

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNLAWFUL KISSING OF A CHILD OR MINOR

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill concerns unlawful kissing of a child or minor.

Highlighted Provisions:

This bill:

- defines terms;
- provides that a mistake as to the victim's age is not a defense to the offense of unlawfully kissing a child;
- creates the offenses of unlawfully kissing a child and unlawfully kissing a minor;
- establishes criminal penalties; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-304.5, as last amended by Laws of Utah 2022, Chapter 181

76-10-1303, as last amended by Laws of Utah 2022, Chapter 124

ENACTS:

76-5-416.2, as Utah Code Annotated 1953

76-5-416.4, as Utah Code Annotated 1953

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

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

28 **76-2-304.5 . Mistake as to victim's age not a defense.**

29 (1) It is not a defense to the [~~crime of child kidnapping, a violation of Section 76-5-301.1;~~
30 ~~rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of~~
31 ~~Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1; sexual abuse~~
32 ~~of a child, a violation of Section 76-5-404.1; aggravated sexual abuse of a child, a~~
33 ~~violation of Section 76-5-404.3; or an attempt to commit any of these offenses,]~~
34 following offenses that the actor mistakenly believed the victim to be 14 years old or
35 older at the time of the alleged offense or was unaware of the victim's true age[-] :

36 (a) child kidnapping, Section 76-5-301.1;

37 (b) rape of a child, Section 76-5-402.1;

38 (c) object rape of a child, Section 76-5-402.3;

39 (d) sodomy on a child, Section 76-5-403.1;

40 (e) sexual abuse of a child, Section 76-5-404.1;

41 (f) aggravated sexual abuse of a child, Section 76-5-404.3;

42 (g) unlawful kissing of a child, Section 76-5-416.2; or

43 (h) an attempt to commit an offense listed in Subsections (1)(a) through (1)(g).

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

49 (a) unlawful sexual activity with a minor, Section 76-5-401;

50 (b) sexual abuse of a minor, Section 76-5-401.1; or

51 (c) an attempt to commit an offense listed in Subsection (2)(a) or (2)(b).

52 (3) It is not a defense to the [~~crime of aggravated human trafficking, a violation of Section~~
53 ~~76-5-310, aggravated human smuggling, a violation of Section 76-5-310.1, or human~~
54 ~~trafficking of a child, a violation of Section 76-5-308.5,]~~ following offenses that the actor
55 mistakenly believed the victim to be 18 years old or older at the time of the alleged
56 offense or was unaware of the victim's true age[-] :

57 (a) human trafficking of a child, Section 76-5-308.5;

58 (b) aggravated human trafficking, Section 76-5-310;

59 (c) aggravated human smuggling, Section 76-5-310.1;

60 (d) unlawful sexual conduct with a minor, Subsection 76-5-401.2(2)(a)(ii);

61 (e) patronizing a prostitute, Section 76-10-1303;

62 (f) aggravated exploitation of prostitution, Section 76-10-1306; or
63 (g) sexual solicitation, Section 76-10-1313.

64 [~~(4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of~~
65 ~~Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18~~
66 ~~years old or older at the time of the alleged offense or was unaware of the victim's true~~
67 ~~age.]~~

68 [~~(5) It is not a defense to any of the following crimes that the actor mistakenly believed the~~
69 ~~victim to be 18 years old or older at the time of the alleged offense or was unaware of~~
70 ~~the victim's true age:]~~

71 [~~(a) patronizing a prostitute, a violation of Section 76-10-1303;]~~

72 [~~(b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or]~~

73 [~~(c) sexual solicitation, a violation of Section 76-10-1313.]~~

74 Section 2. Section **76-5-416.2** is enacted to read:

75 **76-5-416.2 . Unlawful kissing of a child.**

76 (1) (a) As used in this section, "child" means an individual who is under 14 years old.

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

78 (2) An actor commits unlawful kissing of a child if the actor:

79 (a) is 18 years old or older; and

80 (b) intentionally or knowingly:

81 (i) kisses a child on the child's mouth; and

82 (ii) penetrates the minor's mouth with the actor's tongue.

83 (3) A violation of Subsection (2) is a class A misdemeanor.

84 (4) Any penetration, however slight, of the mouth of the child by the actor's tongue is
85 sufficient to constitute a violation of this section.

86 Section 3. Section **76-5-416.4** is enacted to read:

87 **76-5-416.4 . Unlawful kissing of a minor.**

88 (1) (a) As used in this section, "minor" means an individual who is 14 years old or older
89 but younger than 18 years old.

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

91 (2) An actor commits unlawful kissing of a minor if the actor:

92 (a) intentionally or knowingly:

93 (i) kisses a minor on the minor's mouth; and

94 (ii) penetrates the minor's mouth with the actor's tongue; and

95 (b) is older than the minor by 10 years or more.

96 (3) A violation of Subsection (2) is a class A misdemeanor.

97 (4) Any penetration, however slight, of the mouth of the minor by the actor's tongue is
98 sufficient to constitute a violation of this section.

99 Section 4. Section **76-10-1303** is amended to read:

100 **76-10-1303 . Patronizing a prostitute.**

101 (1) An actor is guilty of patronizing a prostitute if the actor:

102 (a) pays or offers or agrees to pay a prostituted individual, or an individual the actor
103 believes to be a prostituted individual, a fee, or the functional equivalent of a fee, for
104 the purpose of engaging in an act of sexual activity; or

105 (b) enters or remains in a place of prostitution for the purpose of engaging in sexual
106 activity.

107 (2) Patronizing a prostitute is a class A misdemeanor, except as provided in Subsection (3),
108 (4), or (5) or Section 76-10-1309.

109 (3) A violation of this section that is preceded by a conviction under this section or a
110 conviction under a local ordinance adopted under Section 76-10-1307 is a class A
111 misdemeanor.

112 (4) A third violation of this section or a local ordinance adopted under Section 76-10-1307
113 is a third degree felony.

114 (5) (a) Except as provided in Subsection (5)(d), if the patronizing of a prostitute under
115 Subsection (1)(a) involves a child as the other individual, a violation of Subsection
116 (1)(a) is a second degree felony.

117 (b) In accordance with [~~Subsection 76-2-304.5(5)(a)~~] Section 76-2-304.5, it is not a
118 defense to a prosecution under Subsection (5)(a) that the actor mistakenly believed
119 the individual to be 18 years old or older at the time of the offense or was unaware of
120 the individual's true age.

121 (c) An actor's belief that the individual was under 18 years old at the time of the offense,
122 even if the individual was 18 years old or older, is a violation of Subsection (5)(a).

123 (d) If the act committed under Subsection (5)(a) amounts to an offense that is subject to
124 a greater penalty under another provision of state law than is provided under
125 Subsection (5)(a), this Subsection (5) does not prohibit prosecution and sentencing
126 for the more serious offense.

127 (6) Upon a conviction for a violation of this section, the court shall order:

128 (a) the maximum fine amount and may not waive or suspend the fine; and

129 (b) the defendant to pay for and complete a court-approved educational program about

130 the negative effects on an individual involved with prostitution or human trafficking.

131 Section 5. **Effective date.**

132 This bill takes effect on May 1, 2024.