

SEX OFFENSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill adds to the definition of position of special trust.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "position of special trust" to a professor, instructor, or teaching assistant at an institution of higher education; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-404.1, as last amended by Laws of Utah 2018, Chapter 192

76-5-406, as last amended by Laws of Utah 2018, Chapter 176

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

Section 1. Section **76-5-404.1** is amended to read:

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

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

- 29 (b) "Child" means an individual under the age of 14.
- 30 (c) "Position of special trust" means:
- 31 (i) an adoptive parent;
- 32 (ii) an athletic manager who is an adult;
- 33 (iii) an aunt;
- 34 (iv) a babysitter;
- 35 (v) a coach;
- 36 (vi) a cohabitant of a parent if the cohabitant is an adult;
- 37 (vii) a counselor;
- 38 (viii) a doctor or physician;
- 39 (ix) an employer;
- 40 (x) a foster parent;
- 41 (xi) a grandparent;
- 42 (xii) a legal guardian;
- 43 (xiii) a natural parent;
- 44 (xiv) a recreational leader who is an adult;
- 45 (xv) a religious leader;
- 46 (xvi) a sibling or a stepsibling who is an adult;
- 47 (xvii) a scout leader who is an adult;
- 48 (xviii) a stepparent;
- 49 (xix) a teacher or any other individual employed by or volunteering at a public or
- 50 private elementary school or secondary school, and who is 18 years of age or older;
- 51 (xx) an instructor, professor, or teaching assistant at a public or private institution of
- 52 higher education;
- 53 [~~xx~~] (xxi) an uncle;
- 54 [~~xxi~~] (xxii) a youth leader who is an adult; or
- 55 [~~xxii~~] (xxiii) any individual in a position of authority, other than those individuals

56 listed in Subsections (1)(c)(i) through [~~(xxi)~~] (xxiii), which enables the individual to exercise
57 undue influence over the child.

58 (2) An individual commits sexual abuse of a child if, under circumstances not
59 amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit
60 any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child,
61 the breast of a female child, or otherwise takes indecent liberties with a child, with intent to
62 cause substantial emotional or bodily pain to any individual or with the intent to arouse or
63 gratify the sexual desire of any individual regardless of the sex of any participant.

64 (3) Sexual abuse of a child is a second degree felony.

65 (4) An individual commits aggravated sexual abuse of a child when in conjunction
66 with the offense described in Subsection (2) any of the following circumstances have been
67 charged and admitted or found true in the action for the offense:

68 (a) the offense was committed by the use of a dangerous weapon as defined in Section
69 [76-1-601](#), or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
70 was committed during the course of a kidnapping;

71 (b) the accused caused bodily injury or severe psychological injury to the victim during
72 or as a result of the offense;

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

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

77 (e) the accused, prior to sentencing for this offense, was previously convicted of any
78 sexual offense;

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

81 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if
82 committed in Utah would constitute an offense described in this chapter, and were committed

83 at the same time, or during the same course of conduct, or before or after the instant offense;

84 (h) the offense was committed by an individual who occupied a position of special
85 trust in relation to the victim;

86 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
87 sexual acts by the victim with any other individual, or sexual performance by the victim before
88 any other individual, human trafficking, or human smuggling; or

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

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

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

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

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

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

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

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

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

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

109 (7) The provisions of Subsection (6) do not apply when an individual is sentenced

110 under Subsection (5)(c).

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

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

114 Section 2. Section 76-5-406 is amended to read:

115 **76-5-406. Sexual offenses against the victim without consent of victim --**

116 **Circumstances.**

117 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
118 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
119 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
120 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
121 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
122 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
123 victim under any of the following circumstances:

124 (1) the victim expresses lack of consent through words or conduct;

125 (2) the actor overcomes the victim through the actual application of physical force or
126 violence;

127 (3) the actor is able to overcome the victim through concealment or by the element of
128 surprise;

129 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
130 immediate future against the victim or any other person, and the victim perceives at the time
131 that the actor has the ability to execute this threat; or

132 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
133 against the victim or any other person, and the victim believes at the time that the actor has the
134 ability to execute this threat;

135 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
136 kidnapping, or extortion;

137 (5) the actor knows the victim is unconscious, unaware that the act is occurring, or
138 physically unable to resist;

139 (6) the actor knows or reasonably should know that the victim has a mental disease or
140 defect, which renders the victim unable to:

141 (a) appraise the nature of the act;

142 (b) resist the act;

143 (c) understand the possible consequences to the victim's health or safety; or

144 (d) appraise the nature of the relationship between the actor and the victim.

145 (7) the actor knows that the victim submits or participates because the victim
146 erroneously believes that the actor is the victim's spouse;

147 (8) the actor intentionally impaired the power of the victim to appraise or control his or
148 her conduct by administering any substance without the victim's knowledge;

149 (9) the victim is younger than 14 years of age;

150 (10) the victim is younger than 18 years of age and at the time of the offense the actor
151 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
152 special trust in relation to the victim as defined in Section [76-5-404.1](#);

153 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
154 actor is more than three years older than the victim and entices or coerces the victim to submit
155 or participate, under circumstances not amounting to the force or threat required under
156 Subsection (2) or (4); or

157 (12) the actor is a health professional or religious counselor, as those terms are defined
158 in this Subsection (12), the act is committed under the guise of providing professional
159 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
160 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
161 to the extent that resistance by the victim could not reasonably be expected to have been
162 manifested[; ~~for~~]. For purposes of this Subsection (12):

163 (a) "health professional" means an individual who is licensed or who holds himself or

164 herself out to be licensed, or who otherwise provides professional physical or mental health
165 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
166 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
167 social service worker, clinical social worker, certified social worker, marriage and family
168 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
169 specialist, or substance abuse counselor; and

170 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
171 member of the clergy.