

2017
UTAH CHILD ABUSE STATUTES
AND
CHILD ABUSE REPORTING LAW

10TH EDITION
Revised June 2017



Special thanks to Salt Lake County Children's Justice Center staff, Thaddeus May, Matthew Janzen, Will Carlson and Craig Johnson.



Please contact Deondra Brown at dnielsen@agutah.gov for any corrections or additions.

DISCLAIMER: This is merely a summary of Utah laws and is not intended to be legal advice. Please review the specific code section and/or consult with an attorney for specific legal advice.

Summary of Child Abuse Related Laws

SEX CRIMES OF CHILDREN (Under 14) Page 3

- Rape of a Child (§76-5-402.1)
- Object Rape of a Child (§76-5-402.3)
- Sodomy on a Child (§76-5-403.1)
- Sexual Abuse of a Child (§76-5-404.1)
- Aggravated Sexual Abuse of a Child (§76-5-405)
- Lewdness Involving a Child (§76-9-702.5)
- Unlawful adolescent sexual activity (§76-5-401.3)
- Mistake of Age is not a defense §76-2-304.5(1)
- Voluntary Intoxication §76-2-306(2)
- HIV/Hepatitis enhancement §76-3-203.12

SEX CRIMES OF JUVENILES Page 5

- Unlawful Sexual Activity with a Minor—14 or 15-year-old (§76-5-401)
- Sexual Abuse of a Minor—14 or 15-year-old (§76-5-401.1)
- Unlawful adolescent sexual activity §76-5-401.3
- Mistake of Age is not a defense §76-2-304.5(2)
- Voluntary Intoxication §76-2-306(2)
- HIV/Hepatitis enhancement §76-3-203.12
- Unlawful Sexual Conduct with 16 or 17 year old §76-5-401.2
- Unlawful Sexual Conduct with 16 or 17 year old (touching) §76-5-401.2
- Mistake of Age is not a defense §76-2-304.5(3)
- Voluntary Intoxication §76-2-306(2)
- HIV/Hepatitis enhancement §76-3-203.12

SEX CRIMES INVOLVING JUVENILES (14+) AND ADULTS Page 7

- Aggravated Sexual Assault (§76-5-405)
- Rape (§76-5-402)
- Object Rape (§76-5-402.2)
- Forcible Sodomy (§76-5-403)
- Forcible Sexual Abuse (§76-5-404)
- Sexual Battery (§76-9-702.1)
- Lewdness (§76-9-702)
- Voyeurism (§76-9-702.7)
- Voluntary Intoxication §76-2-306(2)
- HIV/Hepatitis enhancement §76-3-203.12

MARITAL VIOLATIONS Page 10

- Bigamy (§76-7-101)
- Child bigamy (§76-7-101.5)
- Incest (§76-7-102)

PHYSICAL ABUSE CRIMES OF CHILDREN & JUVENILES Page 10

- Child Abuse “Physical injury” §76-5-109(1)(e)
- Child Abuse “Serious Physical injury” §76-5-109(1)(f)
- “Care and Custody”
- Aggravated Murder (§76-5-202)
- Murder (§76-5-203)
- Child Abuse Homicide (§76-5-208)

- Endangerment of a child or vulnerable adult (§ 76-5-112.5)
- Reckless Endangerment (§76-5-112)
- Abuse or neglect of disabled child (§76-5-110)
- Leaving child in unattended motor vehicle (§76-10-2202)

KIDNAPPING CRIMES Page 14

- Child Kidnapping (§76-5-301.1)
- Kidnapping (§76-5-301)
- Aggravated Kidnapping (§76-5-302)
- Custodial Interference (§76-5-303)
- Unlawful Detention (§76-5-304)

PORNOGRAPHY AND INTERNET CRIMES Page 15

- Sexual Exploitation of Minor (Child Pornography) (§76-5b-202)
- Sexual extortion §76-5b-204(2)
- Aggravated sexual extortion §76-5b-204(4)
- Distributing Pornographic Material (§76-10-1203)
- Dealing Harmful Materials (§76-10-1201)
- Indecent Public Displays Prohibitions (§76-10-1228)
- Accessing Porn/Indecent Material on School Property (§76-10-1235)
- Enticing a Minor (§76-4-401)

DOMESTIC VIOLENCE Page 18

- Stalking (§76-5-106.5)
- Protective Order Violation (§76-5-108)
- DV in presence of child (§76-5-109.1)

OTHER CRIMES Page 19

- Unlawful Sale or Supply of Alcohol to Minors (§32B-4-403)
- Providing Tobacco to Minors (§76-10-104)
- Contributing to Delinquency of Minor (§76-10-2301)
- Jail Release Orders § 77-20-3.5
- Human Trafficking Safe Harbor § 78B-9-104

SEX OFFENDER REGISTRY Page 20

CHILD ABUSE OFFENDER REGISTRY Page 21

AGE OF CONSENT Page 22

UTAH AGE OF CONSENT LAWS CHART Page 23

STATUTE OF LIMITATIONS Page 24

CHILD ABUSE REPORTING LAW Page 25

CRIMINAL RESPONSIBILITY Page 25

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SEX CRIMES OF CHILDREN (UNDER 14)

Crime/Statute	Elements/Level of Offense	Important Issues
Rape of a Child §76-5-402.1	<ul style="list-style-type: none"> ➤ Victim is 13 years of age or younger ➤ Sexual intercourse ● Felony 1 with 25 years to life sentence; LWOP if causes serious bodily injury or prior grievous sexual offense; ● For first time offenders younger than 21 the court, considering the age of the victim & interests of justice, can impose 15, 10, or 6 to life; ● Prison is not mandatory if the sentencing court finds the offender was under 18 at time of offense and could have been adjudicated in juvenile court but for delayed reporting/filing. §76-3-403(2) ● Attempt is 15 to life. 	<ul style="list-style-type: none"> ➤ Touching of genitals to genitals, however slight, is sufficient. § (§76-5-407(2)(b)(v) ➤ If touching is by any part or parts of the human body except the genitals or the mouth, then it would be Sex Abuse of Child. §76-5-404.1(4)(j)
Object Rape of Child §76-5-402.3	<ul style="list-style-type: none"> ➤ Victim is 13 years of age or younger ➤ Penetration or touching, however slight, of ➤ Genital or anal opening ➤ By any foreign object, substance, instrument, or device (not human body) <i>with (specific) intent to</i> ➤ To cause substantial emotional or bodily pain to the child OR ➤ To arouse or gratify the sexual desire of any person ● Felony 1 with 25 years to life sentence; LWOP if causes serious bodily injury or prior grievous sexual offense; ● For first time offenders younger than 21 the court, considering the age of the victim & interests of justice, can impose 15, 10, or 6 to life; ● Prison is not mandatory if the sentencing court finds the offender was under 18 at time of offense and could have been adjudicated in juvenile court but for delayed reporting/filing. §76-3-403(2) ● Attempt is 15 to life 	<ul style="list-style-type: none"> ➤ Any touching, however slight, is sufficient. §76-5-407(2)(b)(vi)
Sodomy on a Child §76-5-403.1	<ul style="list-style-type: none"> ➤ Victim is 13 years of age or younger ➤ Any sexual act ➤ 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) ● Felony 1 with 25 years to life sentence; LWOP if causes serious bodily injury or prior grievous sexual offense; ● For first time offenders younger than 21 the court, considering the age of the victim & interests of justice, can impose 15, 10, or 6 to life; ● Prison is not mandatory if the sentencing court finds the offender was under 18 at time of offense and could have been adjudicated in juvenile court but for delayed reporting/filing. §76-3-403(2) ● Attempt is 15 to life 	<ul style="list-style-type: none"> ➤ Any touching, even if accomplished through clothing, is sufficient. §76-5-407(3)(a)(vi)

<p>Sexual Abuse of Child §76-5-404.1</p>	<ul style="list-style-type: none"> ➤ Victim is 13 years of age or younger ➤ Touching of the anus, buttocks, genitals, female breast, OR ➤ Otherwise takes or causes child to take indecent liberties <i>with(specific) intent</i> ➤ To cause substantial emotional or bodily pain to any person OR ➤ To arouse or gratify the sexual desire (regardless of the sex of any participant) <p>☛ Felony 2 with 1 to 15 years sentence (However, see aggravating circumstances below)</p>	<ul style="list-style-type: none"> ➤ Any touching, even if accomplished through clothing, is sufficient. §76-5-407(3)(b) ➤ <i>State v. Whitaker</i> 2016 UT App 104 ¶14 “Circumstantial evidence has routinely been used to prove specific intent.” ➤ In deciding whether conduct amounts to indecent liberties, use your judgment and common sense. You may consider factors such as: (1) the duration of the conduct, (2) the intrusiveness of the conduct against the child’s person, (3) whether child requested that the conduct stop, (4) whether the conduct stopped upon request, (5) the relationship between the child and the defendant, (6) the child’s age, (7) whether the child was forced or coerced to participate, and any other factors you consider relevant. <i>Model Jury Instruction</i> CR-1601.
<p>Aggravated Sexual Abuse of Child §76-5-404.1(4)</p>	<ul style="list-style-type: none"> ➤ Offender commits Sexual Abuse of a Child (see above) under any one or more of ten circumstances: (a) use of dangerous weapon, force, duress, violence, intimidation, coercion, menace, threat of harm, or in course of a kidnapping; (b) bodily injury or severe psychological injury; (c) stranger to the victim or made friends with victim for purpose of committing offense; (d) displayed pornography during course of offense or photographed victim in a lewd condition; (e) priors; (f) 2+ victims at the same time; (g) 5 separate acts; (h) position of special trust*; (i) encouraged, aided, allowed, or benefited from acts of prostitution or trafficking; or (j) penetration, however slight, of the genital or anal by any part or parts of the human body other than the genitals or mouth <p>☛ Felony 1 with 15 to life sentence; LWOP if causes serious bodily injury or prior grievous sexual offense; attempt is 3 to life</p> <p>☛ Even so, court may impose 15, 10, or 6 to life if “in the interests of justice” except in cases with a prior grievous sexual offense.</p>	<ul style="list-style-type: none"> ➤ “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 (recent statutory addition adds a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older), 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. (§76-5-404.1(4)(h)) ➤ Position of special trust may be established in two ways: either by occupying specific listed or by fitting the general definition. If you meet on of the above positions you are now in a “per se” position of special trust no further proof than the list position is necessary to establish the position. <i>See e.g., State v. Watkins</i>, 2011 UT App 96 (co-habitant is not narrowly defined); <i>State v. Rowley</i>, 2008 UT App 233 (victim’s best friend’s father and supervising adult in the home where she frequently spent the night).
<p>Lewdness Involving Child §76-9-702.5</p>	<ul style="list-style-type: none"> ➤ Victim is 13 years of age or younger ➤ <i>Intentionally or knowingly</i> does any of the following in the presence of a child: <ul style="list-style-type: none"> • Performs an act of sexual intercourse or sodomy • Masturbates • Causes child to expose his or her genitals, anus, or breast if a female, with intent to arouse sexual desire of actor or child • Exposes genitals, female breast below top of areola, buttocks, anus, or pubic area ➤ In a public place, or ➤ In a private place <ul style="list-style-type: none"> • Under circumstances the person should know will likely cause affront or alarm, or • With the intent to arouse or gratify the sexual desire of the actor or the child <p>Class A Misdemeanor with 0 to 1 year sentence</p>	<ul style="list-style-type: none"> ➤ Exposure of genitals refers to at least partial nudity. <i>State v. Serpente</i>, 768 P.2d 994 (Utah App. 1989). ➤ Any other act of lewdness means an act of equal magnitude and gravity as those acts specifically set forth in the statute, namely, the exposure of genitals or private parts, masturbation, or trespassory voyeurism. <i>State v. Serpente</i>, 768 P.2d 994 (Utah App. 1989); <i>State v. Vogt</i>, 824 P.2d 455 (Utah App. 1991); <i>State v. Perry</i>, 871 P.2d 576 (Utah App. 1994).

<p>Unlawful adolescent sexual activity §76-5-401.3</p>	<ul style="list-style-type: none"> ➤ Victim and Offender are between ages of 12 and 17 ➤ Sexual activity under circumstances not amounting to: rape (of a child), object rape (of a child), forcible sodomy, sodomy on a child, aggravated sexual assault, sexual abuse of a child, or incest. ☛ See this chart for offense level <table border="1" data-bbox="562 337 1014 558"> <thead> <tr> <th>AGE</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>MC</td> <td>MC</td> <td>MA</td> <td>MA</td> <td>F3</td> <td>F3</td> </tr> <tr> <td>13</td> <td>MC</td> <td>MC</td> <td>MC</td> <td>MB</td> <td>MA</td> <td>F3</td> </tr> <tr> <td>14</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>MB</td> </tr> <tr> <td>15</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> <tr> <td>16</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> <tr> <td>17</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> </tbody> </table>	AGE	12	13	14	15	16	17	12	MC	MC	MA	MA	F3	F3	13	MC	MC	MC	MB	MA	F3	14	—	—	—	—	—	MB	15	—	—	—	—	—	—	16	—	—	—	—	—	—	17	—	—	—	—	—	—	<ul style="list-style-type: none"> ➤ Sexual activity is defined by what offenses are excluded, which are most sexual offenses. For practical purposes, this section creates a legal fiction for prosecutors to file/offer when sexual activity between youth appears to be mutually desired and non-coercive.
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<p>Mistake of Age is not a defense §76-2-304.5(1)</p>	<p>Not a defense that person believed the victim to be 14 years or older to any crime of:</p> <ul style="list-style-type: none"> • Child Kidnapping, Rape of Child, Object Rape of Child, Sodomy upon Child, (Aggravated) Sexual Abuse of Child • Or the attempt to do such. 																																																		
<p>Voluntary Intoxication §76-2-306(2)</p>	<p>Voluntary intoxication is no longer a defense to offenses found in Title 76, Chapter 5, Part 4.</p>																																																		
<p>HIV/Hepatitis enhancement §76-3-203.12</p>	<ul style="list-style-type: none"> ➤ Violation of a crime in 76-5 Part 4; ➤ Not a first degree felony; ➤ Offender had HIV, hepatitis B, or hepatitis C at time of the offense; and ➤ Offender knew of his/her status. ☛ Offense is subject to a one-step enhancement. 																																																		

SEX CRIMES ON JUVENILES

“Minor” (14 years but less than 16 years)

<p>Unlawful Sexual Activity with Minor §76-5-401</p>	<ul style="list-style-type: none"> ➤ Victim is 14 or 15 years old ➤ Offender is 18 or older ➤ This statute prohibits (1) sexual intercourse, (2) sodomy, or (3) object penetration by a perpetrator upon the victim ☛ Age difference between the victim and perpetrator: <ul style="list-style-type: none"> • Less than 4 years older than the victim = Class B Misdemeanor with 0 to 180 days sentence • 4 years or more older than the victim = Felony 3 with 0 to 5 years sentence 	<ul style="list-style-type: none"> ➤ Touching/Penetration §76-5-407: <ul style="list-style-type: none"> • Any <i>sexual penetration</i>, however slight, is sufficient, involving intercourse. • Any <i>touching</i>, however slight, is sufficient, involving sodomy. ➤ If offender is under 18, refer to Unlawful adolescent sexual activity §76-5-401.3 (above).
<p>Sex Abuse of Minor §76-5-401.1</p>	<ul style="list-style-type: none"> ➤ Victim is 14 or 15 years old ➤ Offender must be 4 or more years older than victim OR hold a relationship of special trust as a teacher, employee, or volunteer ➤ Engages in the same type of touching similar to sexual abuse of child or forcible sexual abuse of adult ☛ Class A Misdemeanor with 0 to 1 year sentence ☛ F3 (0-5 years) if offender is 18 or older, held a position of special trust, and committed the offense against a victim enrolled as a student at the school where offender works. 	<ul style="list-style-type: none"> ➤ The person committing the offense must be 4 years or more older than the minor (i.e., 18 yrs. of age or older).

<p>Unlawful adolescent sexual activity §76-5-401.3</p>	<ul style="list-style-type: none"> ➤ Victim and Offender are between ages of 12 and 17 ➤ Sexual activity under circumstances not amounting to: rape (of a child), object rape (of a child), forcible sodomy, sodomy on a child, aggravated sexual assault, sexual abuse of a child, or incest. ☛ See this chart for offense level <table border="1" style="margin-left: 40px; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="border: none;">AGE</th> <th style="border: none;">12</th> <th style="border: none;">13</th> <th style="border: none;">14</th> <th style="border: none;">15</th> <th style="border: none;">16</th> <th style="border: none;">17</th> </tr> </thead> <tbody> <tr> <td style="border: none;">12</td> <td>MC</td> <td>MC</td> <td>MA</td> <td>MA</td> <td>F3</td> <td>F3</td> </tr> <tr> <td style="border: none;">13</td> <td>MC</td> <td>MC</td> <td>MC</td> <td>MB</td> <td>MA</td> <td>F3</td> </tr> <tr> <td style="border: none;">14</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>MB</td> </tr> <tr> <td style="border: none;">15</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> <tr> <td style="border: none;">16</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> <tr> <td style="border: none;">17</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> <td>—</td> </tr> </tbody> </table> <ul style="list-style-type: none"> ➤ 	AGE	12	13	14	15	16	17	12	MC	MC	MA	MA	F3	F3	13	MC	MC	MC	MB	MA	F3	14	—	—	—	—	—	MB	15	—	—	—	—	—	—	16	—	—	—	—	—	—	17	—	—	—	—	—	—	<ul style="list-style-type: none"> ➤ Sexual activity is defined by what offenses are excluded, which are most sexual offenses. For practical purposes, this section creates a legal fiction for prosecutors to file/offer when sexual activity between youth appears to be mutually desired and non-coercive.
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<p>Mistake of Age is not a defense §76-2-304.5(2)</p>	<ul style="list-style-type: none"> ➤ It is not a defense 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. ➤ Or the attempt to do such. 																																																		
<p>Voluntary Intoxication §76-2-306(2)</p>	<ul style="list-style-type: none"> ➤ Voluntary intoxication is no longer a defense to offenses found in Title 76, Chapter 5, Part 4. 																																																		
<p>HIV/Hepatitis enhancement §76-3-203.12</p>	<ul style="list-style-type: none"> ➤ Violation of a crime in 76-5 Part 4; ➤ Not a first degree felony; ➤ Offender had HIV, hepatitis B, or hepatitis C at time of the offense; and ➤ Offender knew of his/her status. ➤ Offense is subject to a one-step enhancement. 																																																		
<p>“16 or 17 year old”</p>																																																			
<p>Unlawful Sexual Conduct with 16 or 17 year old §76-5-401.2</p>	<ul style="list-style-type: none"> ➤ Victim is 16 or 17 years old ➤ Actor is <ul style="list-style-type: none"> • 7 or more years older than the victim and the person knew or reasonably should have known the age of the minor; or • 10 or more years older than the victim ➤ And engaged in sexual activity: (1) sexual intercourse, (2) sodomy, or (3) object penetration by a perpetrator upon the victim ☛ Felony 3 with 0 to 5 years sentence 	<ul style="list-style-type: none"> ➤ Change from 10 to 7 years occurred in the 2013 General Legislative session. <i>Effective Date March 22, 2013.</i> 																																																	
<p>Unlawful Sexual Conduct with 16 or 17 year old (touching) §76-5-401.2</p>	<ul style="list-style-type: none"> ➤ Victim is 16 or 17 years old ➤ Actor is <ul style="list-style-type: none"> • 7 or more years older than the victim and the person knew or reasonably should have known the age of the minor; or • 10 or more years older than the victim ➤ Engages in the same type of touching similar to sexual abuse of child or forcible sexual abuse of adult ☛ Class A misdemeanor with 0 to 1 year sentence 	<ul style="list-style-type: none"> ➤ Change from 10 to 7 years occurred in the 2013 General Legislative session. <i>Effective Date March 22, 2013.</i> 																																																	

Mistake of Age is not a defense §76-2-304.5(3)	<ul style="list-style-type: none"> ➤ It is not a defense that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age. 	<ul style="list-style-type: none"> ➤ It is still a defense for an actor 7 to 9 years older than the victim. ➤ Affirmative defense prior to March 22, 2013.
Voluntary Intoxication §76-2-306(2)	<ul style="list-style-type: none"> ➤ Voluntary intoxication is no longer a defense to offenses found in Title 76, Chapter 5, Part 4. 	
HIV/Hepatitis enhancement §76-3-203.12	<ul style="list-style-type: none"> ➤ Violation of a crime in 76-5 Part 4; ➤ Not a first degree felony; ➤ Offender had HIV, hepatitis B, or hepatitis C at time of the offense; and ➤ Offender knew of his/her status. <p>☛ Offense is subject to a one-step enhancement.</p>	

SEX CRIMES INVOLVING JUVENILES (14+) AND ADULTS

Aggravated Sexual Assault §76-5-405	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ In the course of a rape, object rape, forcible sodomy, or forcible sexual abuse <ul style="list-style-type: none"> • Uses or threatens victim with use of a dangerous weapon • Compels or attempts to compel submission by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person • Is aided or abetted by one or more person • 15 years to Life; LWOP (prior grievous sexual offense) ➤ In the course of an <i>attempted rape</i>, <i>attempted object rape</i>, or <i>attempted forcible sodomy</i> <ul style="list-style-type: none"> • Causes serious bodily injury to any person • Uses or threatens the victim with the use of a dangerous weapon • Attempts to compel submission by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person • Is aided or abetted by one or more persons • 10 years to Life; LWOP (prior grievous sexual offense) ➤ In the course of an <i>attempted forcible sexual abuse</i> <ul style="list-style-type: none"> • Causes serious bodily injury to any person • Uses or threatens the victim with the use of a dangerous weapon • Attempts to compel submission by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person • Is aided or abetted by one or more persons <p>☛ 6 years to Life; LWOP (prior grievous sexual offense)</p>	
Rape §76-5-402	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ Sexual intercourse ➤ Without the consent of the victim <p>☛ Felony 1 with 5 years to life sentence</p>	<ul style="list-style-type: none"> ➤ Whether or not the actor is married to the victim.

<p>Object Rape §76-5-402.2</p>	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ Penetration or touching, however slight, of ➤ Genital or anal opening ➤ By any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals <p style="text-align: center;"><i>with (specific) intent to</i></p> <ul style="list-style-type: none"> ➤ To cause substantial emotional or bodily pain to the child <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ➤ To arouse or gratify the sexual desire of any person ➤ Without the consent of the victim <p>☛ Felony 1 with 5 years to life sentence</p>	
<p>Forcible Sodomy §76-5-403</p>	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ Any sexual act ➤ Involving the genitals or anus of the actor or the child <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ➤ the mouth or anus of either person (regardless of the sex of either participant) ➤ Without the consent of the victim <p>☛ Felony 1 with 5 years to life sentence</p>	
<p>Forcible Sexual Abuse §76-5-404</p>	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ Touching of the anus, buttocks, genitals, female breast, <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ➤ Otherwise takes or causes child to take indecent liberties <p style="text-align: center;"><i>with (specific) intent</i></p> <ul style="list-style-type: none"> ➤ To cause substantial emotional or bodily pain to any person <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ➤ To arouse or gratify the sexual desire (regardless of the sex of any participant) ➤ Without the consent of the victim <p>☛ Felony 2 with 1 to 15 years sentence</p>	
<p>Sexual Battery §76-9-702.1</p>	<ul style="list-style-type: none"> ➤ Victim is any age ➤ Touching of the anus, buttocks, genitals, or breast of a female (whether or not through clothing) ➤ Under circumstances the actor knows or should know will likely cause affront or alarm to the person touched <p>☛ Class A misdemeanor with 0-1 year sentence</p>	
<p>Lewdness §76-9-702</p>	<ul style="list-style-type: none"> ➤ Victim is 14 years of age or older ➤ <i>Intentionally or knowingly</i> does any of the following in the presence of a child: <ul style="list-style-type: none"> • Performs an act of sexual intercourse or sodomy • Masturbates • Causes child to expose his or her genitals, anus, or breast if a female, with intent to arouse sexual desire of actor or child • Exposes genitals, female breast below top of areola, buttocks, anus, or pubic area ➤ In a public place, or ➤ In a private place <ul style="list-style-type: none"> • Under circumstances the person should know will likely cause affront or alarm, or • With the intent to arouse or gratify the sexual desire of the actor or the child <p>☛ Class B Misdemeanor; Felony 3 if sex offender or has had 2 or more priors</p>	<ul style="list-style-type: none"> ➤ Exposure of genitals refers to at least partial nudity. <i>State v. Serpente</i>, 768 P.2d 994 (Utah App. 1989). ➤ Any other act of lewdness means an act of equal magnitude and gravity as those acts specifically set forth in the statute, namely, the exposure of genitals or private parts, masturbation, or trespassory voyeurism. <i>State v. Serpente</i>, 768 P.2d 994 (Utah App. 1989); <i>State v. Vogt</i>, 824 P.2d 455 (Utah App. 1991); <i>State v. Perry</i>, 871 P.2d 576 (Utah App. 1994).

<p>Voyeurism §76-9-702.7</p>	<p><u>Recording image</u></p> <ul style="list-style-type: none"> ➤ Intentionally uses camcorder, any kind of camera, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means ➤ To view any portion of victim's body regarding which individual has a reasonable expectation of privacy, whether or not that portion of body is covered with clothing ➤ Without knowledge or consent of victim ➤ Under circumstances in which individual has reasonable expectation of privacy <p>☛ Punishment:</p> <ul style="list-style-type: none"> • Class A Misdemeanor • Felony 3, if victim under 14 years of age <p><u>"Peeping Tom"</u></p> <ul style="list-style-type: none"> ➤ Views or attempts to view individual ➤ With or without instrumentality ➤ Any portion of victim's body regarding which victim has reasonable expectation of privacy, whether or not clothed ➤ Without the knowledge or consent of the individual ➤ Under circumstances in which individual has a reasonable expectation of privacy <p>☛ Punishment:</p> <ul style="list-style-type: none"> • Class B Misdemeanor • Class A Misdemeanor, if victim under 14 years of age 	
<p>Voluntary Intoxication §76-2-306(2)</p>	<p>Voluntary intoxication is no longer a defense to offenses found in Title 76, Chapter 5, Part 4.</p>	
<p>HIV/Hepatitis enhancement §76-3-203.12</p>	<ul style="list-style-type: none"> ➤ Violation of a crime in 76-5 Part 4; ➤ Not a first degree felony; ➤ Offender had HIV, hepatitis B, or hepatitis C at time of the offense; and ➤ Offender knew of his/her status. <p>☛ Offense is subject to a one-step enhancement.</p>	

MARITAL VIOLATIONS

<p>Bigamy §76-7-101</p>	<ul style="list-style-type: none"> ➤ Knows person has a husband or wife, or knowing that the other person has a husband or wife ➤ Person purports to marry another person and cohabits with another person ☛ Felony 3 with 0 to 5 years sentence ☛ Felony 2 if, in the same case, actor is also convicted of inducing marriage under false pretenses, fraud, domestic abuse, child abuse, sexual abuse, human trafficking, or human smuggling. 	<ul style="list-style-type: none"> ➤ Defense if <ul style="list-style-type: none"> ○ accused reasonably believed accused and other person were legally eligible to remarry; ○ accused, under reasonable fear of coercion or bodily harm, left a bigamous relationship; ○ accused is a minor who left a bigamous relationship; or accused has taken steps to protect the safety and welfare of any minor child of a bigamous relationship
<p>Child bigamy §76-7-101.5</p>	<ul style="list-style-type: none"> ➤ Person 18 years or older ➤ Knowing person has a wife or husband, or knowing the person under 18 has a wife or husband, ➤ Purports to marry the person under 18, or ➤ Cohabitates with the person under 18 ☛ Felony 2 with 1 to 15 years sentence 	
<p>Incest §76-7-102</p>	<ul style="list-style-type: none"> ➤ Sexual intercourse when actor has knowledge of kinship ➤ Providing or making seminal fluid or human egg available ➤ Allowing insertion of seminal fluid ☛ Felony 3 with 0 to 5 years sentence 	<ul style="list-style-type: none"> ➤ "Related person" <ul style="list-style-type: none"> ○ Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, first cousin ○ Blood relationships of the whole or half ○ Adoptive parents and children ○ Stepparents and stepchildren while the marriage creating the relationship exists

PHYSICAL ABUSE CRIMES OF CHILDREN & JUVENILES

<p>Child Abuse "Physical injury" §76-5-109(1)(e)</p>	<p>"Injury to or condition of a child which <i>impairs the physical condition of the child</i>, including:</p> <ul style="list-style-type: none"> ➤ a bruise or other contusion of the skin; ➤ a minor laceration or abrasion; ➤ failure to thrive or malnutrition; or ➤ any other condition which imperils the child's health or welfare and which is not a serious physical injury <p>☛ Punishment is based on intent (subsection 3)</p> <ul style="list-style-type: none"> • Intentionally or knowingly = Class A Misdemeanor • Recklessly = Class B Misdemeanor • Criminal Negligence = Class C Misdemeanor 	<ul style="list-style-type: none"> ➤ <i>bruise</i> = blunt force injury resulting in superficial discoloration due to hemorrhage of ruptured blood vessels from beneath the skin; also know as a contusion; firm swollen, tender, maybe warm <ul style="list-style-type: none"> ▪ <i>hematoma</i> = collection of blood, palpable mass inside bruise or more commonly on deep tissue or organ, clot of blood ▪ <i>ecchymosis</i> (not a bruise) = hemorrhagic spot or blotch in the skin; blood leaking into and adjacent area (i.e., black eye from blow to bridge of nose); non-tender, non-distinct margins ▪ <i>petechia</i> = multiple hemorrhagic spots, non-blanching, pinpoint, non-raised, round spots caused by intradermal or sub-mucous hemorrhage ▪ <i>punctuate</i> = marked with points or dots, separated from the surrounding area by color, elevation or texture ➤ <i>contusion</i> = an injury of a part without a break in the skin <i>(Continued next page)</i>
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		<ul style="list-style-type: none"> ➤ <i>laceration</i> = separation of skin or other tissue by a tremendous force, producing irregular edges; act of tearing or splitting <ul style="list-style-type: none"> ▪ <i>avulsion</i> = the tearing away, forceful separation or detachment of skin; skin layer is sometimes left as a flap ▪ <i>incision</i> = cut made by a sharp instrument, clean relatively smooth, equidistance in depth ▪ <i>puncture</i> = piercing or penetrating with a pointed object or instrument, a hole ➤ <i>abrasion</i> = wearing down or rubbing away or removal of the superficial layers of skin or mucous membrane in a limited area ➤ <i>thrive</i> = to grow vigorously (Webster's Dictionary) ➤ <i>malnutrition</i> = the condition that develops when the body does not get the right amount of the vitamins, minerals, and other nutrients it needs to maintain healthy tissues and organ function; malnourished children may be short for their age, thin, listless, and have weakened immune systems ➤ any other condition which imperils the child's health or welfare: <ul style="list-style-type: none"> ○ <i>State v. Piep</i>, 2004 UT App 7, 84 P.3d 850 (filthy house with a very foul odor, rotten and moldy food in and out of the refrigerator, a green substance running out of the refrigerator onto the floor, garbage and food on the floor, clothes everywhere, brown stains on the wall, and what appeared to be human feces lying next to a pair of pants with a brown stain on the seat). ○ "We do not read the statutory definition as requiring some physical impact in order to imperil the child's health or welfare." <i>Provo City v. Cannon</i>, 1999 UT App 344, ¶11, 994 P.2d 206 (defendant held a nine-month-old infant over the railing of a third-story apartment balcony; although the infant suffered no injury and there was no physical impact, the infant was imperiled or endangered when he was suspended by his arms, many feet above the ground, for several minutes).
<p>Child Abuse "Serious Physical injury" §76-5-109(1)(f)</p>	<p>Any physical injury or set of injuries that: (A) seriously impairs the child's health; (B) involves physical torture; (C) causes serious emotional harm to the child; or (D) involves a substantial risk of death to the child.</p> <p>Including but not limited to the following:</p> <ul style="list-style-type: none"> ➤ fracture of any bone or bones; ➤ intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface; ➤ any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child; ➤ any injury caused by use of a dangerous weapon as defined in Section 76- 1-601; ➤ any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions; ➤ any damage to internal organs of the body; (Continued next page) 	<ul style="list-style-type: none"> ➤ <i>burn</i> = injury to tissues caused by the contact with heat, flame, chemicals, electricity, or radiation <ul style="list-style-type: none"> ○ <i>First degree</i> (partial-thickness burn)—a burn that affects the epidermis causing erythema (redness of the skin due to congestion of the capillaries) without blistering ○ <i>Second degree</i> (partial-thickness burn)—show vesication (process of blistering) affecting the epidermis and the dermis ○ <i>Third degree</i> (full-thickness burn)—show necrosis (morphological changes indicative of cell death caused by progressive enzymatic degradation) that destroys both the epidermis and the dermis <i>(Continued next page)</i>

	<ul style="list-style-type: none"> ➤ any conduct toward a child that results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function; ➤ any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ; ➤ any impediment of the breathing or circulation of blood by application of pressure to the neck, throat, or chest, or by obstruction of the nose or mouth, that is likely to produce a loss of consciousness; ➤ any conduct that result in starvation or failure to thrive or malnutrition that jeopardizes the child's life; or ➤ unconsciousness caused by the unlawful infliction of a brain injury or unlawfully causing any deprivation of oxygen to the brain. <ul style="list-style-type: none"> ✱ Punishment based upon intent <ul style="list-style-type: none"> • Intentionally or knowingly = Felony 2 • Recklessly = Felony 3 • Criminal Negligence = Class A Misdemeanor 	<ul style="list-style-type: none"> ○ <i>Fourth-degree</i> (full-thickness burn)—a burn that extends deeply into the subcutaneous tissue; it may involve muscle, fascia, or bone. ➤ Section (§76-5-109(1)(c)) definition of "physical injury" rather than dictionary should be used. <i>State v. Jones</i>, 735 P.2d 399, 402 (Ut. Ct. App. 1987) (multiple injuries which cumulatively result in impairment of child's physical condition would sustain second-degree felony conviction though no individual act of defendant, by itself, was shown to be life-threatening).
"Care and Custody"	Either the actor or a person having the care or custody of the child causes or permits another to inflict physical injury is criminally responsible	<ul style="list-style-type: none"> ➤ Care or custody of such child, means accepting responsibility for child's well being; defendant assumed a parental role in child's life, lived in household during time child's injuries were inflicted, helped feed and bathe child, and helped care for child and babysat child, when mother left the home to run errands. <i>State v Widdison</i>, 2000 UT App 185, 4 P.3d 100. ➤ Child abuse statute, which makes it a crime to inflict serious physical injury upon a child or, if a person has care or custody of such child, to cause or permit another to inflict serious physical injury upon child, does not require that caregiver or custodian have ability to control person inflicting injury; purpose of statute is to prevent child abuse both by prohibiting direct infliction of injury on child and affirmatively requiring child's caregiver to take steps to prevent another person from abusing child. <i>State v. Bluff</i>, 2002 UT 66, 52 P.3d 1210.
Aggravated Murder §76-5-202	<ul style="list-style-type: none"> ➤ Intentionally or knowingly causes the death of another ➤ Under following aggravating circumstances ... <ul style="list-style-type: none"> • Homicide committed incident to felony sex offense involving a child or child kidnapping <ul style="list-style-type: none"> ✱ Capital Felony (death) or Felony 1 with 25 to life or LWOP Attempt is 5 to life sentence 	
Murder §76-5-203	<ul style="list-style-type: none"> ➤ Actor intentionally or knowingly causes the death of another ➤ Intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another ➤ With depraved indifference to human life, the actor knowingly engages in conduct which causes death of another <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ➤ Actor is engaged in the commission, attempted commission, or immediate flight from [a specific listed felony, which includes child abuse], and ➤ The actor acted with the intent required for the predicate offense, and ➤ The person is killed in the course of the felony <ul style="list-style-type: none"> ✱ Punishment is Felony 1 with 15 to life sentence 	<ul style="list-style-type: none"> ➤ Child dies as result of intentional or knowing infliction of serious physical injury.

<p>Child Abuse Homicide §76-5-208</p>	<ul style="list-style-type: none"> ➤ Actor intended to cause the requisite intent for child abuse ➤ The child dies as a result of the abuse ☛ Punishment <ul style="list-style-type: none"> • Felony 1 with 5 to life sentence, if recklessly cause serious physical injury under 76-5-109(2)(b) • Felony 2 with 0 to 15 years, if criminal negligence causes serious bodily injury 76-5-109(2)(c) or any mens rea and infliction of physical injury 76-5-109(3)(a), (b), or (c) 	<ul style="list-style-type: none"> ➤ Intent is not to kill but to cause the child abuse and the result was death.
<p>Endangerment of a child or vulnerable adult §76-5-112.5</p>	<ul style="list-style-type: none"> ➤ Victim is under 18 years of age (or a vulnerable adult) ➤ Actor knowingly or intentionally ➤ Causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia ☛ Punishment <ul style="list-style-type: none"> • Felony 3 • Felony 2, if victim actually suffers bodily injury, substantial bodily injury, or serious bodily injury • Felony 1, if victim dies 	<ul style="list-style-type: none"> ➤ Affirmative defense: if controlled substance was obtained by lawful prescription and is used or possessed by the person to whom it was lawfully prescribed (§76-5-112.5(3)).
<p>Reckless endangerment §76-5-112</p>	<ul style="list-style-type: none"> ➤ Person recklessly engages in conduct ➤ That creates a substantial risk of death or serious bodily injury ➤ To another person ☛ Class A Misdemeanor is 0 to 1 year sentence 	
<p>Abuse or neglect of disabled child §76-5-110</p>	<ul style="list-style-type: none"> ➤ Victim is a disabled child ➤ Actor is a caretaker ➤ Intentionally, knowingly, or recklessly ➤ Abuses or neglects a child with a disability ☛ Felony 3 with 0 to 5 years sentence 	<ul style="list-style-type: none"> ➤ Disabled child is a person under 18 years of age and is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care. ➤ Caretaker is either: <ul style="list-style-type: none"> (i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or (ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability. ➤ Affirmative defense: treatment by spiritual means

<p>Leaving Child Unattended in Motor Vehicle §76-10-2202</p>	<ul style="list-style-type: none"> ➤ Child means a person who is younger than 9 years old ➤ Person intentionally, recklessly, knowingly, or with criminal negligence ➤ leaves the child in an enclosed compartment of a motor vehicle ➤ The motor vehicle is on public property or private property that is open to the general public ➤ Child is not supervised by a person who is at least nine years old ➤ The conditions present a risk to the child of: <ul style="list-style-type: none"> ○ hyperthermia; ○ hypothermia; or ○ dehydration ☛ Class C misdemeanor with 0 to 90 day sentence 	<ul style="list-style-type: none"> ➤ Including the passenger compartment, regardless of whether a door, window, or hatch is left open
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KIDNAPPING CRIMES

<p>Child Kidnapping §76-5-301.1</p>	<ul style="list-style-type: none"> ➤ Actor <i>Intentionally or knowingly</i> ➤ Without authority of law ➤ By any means and in any manner, seizes, confines, detains, or transports ➤ A child under the age of 14. ➤ Without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis ☛ Felony 1 with 15 to life sentence; LWOP if causes serious bodily injury or prior grievous sexual offense 	<ul style="list-style-type: none"> ➤ Section (§76-5-301.1(2) expressly states "violation of Section (§76-5-303 (custodial interference) is not a violation of this section."
<p>Kidnapping §76-5-301</p>	<ul style="list-style-type: none"> ➤ Actor <i>Intentionally or knowingly</i> ➤ Without authority of law and against the will of the victim ➤ Either: <ul style="list-style-type: none"> • Detains or restrains the victim for any substantial period of time, • Detains or restrains the victim in circumstances exposing the victim to risk of bodily injury, • Holds the victim in involuntary servitude, • Detains or restrains a minor without the consent of the minor's parent or legal guardian or the consent of a person acting in loco parentis, if the minor is 14 years of age or older but younger than 18 years of age; or • Moves the victim any substantial distance or across a state line. ☛ Felony 2 with 1 to 15 years sentence 	<ul style="list-style-type: none"> ➤ "Against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.
<p>Aggravated Kidnapping §76-5-302</p>	<ul style="list-style-type: none"> ➤ While in the course of committing: <ul style="list-style-type: none"> • Unlawful Detention • Kidnapping ➤ Actor <i>Intentionally or knowingly</i> ➤ Possesses, uses, or threatens to use a dangerous weapon ➤ Holds the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; ➤ Facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony; ➤ Hinder or delay the discovery of or reporting of a felony; ➤ Inflict bodily injury on or to terrorize the victim or another; ➤ Interfere with the performance of any governmental or political function; or ➤ Commit a sexual offense as described in Title 76, Chapter 5, Part 4. ☛ Felony 1 with 15 to life sentence; LWOP 	<ul style="list-style-type: none"> ➤ "In the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after.

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<p>Custodial Interference §76-5-303</p>	<ul style="list-style-type: none"> ➤ A person entitled to visitation ➤ Takes, entices, conceals, detains, or withholds the child ➤ From a person who is entitled to custody of the child ☀ Punishment <ul style="list-style-type: none"> • Class B Misdemeanor • Class A Misdemeanor for third offense within 2 years • Felony 3 if actor removes, causes the removal, or directs the removal of the child from the state. 	
<p>Unlawful Detention §76-5-304</p>	<ul style="list-style-type: none"> ➤ Person <i>intentionally or knowingly</i> ➤ Without authority of law and against the will of the victim ➤ Either: <ul style="list-style-type: none"> • Detains or restrains the victim <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Coerces or exerts influence over the victim with the intent to cause the victim to remain with the actor for an unreasonable period of time under the circumstances and • The actor is at least four or more years older than the victim ☀ Class B Misdemeanor 	<ul style="list-style-type: none"> ➤ “Against the will of the victim” includes acting without the consent of the legal guardian or custodian of a victim who is: (a) a mentally incompetent person; or (b) a minor who is 14 or 15 years of age.

PORNOGRAPHY AND INTERNET CRIMES

<p>Sexual Exploitation of Minor (Child Pornography) §76-5b-202</p>	<ul style="list-style-type: none"> ➤ Victim is under 18 years of age ➤ Knowingly produce, possess, or possess with intent to distribute child pornography; ➤ Intentionally distribute or view child pornography; or ➤ Minor’s parent or guardian who knowingly consents to or permits minor to be sexually exploited ☀ Felony 2 with 1 to 15 years sentence 	<p>“Child pornography” is defined as:</p> <ul style="list-style-type: none"> ➤ Any visual depiction ➤ Minor engaging in “sexually explicit conduct” <ul style="list-style-type: none"> • Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal • Masturbation • Bestiality • Sadistic or masochistic activities • Lascivious depiction of genitals, pubic region, buttock, or female breast • Nudity or partial nudity for purpose of cause sexual arousal • Fondling of genitals, pubic region, buttocks, or female breast • Explicit representation of the defecation or urination functions <p>Practical Note: most child pornography prosecution is prepubescent children unless the pubescent minor is available to testify about his or her age at the time of the depiction.</p>
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<p>Sexual extortion §76-5b-204(2)</p>	<ul style="list-style-type: none"> ➤ Actor is 18 or older ➤ Has intent to coerce a victim to engage in sexual conduct or to participate in creating pornography, and communicates a threat to the victim's person, property, or reputation; or to distribute an intimate image or video of the victim; OR ➤ Knowingly causes a victim to engage in sexual conduct or creating pornography by means of a threat. ☛ Felony 3 with 0 to 5 years sentence 	
<p>Aggravated sexual extortion §76-5b-204(4)</p>	<ul style="list-style-type: none"> ➤ Actor commits sexual extortion (above) and any of the following circumstances occur: <ul style="list-style-type: none"> ○ Victim is a child or vulnerable adult; ○ Offense was committed by use of a dangerous weapon, or by violence, intimidation, menace, fraud, or threat of physical harm, or was committed in course of a kidnapping; ○ Caused bodily injury or severe psychological injury; ○ Actor was a stranger to victim; ○ Prior; ○ Position of special trust; ○ Aided prostitution or human trafficking; ○ Penetration of the genital or anal opening ☛ Felony 2 with 1 to 15 years sentence (F1 if victim is a child or vulnerable adult) 	
<p>Distributing Pornographic Material §76-10-1203</p>	<ul style="list-style-type: none"> ➤ Person <i>intentionally or knowingly</i> ➤ Sends or brings any pornographic material into the state with intent to distribute or exhibit it to others; ➤ Prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others; ➤ Distributes or offers to distribute, or exhibits or offers to exhibit any pornographic material to others; ➤ Writes, creates, or solicits the publication or advertising of pornographic material; ➤ Promotes the distribution or exhibition of material the person represents to be pornographic; or ➤ Presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic. ☛ Felony 3 with 0 to 5 years sentence 	<p>Definition of Pornography §76-10-1203(1) Materials which:</p> <ul style="list-style-type: none"> ➤ Average person, applying contemporary <i>community standards</i>, would find it <i>appeals to prurient interest in sex</i> ➤ <i>Patently offensive</i> in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion ➤ Taken as a whole does <i>not have serious</i> literary, artistic, political, or scientific <i>value</i>
<p>Dealing Harmful Materials §76-10-1206</p>	<ul style="list-style-type: none"> ➤ Knowing or believing that a person is a minor, or having failed to determine age <i>Intentionally</i> ➤ Distributes/exhibits or offers to distribute/ exhibit to a minor any material harmful to minors ➤ Produces, performs, or directs any performance before a minor that is harmful to minors ➤ Participates in any performance before a minor that is harmful to minors ☛ Punishment: <ul style="list-style-type: none"> • 3rd degree felony, if committed by a person 18 years of age or older • Class A misdemeanor, if committed by a person 16 or 17 years of age • Class B misdemeanor if committed by a person younger than 16 years of age 	<p>Definition of Material Harmful to a Minor (§76-10-1206(4)(a)) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:</p> <ul style="list-style-type: none"> ➤ Appeals to the <i>prurient interest in sex of minors</i> ➤ <i>Patently offensive</i> to prevailing standards in adult community with respect to what is suitable for minors ➤ Does not have <i>serious value for minors</i>
<p>Indecent Public Displays Prohibitions §76-10-1228</p>	<ul style="list-style-type: none"> ➤ Willfully or knowingly ➤ Sells, lends, gives, advertises, or distributes or possess with intent to offer for sale ➤ To a minor ➤ A "description or depiction of illicit sex or sexual immorality," or a "nude or partially denuded figure" ☛ Class A misdemeanor with 0 to 1 year sentence 	<p>Definitions for Indecent Public Displays (§76-10-1227)</p> <ul style="list-style-type: none"> ➤ "Description or depiction of illicit sex or sexual immorality" <ul style="list-style-type: none"> – Human genitals in a state of sexual arousal – Acts of masturbation, sexual intercourse, sodomy – Erotic touching of genitals or pubic region – Erotic touching of buttocks or female breast ➤ "Nude or partially denuded figure" <ul style="list-style-type: none"> – Less than completely and opaquely covered genitals, pubic region, buttock, female breast below top of areola <p>(Continued next page)</p>

		<ul style="list-style-type: none"> – Male genitals in turgid state, even if covered ➤ Exceptions to nude or partially denuded figure definition <ul style="list-style-type: none"> – Any material which, when taken as a whole, has serious value for minors – Serious value means having serious literary, artistic, political, or scientific value for minors
Accessing Porn/Indecent Material on School Property §76-10-1235	<ul style="list-style-type: none"> ➤ Willfully or knowingly creates, views, or otherwise gains access to pornographic or indecent material while present on school property ☀ Punishment <ul style="list-style-type: none"> • Class B misdemeanor • Class A misdemeanor if person is 18 years or older 	<ul style="list-style-type: none"> ➤ “Pornographic or indecent material” means: <ul style="list-style-type: none"> • Pornographic Material • Material Harmful to Minor • Description or depiction of illicit sex or sexual immorality, or a nude or partially denuded figure
Enticing a Minor §76-4-401	<ul style="list-style-type: none"> ➤ Victim is under the age of 18 ➤ Actor knowingly uses the any electronic communication or internet ➤ To solicit, seduce, lure, or entice a minor, or the attempt to do so ➤ That the actor believes to be a minor ➤ To engage in any sexual activity which is a violation of state criminal law ☀ Punishment <ul style="list-style-type: none"> • It is one degree less the sexual activity offense for which the actor is enticing the minor • Enticement for a 1st degree offense becomes a 1st degree offense 3 years to life for a second or subsequent conviction of enticement. 	

DOMESTIC VIOLENCE

<p>Stalking §76-5-106.5</p>	<p>Violation of Stalking Injunction:</p> <ul style="list-style-type: none"> ➤ Person intentionally or knowingly ➤ Violates a prior stalking injunction ➤ That has been properly served <p>Stalking (conduct)</p> <ul style="list-style-type: none"> ➤ Person intentionally or knowingly ➤ Engages in a course of conduct ➤ Directed at a specific person ➤ Knows or should have known that the course of conduct would cause a reasonable person: <ul style="list-style-type: none"> • To fear for the person's own safety or the safety of a third person <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • To suffer other emotional distress <p>☛ Punishment</p> <ul style="list-style-type: none"> • Class A misdemeanor for 1st offense • Felony 3, for 2nd offense, actor was previously convicted of a felony crime involving same victim or victim's immediate family • Felony 2, for 3rd offense, used dangerous weapon, or used means likely to produce death or serious bodily injury 	<ul style="list-style-type: none"> ➤ "Course of conduct" means two or more acts directed at or toward a specific person, including: <ul style="list-style-type: none"> (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property: <ul style="list-style-type: none"> (A) directly, indirectly, or through any third party; and (B) by any action, method, device, or means; or (ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts: <ul style="list-style-type: none"> (A) approaches or confronts a person; (B) appears at the person's workplace or contacts the person's employer or coworkers; (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person; (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person; (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.
<p>Protective Order Violation §76-5-108</p>	<ul style="list-style-type: none"> ➤ Valid protective order, child protective order, ex parte protective order, or ex parte child protective order ➤ Person intentionally or knowingly ➤ Violates that order after having been properly served <p>☛ Class A Misdemeanor with sentence of 0 to 1 year sentence</p>	
<p>Domestic violence in the presence of child §76-5-109.1</p>	<ul style="list-style-type: none"> ➤ Victim is under 18 years old ➤ Actor commits domestic violence ➤ In the presence of a child <p>☛ Punishment</p> <ul style="list-style-type: none"> • Class B Misdemeanor • Felony 3 if domestic violence against cohabitant involves dangerous weapon, intentional serious bodily injury or death (or attempt to cause death) 	<ul style="list-style-type: none"> ➤ Domestic violence is defined under §77-36-1 ➤ "In the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. ➤ This crime is separate and distinct from underlying domestic violence crime. ➤ May charge counts for each child present where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

OTHER CRIMES

<p>Unlawful Sale or Supply of Alcohol to Minors §32B-4-403</p>	<ul style="list-style-type: none"> ➤ A person may not sell, offer for sale, or furnish an alcoholic product to a minor ☀ Punishment is based on intent <ul style="list-style-type: none"> • Intentionally or knowingly = Class A Misdemeanor • (Simple) negligently or recklessly = Class B Misdemeanor 	<ul style="list-style-type: none"> ➤ This section does not apply to the furnishing of an alcoholic product to a minor in accordance with this title: <ul style="list-style-type: none"> (a) for medicinal purposes by: <ul style="list-style-type: none"> (i) the parent or guardian of the minor; or (ii) the health care practitioner of the minor, if the health care practitioner is authorized by law to write a prescription; or (b) as part of a religious organization's religious services. (§32B-4-403(3))
<p>Providing Tobacco to Minors §76-10-104</p>	<ul style="list-style-type: none"> ➤ Person knowingly, intentionally, recklessly, or with criminal negligence ➤ Provides any cigar, cigarette, electronic cigarette, or tobacco in any form ➤ To any person under 19 years of age ☀ Punishment <ul style="list-style-type: none"> • 1st offense = Class C Misdemeanor • 2nd offense = Class B Misdemeanor • 3rd + offense = Class A Misdemeanor 	<ul style="list-style-type: none"> ➤
<p>Contributing to Delinquency of Minor §76-10-2301</p>	<ul style="list-style-type: none"> ➤ Victim is under the age of 18 ➤ Any adult who commits any act or engages in any conduct which he knows or should know would have the effect of causing or encouraging ➤ A minor to commit an act which would be a misdemeanor or infraction ☀ Class B Misdemeanor 	<ul style="list-style-type: none"> ➤ Does not require that the minor be found to be delinquent or to have committed a delinquent act.
<p>Jail Release Orders § 77-20-3.5</p>	<ul style="list-style-type: none"> ➤ An actor gets booked into jail for "domestic violence" or other "qualifying offense" ➤ The actor may not personally contact the victim. ☀ Class B Misdemeanor 	<ul style="list-style-type: none"> ➤ Expanded in 2017 to encompass any offenses against a child or vulnerable adult, as well as all sex offenses. ➤ Order expires on midnight on the day after the actor's initial court appearance.
<p>Human Trafficking Safe Harbor § 78B-9-104</p>	<ul style="list-style-type: none"> ➤ A victim of human trafficking commits drug, prostitution, trespass, theft, forgery, shoplifting, unlawful possession of another's identification documents, lewdness, or sexual solicitation crimes. ➤ The victim was subject to force, fraud, or coercion in committing these crimes. ➤ The Court may vacate any victim's convictions under these circumstances. 	<ul style="list-style-type: none"> ➤ This 2017 law change provides a safe harbor and defense for human trafficking victims charged with this potpourri of charges.

SEX OFFENDER REGISTRY

Lifetime Registration (§77-41-105(3)(c)(i))

Kidnapping Offenses:

Child kidnapping (§76-5-301.1) after July 1, 2006 and except if the offender is a natural parent of the victim

Aggravated kidnapping (§76-5-302) after May 5, 2008 and except if the offender is a natural parent of the victim

Or attempting, soliciting, or conspiring to commit

Sex Offenses:

Rape (§76-5-402) after July 1, 2006

Rape of Child* (§76-5-402.1) after July 1, 2006

Object Rape (§76-5-402.2) after July 1, 2006

Object Rape of Child* (§76-5-402.3) after May 1, 2001

Forcible Sodomy (§76-5-403) after May 1, 2001

Sodomy upon Child* (§76-5-403.1) after May 1, 2001

Sexual Abuse of Child* (§76-5-404.1) after July 1, 2006

Aggravated Sexual Abuse of Child (§76-5-404.1) after July 1, 2006

Aggravated Sexual Assault (§76-5-405) after May 1, 2001

(Felony) Enticement of Minor (§76-4-401) after July 1, 2007

Sexual Exploitation of Minor (§76-5b-201) after July 1, 2006

Aggravated Exploitation of Prostitution (§76-10-1306) after May 10, 2011

Or attempting, soliciting, or conspiring to commit

* Person under 21 years of age in cases that do not involve force or coercion are subject to 10-year registration, not lifetime (see §77-41-105)

10* year Registration (§77-41-1(3)(a))

Kidnapping Offenses:

Kidnapping (§76-5-301(1) (c) or (d)) after May 11, 2010*

Or attempting, soliciting, or conspiring to commit

Sex Offenses:

Aggravated Human Trafficking (§76-5-310)

(Class A or Felony Attempt) Enticement of Minor (§76-4-401)

Sexual Exploitation of Vulnerable Adult (§76-5b-202) after May 10, 2011

Unlawful Sexual Activity with a Minor (§76-5-401)*

Sexual Abuse of a Minor (§76-5-401.1)

Unlawful Sexual conduct with 16 or 17 year old (§76-5-401.2)*

Forcible Sexual Abuse (§76-5-404)

Custodial Sexual Relations—only with a person under 18 (§76-5-412) after May 10, 2011

Incest (§76-7-102) (lifetime if convicted between 7/1/06 and 5/5/08)

Lewdness (4 prior convictions) (§76-9-702) after May 12, 2009

Sexual Battery (4 prior convictions) (§76-9-702.1) after May 12, 2009

Voyeurism (felony or Class A) (§76-9-702.7)

Lewdness Involving a Child (§76-9-702.5)

Or attempting, soliciting, or conspiring to commit

Rape of Child (§76-5-402.1) after July 1, 2006, Object Rape of Child (§76-5-402.3) after May 1, 2001, Sodomy upon Child (§76-5-403.1) after May 1, 2001, & Sexual Abuse of Child (§76-5-404.1) after July 1, 2006, where person is under 21 years & case did not involve force or coercion.

* Person may seek for early removal from registry after 5 years under certain conditions (see §77-44-112)

CHILD ABUSE OFFENDER REGISTRY

Lifetime* Registration (§77-43-105(3)(c)(i))

Child Abuse Offenses:

1st Degree Felony Child Abuse (§76-5-109(2)(a) or (b)) after May 9, 2017

1st Degree Felony Human Trafficking of a Child (§76-5-308.5) after May 9, 2017

Or attempting, soliciting, or conspiring to commit

* Applies to all persons in custody of Department of Corrections or on parole/probation on May 9, 2017 or who enter the state on or after May 9, 2017. (see §77-43-101(2))

10* year Registration (§77-43-105(3)(a))

Child Abuse Offenses:

2nd/3rd Degree Felony Child Abuse (§76-5-109(2)(a) or (b)) after May 9, 2017

2nd/3rd Degree Felony Human Trafficking of a Child (§76-5-308.5) after May 9, 2017

Or attempting, soliciting, or conspiring to commit

* Applies to all persons in custody of Department of Corrections or on parole/probation on May 9, 2017 or who enter the state on or after May 9, 2017. (see §77-43-101(2))

AGE OF CONSENT

In the state of Utah children under the age of 14 cannot consent to any sexual activity under any circumstance, except for Unlawful Adolescent Sexual Activity (§76-5-401.3) (see offense level chart above)

Juveniles 14 and 15 years old cannot consent to sexual intercourse, oral/anal sex or penetration under any circumstances, and sexual touching with a person 7 or more years older.

Juveniles 16 and 17 years old cannot consent to any sexual activity with a person 10 years or more older (and a person 7 years to 9 years older if the person knew or should have know the victim's age).

Utah Code Section 76-5-406, outlines what constitution "without the consent" of the victim as follows:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;
- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
- (5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
- (6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;
- (7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;
- (8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;
- (9) the victim is younger than 14 years of age;
- (10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim (meaning 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)
- (11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or
- (12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested. For purposes of this Subsection (12):
 - (a) "health professional" means an individual who is licensed or who holds himself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and
 - (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

UTAH AGE OF CONSENT LAWS

Age	Sexual Intercourse	Oral/Anal Sexual Activity	Vaginal/Anal Penetration	Fondling/Sexual Touching																																																																																																																																																																																																				
16-17*	Cannot consent to person 10+ years older (7+ if knew victim's age) Penalty: 3 rd Degree Felony U.C.A. (§76-5-401.2(2)(a))	Cannot consent to person 10+ years older (7+ if knew victim's age) Penalty: 3 rd Degree Felony U.C.A. (§76-5-401.2(2)(b))	Cannot consent to person 10+ years older (7+ if knew victim's age) Penalty: 3 rd Degree Felony U.C.A. (§76-5-401.2(2)(c))	Cannot consent to person 10+ years older (7+ if knew victim's age) Penalty: Class A Misdemeanor U.C.A. (§76-5-401.2(2)(d))																																																																																																																																																																																																				
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* There is no lawful defense to that the person did not know or was mistaken about the victim being under the age of 16; partial defense under 16-17. See U.C.A. 76-2-304.5

WITHOUT CONSENT OF VICTIM**

Age	Sexual Intercourse	Oral/Anal Sexual Activity	Vaginal/Anal Penetration	Fondling/Sexual Touching
14+	Rape Penalty: 1 st Degree Felony U.C.A. (§76-5-402)	Forcible Sodomy Penalty: 1 st Degree Felony U.C.A. (§76-5-403)	Object Rape Penalty: 1 st Degree Felony U.C.A. (§76-5-402.2)	Forcible Sexual Abuse Penalty: 2 nd Degree Felony U.C.A. (§76-5-404)

** Regardless of the victim's age, sexual activity is without the consent of the victim under the following circumstances (See U. C. A. (§76-5-406):

- The victim expresses lack of consent through words or conduct.
- The actor used force, violence, or threats.
- The actor used some form of trickery.
- The victim has not consented and the actor knows the victim is unconscious or otherwise physically unable to resist.
- The actor knows that as a result of mental disease or defect the victim is incapable of appraising the nature of the act or resisting it.
- The actor intentionally impairs the power of the victim by administering any substance without the victim's knowledge.
- The victim was under the age of 18 and the actor held a position of special trust over the victim.
- The victim was over the age of 14 but under the age of 18, the actor was 3 years older, and the used some form of improper enticement/coercion on the victim.
- The actor was a health professional or religious counselor and committed the act under a guise of providing professional services.

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STATUTE OF LIMITATIONS

U.C.A. §76-1-301 and §76-1-302

Prosecution Time Table for Child Sexual Abuse

Time Period / Date of Acts Being Prosecuted	Statute of Limitations for Felonies	Statute of Limitations for Misdemeanors	Statute of Limitations if Reporting was Delayed
1973 to May 9, 1983	4 years after act	2 years after act	No difference.
May 10, 1983 to April 28, 1991	4 years after act	2 years after act	1 year after report but within 8 years of the act.
April 29, 1991 to 1996	4 years after act	2 years after act	Prosecution may nevertheless be commenced for rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child <u>within 4 years after the report of the offense to law enforcement.</u>
1996 to present	4 years after act	2 years after act	Prosecution may nevertheless be commenced for rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, or aggravated sexual abuse of a child <u>within four years after the report of the offense to law enforcement.</u>
2009 to present	May be commenced at anytime (Exception: Forcible Sex Abuse)	2 years after act	Forcible Sex Abuse shall be commenced within 8 years after the offense is committed, if within 4 years after its commission the offense is reported to law enforcement. Prosecution may be commenced at any time for rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy on a child, sexual abuse of a child, aggravated sexual abuse, or aggravated sexual abuse of a child.

Prior to March 18th, 1995, the governing statute for all of the listed crimes was UTAH CODE ANN. 76-1-302, which set out a statute of limitations of four years from the date of the crime. On 3/18/1995, the Utah Code was amended to create a 4 years from report requirement for Sodomy of, Sexual Abuse of, Object Rape of, and Rape of a Child. (HB 109) On 4/29/1996, the Utah Code was amended to create a 4 years from report requirement for Aggravated Sexual Abuse of a Child. (HB 242) On 5/6/2002, the Utah Code was amended to remove all statutes of limitation from Child Abuse Homicide, Aggravated Kidnapping, and Child Kidnapping. (HB 39) On 5/5/2003, the Utah Code was amended to create the DNA exception. (SB 116) In 2003, the DNA exception to the statute of limitations was enacted, which allows prosecution if the perpetrator is unknown, but DNA evidence collected at a later date makes the person identifiable. UTAH CODE ANN. 76-1-302(2). This exception does not apply if the statute of limitations has run as of May 5, 2003 and no charges have been filed. *Id.* The prosecution has one year from the date of discovery of the perpetrator's identity to file charges. *Id.* at (3) On 5/2/2005, the Utah Code was amended to create 8/4 requirements for Rape, Object Rape, Forcible Sodomy, Aggravated Sexual Assault, and Forcible Sexual Abuse. (SB 177) On 5/5/2008, the Utah Code was amended to remove all statutes of limitation from any first-degree felony sex offense and Sexual Abuse of a Child. (HB 13) Of the listed offenses, only Forcible Sexual Abuse still has a statute of limitations, that limitation is an 8/4 requirement.

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CHILD ABUSE REPORTING LAW - U.C.A. §62A-4a-403

Reporting Requirements 62A-4a-403.

General reporting requirement:

(1) (a) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.

Cross reporting requirement between DCFS and Law Enforcement:

(b) Upon receipt of the notification described in Subsection (1)(a), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect is made to the division, the division shall immediately notify the appropriate local law enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

Clergy reporting exemption by actor to clergy:

(2) Subject to Subsection (3), the notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to the clergyman or priest in the professional character of the clergyman or priest in the course of discipline enjoined by the church to which the clergyman or priest belongs, if:

- (a) the confession was made directly to the clergyman or priest by the perpetrator; and
- (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

Clergy reporting requirement by victim or another to clergy:

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, the clergyman or priest is required to give notification on the basis of that information even though the clergyman or priest may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

CRIMINAL RESPONSIBILITY - U.C.A. §76-2-301

A person is not criminally responsible for conduct performed before he reaches the age of 14 years. This section shall in no way limit the jurisdiction of or proceedings before the juvenile courts of this state. (§76-2-301)

The United States Supreme Court recently stated in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders. In the 2013 General Legislative Session, Senate Bill 228 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.