

Representative Marc K. Roberts proposes the following substitute bill:

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:

- ▶ creates a new provision for wrongful adolescent sexual activity between persons under 18 years of age;
- ▶ creates penalties; and
- ▶ makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-401, as last amended by Laws of Utah 2016, Chapter 372

ENACTS:

76-5-401.3, Utah Code Annotated 1953



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

Section 1. Section **76-5-401** is amended to read:

76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person 18 years of age or older commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) (a) Except under Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) If the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, the offense is a class B misdemeanor. An offense under this Subsection (3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).

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

76-5-401.3. Wrongful adolescent sexual activity.

(1) As used in this section:

(a) "adolescent" means a person who is 12 years of age or older, but under 18 years of age; and

(b) "wrongful adolescent sexual activity" means, under circumstances not amounting to rape, in violation of Section [76-5-402](#), object rape, in violation of Section [76-5-402.2](#), forcible

sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of section 76-5-405, sexual abuse of a child, in violation of Section 76-5-404.1, or incest, in violation of Section 76-7-102, an adolescent who is under 18 years of age, but 12 years of age or older:

(i) has sexual intercourse with another adolescent who is under 18 years of age, but 12 years of age or older;

(ii) engages in any sexual act with another adolescent who is under 18 years of age, but 12 years of age or older, involving the genitals of one adolescent and the mouth or anus of the other adolescent, regardless of the sex of either participant; or

(iii) causes the penetration, however slight, of the genitals or anal opening of another adolescent who is under 18 years of age, but 12 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of either participant.

(2) Wrongful adolescent sexual activity is punishable as a:

(a) third degree felony if an adolescent who is 17 years of age engages in wrongful adolescent sexual activity with an adolescent who is 12 years of age;

(b) third degree felony if an adolescent who is 17 years of age engages in wrongful adolescent sexual activity with an adolescent who is 13 years of age;

(c) third degree felony if an adolescent who is 16 years of age engages in wrongful adolescent sexual activity with an adolescent who is 12 years of age;

(d) class A misdemeanor if an adolescent who is 16 years of age engages in wrongful adolescent sexual activity with an adolescent who is 13 years of age;

(e) class A misdemeanor if an adolescent who is 15 years of age engages in wrongful adolescent sexual activity with an adolescent who is 12 years of age;

(f) class B misdemeanor if an adolescent who is 15 years of age engages in wrongful adolescent sexual activity with an adolescent who is 13 years of age; and

(g) class B misdemeanor if an adolescent who is 14 years of age engages in wrongful adolescent sexual activity with an adolescent who is 12 years of age.

(3) Wrongful adolescent sexual activity is not punishable as a criminal or delinquent offense if engaged in by:

(a) an adolescent who is 13 years of age with another adolescent who is 12 or 13 years

of age; or

(b) an adolescent who is 12 years of age with another adolescent who is 12 years of age.

(4) Wrongful adolescent sexual activity is not punishable as a criminal or delinquent offense if both adolescents are under 18 years of age, but 14 years of age or older.

(5) Offenses under this section are not eligible for nonjudicial adjustment under Section [78A-6-602](#) or referral to youth court under Section [78A-6-1203](#).

(6) Unless the offenses are before the court pursuant to Section [78A-6-701](#), [78A-6-702](#), or [78A-6-703](#), the district court may enter any sentence or combination of sentences which would have been available in juvenile court but for the delayed reporting or delayed filing of the information in district court.

(7) An offense under this section is not subject to registration under Subsection [77-41-102](#)(17).