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Sexual Offenses Utah Criminal Code

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76-4-401. Enticing a minor over the Internet.

-- Elements -- Penalties.

(1) A person commits enticement of a minor over the Internet when, not amounting

to an attempt, conspiracy, or solicitation under Section **76-4-101**, **76-4-201**, or **76-4-203**, the person knowingly uses a computer to solicit, seduce, lure, or entice, or attempt to solicit, seduce, lure, or entice a minor or a person the defendant believes to be a minor to engage in any sexual activity which is a violation of state criminal law.

(2) It is not a defense to the crime of enticing a minor under Subsection (1), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(3) An enticement of a minor under Subsection (1) with the intent to commit:

- (a) a first degree felony is a second degree felony;
- (b) a second degree felony is a third degree felony;
- (c) a third degree felony is a class A misdemeanor;
- (d) a class A misdemeanor is a class B misdemeanor; and
- (e) a class B misdemeanor is a class C misdemeanor.

Enacted by Chapter 353, 2001 General Session

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 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 violation of Subsection (2) is a third degree felony unless 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, in which case it is a class B misdemeanor.

Repealed and Re-enacted by Chapter 82, 1998 General Session

76-5-401.1. Sexual abuse of a minor.

(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 commits sexual abuse of a minor if the person is seven years or more older than the minor and, 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, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, 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 violation of this section is a class A misdemeanor.

Enacted by Chapter 82, 1998 General Session

76-5-401.2. Unlawful sexual conduct with a 16 or 17 year old.

(1) For purposes of this section "minor" means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct described in this section occurred.

(2) A person commits unlawful sexual conduct 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 who is ten or more years older than the minor at the time of the sexual conduct:

(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 violation of Subsection (2) is a third degree felony.

Enacted by Chapter 183, 1998 General Session

76-5-402. Rape.

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

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

(3) Rape is a felony of the first degree.

Amended by Chapter 267, 1991 General Session

76-5-402.1. Rape of a child.

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

(2) Rape of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 40, 1996 General Session

76-5-402.2. Object rape.

A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is punishable as a felony of the first degree.

Amended by Chapter 18, 1984 General Session

76-5-402.3. Object rape of a child.

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

(2)

(a) Object rape of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life.

(b) Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 128, 2000 General Session

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

(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

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

(3) Sodomy is a class B misdemeanor. Forcible sodomy is a felony of the first degree.

Amended by Chapter 88, 1983 General Session

76-5-403.1. Sodomy on a child.

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

(2) Sodomy upon a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 40, 1996 General Session

76-5-404. Forcible sexual abuse.

(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with 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, without the consent of the other, regardless of the sex of any participant.

(2) Forcible sexual abuse is a felony of the second degree.

Amended by Chapter 18, 1984 General Session

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

(1) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child younger than 14 years of age, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with 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.

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

(3) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (1) any of the following circumstances have been charged and admitted or found true in the action for the offense:

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

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

(c) the accused was a stranger to the victim or made friends with the victim for the

purpose of committing the offense;

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

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

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

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

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

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

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

(4) Aggravated sexual abuse of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than five years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 131, 1998 General Session

76-5-405. Aggravated sexual assault.

(1) A person commits aggravated sexual assault if in the course of a rape or attempted rape, object rape or attempted object rape, forcible sodomy or attempted forcible sodomy, or forcible sexual abuse or attempted forcible sexual abuse the actor:

(a) causes bodily injury to the victim;

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

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

(d) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Amended by Chapter 289, 1997 General Session

76-5a-3. Sexual exploitation of a minor.

(1) A person is guilty of sexual exploitation of a minor:

(a) when he knowingly produces, distributes, possesses, or possesses with intent to distribute, material or a live performance depicting:

(i) a nude or partially nude minor for the purpose of causing sexual arousal of any person; or

(ii) any minor's engagement in sexual conduct alone or with another person; or

(b) if he is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a) above.

(2) Sexual exploitation of a minor is a felony of the second degree.

(3) It is a separate offense under this section:

(a) for each minor depicted, and if more than one minor is depicted in the same material or live performance in violation of this section, the depiction of each individual minor in the material or live performance is a separate offense;

(b) each time the same minor is depicted in different material; and

(c) each time the same minor is depicted in a separate live performance.

Amended by Chapter 128, 2000 General Session

76-7-102. Incest.

(1) A person is guilty of incest when, under circumstances not amounting to rape, rape of a child or aggravated sexual assault, he has sexual intercourse with a person whom he knows to be an ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. The relationships referred to herein include blood relationships of the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, and relationship of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(2) Incest is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-9-702.5. Lewdness involving child.

(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of a child who is under 14 years of age:

(a) performs an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area:

(i) in a public place; or

(ii) in a private place:

(A) under circumstances the person should know will likely cause affront or alarm; or

(B) with the intent to arouse or gratify the sexual desire of the actor or the child;

(c) masturbates;

(d) engages in trespassory voyeurism;

(e) under circumstances not amounting to sexual exploitation of a child under Section 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or

(f) performs any other act of lewdness.

(2) Lewdness involving a child is a class A misdemeanor.

Amended by Chapter 302, 1999 General Session

76-10-1306. Aggravated exploitation of prostitution.

(1) A person is guilty of aggravated exploitation if:

(a) In committing an act of exploiting prostitution, as defined in section 76-10-1305, he uses any force, threat, or fear against any person; or

(b) The person procured, transported, or persuaded or with whom he shares the proceeds of prostitution is under eighteen years of age or is the wife of the actor.

(2) Aggravated exploitation of prostitution is a felony of the second degree.

Enacted by Chapter 196, 1973 General Session

76-9-702. Lewdness -- Sexual battery -- Public urination.

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2) Lewdness is a class B misdemeanor.

(3) A person is guilty of sexual battery if the person under circumstances not amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.

(4) Sexual battery is a class A misdemeanor.

(5) A person is guilty of public urination if the person urinates or defecates:

(a) in a public place, other than a public rest room; and

(b) under circumstances which the person should know will likely cause affront or alarm to another.

(6) Public urination is a class C misdemeanor.

(7) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd or grossly lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Amended by Chapter 325, 2003 General Session

76-9-702.8. Voyeurism offenses -- Penalties.

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

Amended by Chapter 52, 2004 General Session

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

(1) It is not a defense to the crime of child kidnaping, a violation of Section **76-5-301.1**; rape of a child, a violation of Section **76-5-402.1**; object rape of a child, a violation of Section **76-5-402.3**; sodomy upon a child, a violation of Section **76-5-403.1**; or sexual abuse of a child, a violation of Section **76-5-404.1**; or aggravated sexual abuse of a child, a violation of Subsection **76-5-404.1** (4); or an attempt to commit any of those offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section **76-5-401**, sexual abuse of a minor, a violation of Section **76-5-401.1**, or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

Amended by Chapter 149, 2003 General Session