

**PENALTIES FOR SPECIFIED JUVENILE OFFENSES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian E. Shiozawa**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Criminal Code relating to the punishable term of imprisonment for certain first degree felonies if the defendant was younger than 18 years of age at the time of the offense.

**Highlighted Provisions:**

This bill:

- ▶ provides that if a defendant was younger than 18 years of age at the time the offense of aggravated murder was committed, the offense is not a capital felony; and
- ▶ provides that when a person commits a felony subject to a penalty of life without parole, the person may not be sentenced to life without parole if the person is younger than 18 years of age at the time of the offense.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-202**, as last amended by Laws of Utah 2010, Chapters 13 and 373

**76-5-301.1**, as last amended by Laws of Utah 2007, Chapter 339

**76-5-302**, as last amended by Laws of Utah 2007, Chapter 339



- 28           **76-5-402**, as last amended by Laws of Utah 2007, Chapter 339
- 29           **76-5-402.1**, as last amended by Laws of Utah 2008, Chapter 179
- 30           **76-5-402.2**, as last amended by Laws of Utah 2008, Chapter 340
- 31           **76-5-402.3**, as last amended by Laws of Utah 2008, Chapter 179
- 32           **76-5-403**, as last amended by Laws of Utah 2007, Chapter 339
- 33           **76-5-403.1**, as last amended by Laws of Utah 2008, Chapter 179
- 34           **76-5-404.1**, as last amended by Laws of Utah 2007, Chapter 339
- 35           **76-5-405**, as last amended by Laws of Utah 2009, Chapter 176



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

38           Section 1. Section **76-5-202** is amended to read:

39           **76-5-202. Aggravated murder.**

40           (1) Criminal homicide constitutes aggravated murder if the actor intentionally or  
41 knowingly causes the death of another under any of the following circumstances:

42           (a) the homicide was committed by a person who is confined in a jail or other  
43 correctional institution;

44           (b) the homicide was committed incident to one act, scheme, course of conduct, or  
45 criminal episode during which two or more persons were killed, or during which the actor  
46 attempted to kill one or more persons in addition to the victim who was killed;

47           (c) the actor knowingly created a great risk of death to a person other than the victim  
48 and the actor;

49           (d) the homicide was committed incident to an act, scheme, course of conduct, or  
50 criminal episode during which the actor committed or attempted to commit aggravated robbery,  
51 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon  
52 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child  
53 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,  
54 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child  
55 kidnapping;

56           (e) the homicide was committed incident to one act, scheme, course of conduct, or  
57 criminal episode during which the actor committed the crime of abuse or desecration of a dead  
58 human body as defined in Subsection 76-9-704(2)(e);

59 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of  
60 the defendant or another by a peace officer acting under color of legal authority or for the  
61 purpose of effecting the defendant's or another's escape from lawful custody;

62 (g) the homicide was committed for pecuniary gain;

63 (h) the defendant committed, or engaged or employed another person to commit the  
64 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration  
65 for commission of the homicide;

66 (i) the actor previously committed or was convicted of:

67 (i) aggravated murder under this section;

68 (ii) attempted aggravated murder under this section;

69 (iii) murder, Section 76-5-203;

70 (iv) attempted murder, Section 76-5-203; or

71 (v) an offense committed in another jurisdiction which if committed in this state would  
72 be a violation of a crime listed in this Subsection (1)(i);

73 (j) the actor was previously convicted of:

74 (i) aggravated assault, Subsection 76-5-103(2);

75 (ii) mayhem, Section 76-5-105;

76 (iii) kidnapping, Section 76-5-301;

77 (iv) child kidnapping, Section 76-5-301.1;

78 (v) aggravated kidnapping, Section 76-5-302;

79 (vi) rape, Section 76-5-402;

80 (vii) rape of a child, Section 76-5-402.1;

81 (viii) object rape, Section 76-5-402.2;

82 (ix) object rape of a child, Section 76-5-402.3;

83 (x) forcible sodomy, Section 76-5-403;

84 (xi) sodomy on a child, Section 76-5-403.1;

85 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

86 (xiii) aggravated sexual assault, Section 76-5-405;

87 (xiv) aggravated arson, Section 76-6-103;

88 (xv) aggravated burglary, Section 76-6-203;

89 (xvi) aggravated robbery, Section 76-6-302;

- 90 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 91 (xviii) an offense committed in another jurisdiction which if committed in this state
- 92 would be a violation of a crime listed in this Subsection (1)(j);
- 93 (k) the homicide was committed for the purpose of:
- 94 (i) preventing a witness from testifying;
- 95 (ii) preventing a person from providing evidence or participating in any legal
- 96 proceedings or official investigation;
- 97 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 98 any legal proceedings or official investigation; or
- 99 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 100 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 101 public office, and the homicide is based on, is caused by, or is related to that official position,
- 102 act, capacity, or candidacy;
- 103 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 104 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 105 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 106 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 107 have known, that the victim holds or has held that official position;
- 108 (n) the homicide was committed:
- 109 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 110 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 111 structure, or was mailed or delivered; or
- 112 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- 113 (o) the homicide was committed during the act of unlawfully assuming control of any
- 114 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
- 115 valuable consideration for the release of the public conveyance or any passenger, crew
- 116 member, or any other person aboard, or to direct the route or movement of the public
- 117 conveyance or otherwise exert control over the public conveyance;
- 118 (p) the homicide was committed by means of the administration of a poison or of any
- 119 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 120 (q) the victim was a person held or otherwise detained as a shield, hostage, or for

121 ransom;

122 (r) the homicide was committed in an especially heinous, atrocious, cruel, or  
123 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious  
124 physical abuse, or serious bodily injury of the victim before death;

125 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or  
126 after death, in a manner demonstrating the actor's depravity of mind; or

127 (t) the victim, at the time of the death of the victim:

128 (i) was younger than 14 years of age; and

129 (ii) was not an unborn child.

130 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless  
131 indifference to human life, causes the death of another incident to an act, scheme, course of  
132 conduct, or criminal episode during which the actor is a major participant in the commission or  
133 attempted commission of:

134 (a) child abuse, Subsection 76-5-109(2)(a);

135 (b) child kidnapping, Section 76-5-301.1;

136 (c) rape of a child, Section 76-5-402.1;

137 (d) object rape of a child, Section 76-5-402.3;

138 (e) sodomy on a child, Section 76-5-403.1; or

139 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

140 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder  
141 is a capital felony.

142 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder  
143 is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

144 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice  
145 of intent to seek the death penalty. The notice shall be served on the defendant or defense  
146 counsel and filed with the court.

147 (ii) Notice of intent to seek the death penalty may be served and filed more than 60  
148 days after the arraignment upon written stipulation of the parties or upon a finding by the court  
149 of good cause.

150 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to  
151 noncapital first degree felony aggravated murder during the period in which the prosecutor may

152 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

153 (e) If the defendant was younger than 18 years of age at the time the offense was  
154 committed, aggravated murder is a noncapital first degree felony punishable as provided in  
155 Section 76-3-207.7.

156 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted  
157 aggravated murder that the defendant caused the death of another or attempted to cause the  
158 death of another under a reasonable belief that the circumstances provided a legal justification  
159 or excuse for the conduct although the conduct was not legally justifiable or excusable under  
160 the existing circumstances.

161 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from  
162 the viewpoint of a reasonable person under the then existing circumstances.

163 (c) This affirmative defense reduces charges only as follows:

164 (i) aggravated murder to murder; and

165 (ii) attempted aggravated murder to attempted murder.

166 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes  
167 a separate offense does not merge with the crime of aggravated murder.

168 (b) A person who is convicted of aggravated murder, based on an aggravating  
169 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be  
170 convicted of, and punished for, the separate offense.

171 Section 2. Section **76-5-301.1** is amended to read:

172 **76-5-301.1. Child kidnapping.**

173 (1) An actor commits child kidnapping if the actor intentionally or knowingly, without  
174 authority of law, and by any means and in any manner, seizes, confines, detains, or transports a  
175 child under the age of 14 without the consent of the victim's parent or guardian, or the consent  
176 of a person acting in loco parentis.

177 (2) Violation of Section 76-5-303 is not a violation of this section.

178 (3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:

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

181 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact  
182 finds that during the course of the commission of the child kidnapping the defendant caused

183 serious bodily injury to another; or

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

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

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

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

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

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

194 (5) The provisions of Subsection (4) do not apply when a person is sentenced under  
195 Subsection (3)(c).

196 (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18  
197 years of age at the time of the offense.

198 [~~(6)~~] (7) Imprisonment under this section is mandatory in accordance with Section  
199 76-3-406.

200 Section 3. Section **76-5-302** is amended to read:

201 **76-5-302. Aggravated kidnapping.**

202 (1) An actor commits aggravated kidnapping if the actor, in the course of committing  
203 unlawful detention or kidnapping:

204 (a) possesses, uses, or threatens to use a dangerous weapon as defined in Section  
205 76-1-601; or

206 (b) acts with intent:

207 (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a  
208 third person to engage in particular conduct or to forbear from engaging in particular conduct;

209 (ii) to facilitate the commission, attempted commission, or flight after commission or  
210 attempted commission of a felony;

211 (iii) to hinder or delay the discovery of or reporting of a felony;

212 (iv) to inflict bodily injury on or to terrorize the victim or another;

213 (v) to interfere with the performance of any governmental or political function; or

214 (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual  
215 Offenses.

216 (2) As used in this section, "in the course of committing unlawful detention or  
217 kidnapping" means in the course of committing, attempting to commit, or in the immediate  
218 flight after the attempt or commission of a violation of:

219 (a) Section 76-5-301, kidnapping; or

220 (b) Section 76-5-304, unlawful detention.

221 (3) Aggravated kidnapping is a first degree felony punishable by a term of  
222 imprisonment of:

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

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

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

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

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

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

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

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

238 (5) The provisions of Subsection (4) do not apply when a person is sentenced under  
239 Subsection (3)(c).

240 (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18  
241 years of age at the time of the offense.

242 [~~(6)~~] (7) Imprisonment under this section is mandatory in accordance with Section  
243 76-3-406.

244 Section 4. Section **76-5-402** is amended to read:

245 **76-5-402. Rape.**

246 (1) A person commits rape when the actor has sexual intercourse with another person  
247 without the victim's consent.

248 (2) This section applies whether or not the actor is married to the victim.

249 (3) Rape is a felony of the first degree, punishable by a term of imprisonment of:

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

252 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,  
253 if the trier of fact finds that:

254 (i) during the course of the commission of the rape the defendant caused serious bodily  
255 injury to another; or

256 (ii) at the time of the commission of the rape, the defendant was younger than 18 years  
257 of age and was previously convicted of a grievous sexual offense; or

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

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

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

265 (b) six years and which may be for life.

266 (5) The provisions of Subsection (4) do not apply when a person is sentenced under  
267 Subsection (3)(a) or (c).

268 (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance  
269 with Section 76-3-406.

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

271 **76-5-402.1. Rape of a child.**

272 (1) A person commits rape of a child when the person has sexual intercourse with a  
273 child who is under the age of 14.

274 (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

275 (a) except as provided in Subsection (2)(b), not less than 25 years and which may be

276 for life; or

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

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

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

282 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age  
283 at the time of the offense.

284 [~~3~~] (4) Imprisonment under this section is mandatory in accordance with Section  
285 76-3-406.

286 Section 6. Section **76-5-402.2** is amended to read:

287 **76-5-402.2. Object rape.**

288 (1) A person who, without the victim's consent, causes the penetration, however slight,  
289 of the genital or anal opening of another person who is 14 years of age or older, by any foreign  
290 object, substance, instrument, or device, including a part of the human body other than the  
291 mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or  
292 with the intent to arouse or gratify the sexual desire of any person, commits an offense which is  
293 a first degree felony, punishable by a term of imprisonment of:

294 (a) except as provided in Subsection (1)(b) or (c), not less than five years and which  
295 may be for life;

296 (b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life,  
297 if the trier of fact finds that:

298 (i) during the course of the commission of the object rape the defendant caused serious  
299 bodily injury to another; or

300 (ii) at the time of the commission of the object rape, the defendant was younger than 18  
301 years of age and was previously convicted of a grievous sexual offense; or

302 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
303 object rape, the defendant was previously convicted of a grievous sexual offense.

304 (2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser  
305 term than the term described in Subsection (1)(b) is in the interests of justice and states the  
306 reasons for this finding on the record, the court may impose a term of imprisonment of not less

307 than:

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

309 (b) six years and which may be for life.

310 (3) The provisions of Subsection (2) do not apply when a person is sentenced under

311 Subsection (1)(a) or (c).

312 (4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance

313 with Section 76-3-406.

314 Section 7. Section **76-5-402.3** is amended to read:

315 **76-5-402.3. Object rape of a child -- Penalty.**

316 (1) A person commits object rape of a child when the person causes the penetration or  
317 touching, however slight, of the genital or anal opening of a child who is under the age of 14 by  
318 any foreign object, substance, instrument, or device, not including a part of the human body,  
319 with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse  
320 or gratify the sexual desire of any person.

321 (2) Object rape of a child is a first degree felony punishable by a term of imprisonment  
322 of:

323 (a) except as provided in Subsection (2)(b) not less than 25 years and which may be for  
324 life; or

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

326 (i) during the course of the commission of the object rape of a child the defendant  
327 caused serious bodily injury to another; or

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

330 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age  
331 at the time of the offense.

332 [~~3~~] (4) Imprisonment under this section is mandatory in accordance with Section  
333 76-3-406.

334 Section 8. Section **76-5-403** is amended to read:

335 **76-5-403. Sodomy -- Forcible sodomy.**

336 (1) A person commits sodomy when the actor engages in any sexual act with a person  
337 who is 14 years of age or older involving the genitals of one person and mouth or anus of

338 another person, regardless of the sex of either participant.

339 (2) A person commits forcible sodomy when the actor commits sodomy upon another  
340 without the other's consent.

341 (3) Sodomy is a class B misdemeanor.

342 (4) Forcible sodomy is a first degree felony [~~of the first degree~~], punishable by a term  
343 of imprisonment of:

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

346 (b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life,  
347 if the trier of fact finds that:

348 (i) during the course of the commission of the forcible sodomy the defendant caused  
349 serious bodily injury to another; or

350 (ii) at the time of the commission of the rape, the defendant was younger than 18 years  
351 of age and was previously convicted of a grievous sexual offense; or

352 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
353 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

354 (5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser  
355 term than the term described in Subsection (4)(b) is in the interests of justice and states the  
356 reasons for this finding on the record, the court may impose a term of imprisonment of not less  
357 than:

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

359 (b) six years and which may be for life.

360 (6) The provisions of Subsection (5) do not apply when a person is sentenced under  
361 Subsection (4)(a) or (c).

362 (7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance  
363 with Section 76-3-406.

364 Section 9. Section **76-5-403.1** is amended to read:

365 **76-5-403.1. Sodomy on a child.**

366 (1) A person commits sodomy upon a child if the actor engages in any sexual act upon  
367 or with a child who is under the age of 14, involving the genitals or anus of the actor or the  
368 child and the mouth or anus of either person, regardless of the sex of either participant.

369 (2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment  
370 of:

371 (a) except as provided in Subsection (2)(b), not less than 25 years and which may be  
372 for life; or

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

374 (i) during the course of the commission of the sodomy upon a child the defendant  
375 caused serious bodily injury to another; or

376 (ii) at the time of the commission of the sodomy upon a child, the defendant was  
377 previously convicted of a grievous sexual offense.

378 (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age  
379 at the time of the offense.

380 [~~3~~] (4) Imprisonment under this section is mandatory in accordance with Section  
381 76-3-406.

382 Section 10. Section **76-5-404.1** is amended to read:

383 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

384 (1) As used in this section, "child" means a person under the age of 14.

385 (2) A person commits sexual abuse of a child if, under circumstances not amounting to  
386 rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of  
387 these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a  
388 female child, or otherwise takes indecent liberties with a child, or causes a child to take  
389 indecent liberties with the actor or another with intent to cause substantial emotional or bodily  
390 pain to any person or with the intent to arouse or gratify the sexual desire of any person  
391 regardless of the sex of any participant.

392 (3) Sexual abuse of a child is punishable as a second degree felony.

393 (4) A person commits aggravated sexual abuse of a child when in conjunction with the  
394 offense described in Subsection (2) any of the following circumstances have been charged and  
395 admitted or found true in the action for the offense:

396 (a) the offense was committed by the use of a dangerous weapon as defined in Section  
397 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or  
398 was committed during the course of a kidnaping;

399 (b) the accused caused bodily injury or severe psychological injury to the victim during

400 or as a result of the offense;

401 (c) the accused was a stranger to the victim or made friends with the victim for the  
402 purpose of committing the offense;

403 (d) the accused used, showed, or displayed pornography or caused the victim to be  
404 photographed in a lewd condition during the course of the offense;

405 (e) the accused, prior to sentencing for this offense, was previously convicted of any  
406 felony, or of a misdemeanor involving a sexual offense;

407 (f) the accused committed the same or similar sexual act upon two or more victims at  
408 the same time or during the same course of conduct;

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

412 (h) the offense was committed by a person who occupied a position of special trust in  
413 relation to the victim; "position of special trust" means that position occupied by a person in a  
414 position of authority, who, by reason of that position is able to exercise undue influence over  
415 the victim, and includes, but is not limited to, a youth leader or recreational leader who is an  
416 adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,  
417 employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive  
418 parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;

419 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or  
420 sexual acts by the victim with any other person, or sexual performance by the victim before any  
421 other person; or

422 (j) the accused caused the penetration, however slight, of the genital or anal opening of  
423 the child by any part or parts of the human body other than the genitals or mouth.

424 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of  
425 imprisonment of:

426 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and  
427 which may be for life;

428 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact  
429 finds that during the course of the commission of the aggravated sexual abuse of a child the  
430 defendant caused serious bodily injury to another; or

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

434 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a  
435 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and  
436 states the reasons for this finding on the record, the court may impose a term of imprisonment  
437 of not less than:

438 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

439 (b) for purposes of Subsection (5)(a) or (b):

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

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

442 (7) The provisions of Subsection (6) do not apply when a person is sentenced under  
443 Subsection (5)(c).

444 (8) Subsections (5)(b) and (c) do not apply if the defendant was younger than 18 years  
445 of age at the time of the offense.

446 [~~(8)~~] (9) Imprisonment under this section is mandatory in accordance with Section  
447 76-3-406.

448 Section 11. Section **76-5-405** is amended to read:

449 **76-5-405. Aggravated sexual assault -- Penalty.**

450 (1) A person commits aggravated sexual assault if:

451 (a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the  
452 actor:

453 (i) uses, or threatens the victim with the use of, a dangerous weapon as defined in  
454 Section 76-1-601;

455 (ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible  
456 sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be  
457 inflicted imminently on any person; or

458 (iii) is aided or abetted by one or more persons;

459 (b) in the course of an attempted rape, attempted object rape, or attempted forcible  
460 sodomy, the actor:

461 (i) causes serious bodily injury to any person;

462 (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in  
463 Section 76-1-601;

464 (iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy,  
465 by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person;  
466 or

467 (iv) is aided or abetted by one or more persons; or

468 (c) in the course of an attempted forcible sexual abuse, the actor:

469 (i) causes serious bodily injury to any person;

470 (ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in  
471 Section 76-1-601;

472 (iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of  
473 kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

474 (iv) is aided or abetted by one or more persons.

475 (2) Aggravated sexual assault is a first degree felony, punishable by a term of  
476 imprisonment of:

477 (a) for an aggravated sexual assault described in Subsection (1)(a):

478 (i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and  
479 which may be for life; or

480 (ii) life without parole, if the trier of fact finds that at the time of the commission of the  
481 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

482 (b) for an aggravated sexual assault described in Subsection (1)(b):

483 (i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and  
484 which may be for life; or

485 (ii) life without parole, if the trier of fact finds that at the time of the commission of the  
486 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

487 or

488 (c) for an aggravated sexual assault described in Subsection (1)(c):

489 (i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and  
490 which may be for life; or

491 (ii) life without parole, if the trier of fact finds that at the time of the commission of the  
492 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

493 (3) (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a  
494 lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states  
495 the reasons for this finding on the record, the court may impose a term of imprisonment of not  
496 less than:

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

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

499 (b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under  
500 Subsection (2)(a)(ii).

501 (4) (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a  
502 lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states  
503 the reasons for this finding on the record, the court may impose a term of imprisonment of not  
504 less than six years and which may be for life.

505 (b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under  
506 Subsection (2)(b)(ii).

507 (5) (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a  
508 lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states  
509 the reasons for this finding on the record, the court may impose a term of imprisonment of not  
510 less than three years and which may be for life.

511 (b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under  
512 Subsection (2)(c)(ii).

513 (6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was  
514 younger than 18 years of age at the time of the offense.

515 [~~6~~] (7) Imprisonment under this section is mandatory in accordance with Section  
516 76-3-406.

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**Legislative Review Note**  
as of 2-15-13 10:43 AM

**Office of Legislative Research and General Counsel**