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

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

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

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

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

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

120 (B) at the time of the commission of the object rape of a child the defendant was

121 previously convicted of a grievous sexual offense.

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

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

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

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

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

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

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

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

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

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

137 Section 3. Section 76-5-404.3 is amended to read:

138 **76-5-404.3. Aggravated sexual abuse of a child -- Penalties.**

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

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

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

142 (iii) "Position of special trust" means the same as that term is defined in Section
143 76-5-404.1.

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

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

148 (i) the actor committed the offense:

149 (A) by the use of a dangerous weapon;

150 (B) by force, duress, violence, intimidation, coercion, menace, or threat of harm; or

151 (C) during the course of a kidnaping;

152 (ii) the actor caused bodily injury or severe psychological injury to the child during or
153 as a result of the offense;

154 (iii) the actor was a stranger to the child or made friends with the child for the purpose
155 of committing the offense;

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

158 (v) the actor, prior to sentencing for this offense, was previously convicted of any
159 sexual offense;

160 (vi) the actor committed the same or similar sexual act upon two or more individuals at
161 the same time or during the same course of conduct;

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

165 (viii) the actor occupied a position of special trust in relation to the child; or

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

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

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

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

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

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

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

183 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a
184 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and
185 states the reasons for this finding on the record, the court may impose a term of imprisonment
186 of not less than:

187 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

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

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

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

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

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

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

196 Section 4. **Effective date.**

197 This bill takes effect on May 1, 2024.