

JUVENILE OFFENSES AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to juvenile sex offenses when both juveniles are under 18 years of age.

Highlighted Provisions:

This bill:

- ▶ describes unlawful sexual activity between minors;
- ▶ sets parameters for when unlawful sexual activity occurs between minors and both are under 18 years of age;
- ▶ requires the filing of petitions in juvenile court;
- ▶ creates penalties; and
- ▶ makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-406, as last amended by Laws of Utah 2011, Chapter 366

77-2-9, as last amended by Laws of Utah 2009, Chapter 146

ENACTS:



28 [76-5-401.3](#), Utah Code Annotated 1953

29

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

31 Section 1. Section **76-3-406** is amended to read:

32 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
 33 **offense, or hospitalization may not be granted.**

34 (1) Notwithstanding Sections [76-3-201](#) and [77-18-1](#) and Title 77, Chapter 16a,
 35 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
 36 [76-5-406.5](#), probation ~~[shall]~~ may not be granted, the execution or imposition of sentence
 37 ~~[shall]~~ may not be suspended, the court ~~[shall]~~ may not enter a judgment for a lower category
 38 of offense, and hospitalization ~~[shall]~~ may not be ordered, the effect of which would in any way
 39 shorten the prison sentence for any person who commits a capital felony or a first degree felony
 40 involving:

41 ~~[(1)]~~ (a) Section [76-5-202](#), aggravated murder;

42 ~~[(2)]~~ (b) Section [76-5-203](#), murder;

43 ~~[(3)]~~ (c) Section [76-5-301.1](#), child kidnaping;

44 ~~[(4)]~~ (d) Section [76-5-302](#), aggravated kidnaping;

45 ~~[(5)]~~ (e) Section [76-5-402](#), rape, if the person is sentenced under Subsection
 46 [76-5-402\(3\)\(b\)](#), (3)(c), or (4);

47 ~~[(6)]~~ (f) Section [76-5-402.1](#), rape of a child;

48 ~~[(7)]~~ (g) Section [76-5-402.2](#), object rape, if the person is sentenced under Subsection
 49 [76-5-402.2\(1\)\(b\)](#), (1)(c), or (2);

50 ~~[(8)]~~ (h) Section [76-5-402.3](#), object rape of a child;

51 ~~[(9)]~~ (i) Section [76-5-403](#), forcible sodomy, if the person is sentenced under Subsection
 52 [76-5-403\(4\)\(b\)](#), (4)(c), or (5);

53 ~~[(10)]~~ (j) Section [76-5-403.1](#), sodomy on a child;

54 ~~[(11)]~~ (k) Section [76-5-404](#), forcible sexual abuse, if the person is sentenced under
 55 Subsection [76-5-404\(2\)\(b\)](#) or (3);

56 ~~[(12)]~~ (l) Subsections [76-5-404.1\(4\)](#) and (5), aggravated sexual abuse of a child;

57 ~~[(13)]~~ (m) Section [76-5-405](#), aggravated sexual assault; or

58 ~~[(14)]~~ (n) any attempt to commit a felony listed in Subsection ~~[(6), (8), or (10)]~~ (1)(f),

59 (h), or (j).

60 (2) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702,
61 or 78A-6-703, the provisions of this section do not apply if the sentencing court finds that the
62 defendant was under the age of 18 at the time of the offense and could have been adjudicated in
63 the juvenile court but for the delayed reporting or delayed filing of the information.

64 Section 2. Section **76-5-401.3** is enacted to read:

65 **76-5-401.3. Unlawful sexual activity between minors.**

66 (1) This section applies exclusively to persons charged by petition in the juvenile court
67 who are under the age of 18 at the time of the offense.

68 (2) Petitions alleging one or more violations of Section 76-5-402.1, 76-5-402.3,
69 76-5-403.1, or 76-5-404.1 where both parties are under the age of 18 at the time of the offense
70 shall factually distinguish the perpetrator of the offense, including that:

71 (a) the perpetrator is at least two years older than the victim;

72 (b) the perpetrator did not reasonably mistake the victim's age; and

73 (c) the perpetrator used manipulation, coercion, or deceit such that the victim
74 participated in what appeared to be mutually welcome sexual activity.

75 (3) Conduct that does not meet the requirements of Subsection (2) shall be punishable
76 as unlawful sexual activity between minors as:

77 (a) a class B misdemeanor if there is less than three years' difference in the ages of the
78 parties;

79 (b) a class A misdemeanor if there is more than three years' difference in the ages of
80 the parties but less than four years' difference; or

81 (c) a third degree felony if there is more than four years' difference in the ages of the
82 parties.

83 (4) Subsection (3) does not apply:

84 (a) if one party is under 12 years of age and there is more than two years' difference in
85 the ages of the parties;

86 (b) if the act was committed with the intent to cause substantial emotional or bodily
87 pain;

88 (c) if the victim is over 14 years of age; or

89 (d) if the juvenile is before the court pursuant to Section 78A-6-701, 78A-6-702, or

90 [78A-6-703](#).

91 (5) Subsection [76-5-406\(9\)](#) does not apply to conduct petitioned under this section.

92 Section 3. Section **77-2-9** is amended to read:

93 **77-2-9. Offenses ineligible for diversion.**

94 (1) Except as provided in Subsection (2), diversion may not be granted by a magistrate
95 for:

96 (a) a capital felony;

97 (b) a felony in the first degree;

98 (c) any case involving a sexual offense against a victim who is under the age of 14;

99 (d) any motor vehicle related offense involving alcohol or drugs;

100 (e) any case involving using a motor vehicle in the commission of a felony;

101 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended
102 license;

103 (g) any case involving operating a commercial motor vehicle in a negligent manner
104 causing the death of another including the offenses of:

105 (i) manslaughter under Section [76-5-205](#); or

106 (ii) negligent homicide under Section [76-5-206](#); or

107 (h) a crime of domestic violence as defined in Section [77-36-1](#).

108 (2) When a person [~~under the age of 16~~] is alleged to have committed any violation of
109 Title 76, Chapter 5, Part 4, Sexual Offenses, while under the age of 18, the court may enter a
110 diversion in the matter if the court enters on the record its findings that:

111 (a) unless the offenses are before the court pursuant to Section [78A-6-701](#), [78A-6-702](#),
112 or [78A-6-703](#), the offenses could have been adjudicated in juvenile court but for the delayed
113 reporting or delayed filing of the information in district court;

114 [~~(a)~~] (b) the person did not use coercion or force;

115 [~~(b)~~] (c) there is no more than [~~two~~] three years' difference between the ages of the
116 participants; and

117 [~~(c)~~] (d) it would be in the best interest of the person to grant diversion.