

LEGAL SERVICES

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MEMORANDUM

January 11, 2021

SUBJECT: Sexual Abuse of a Minor: Age factors among states
(Work Order No. 32-LS0269)

TO: Representative Geran Tarr
Attn: Michelle Hale

FROM: Claire E. Radford
Legislative Counsel



During my December 9, 2020, telephone conversation with your office, I discussed my research regarding the age of consent statutes in various states and the age differences between a victim and an offender, and the corresponding penalty levels. My research was based on a prior request from your office about these topics and this memorandum is a brief follow-up to that conversation.

As I discussed in our telephone conversation, age of consent varies across states, and the generalized term "age of consent" does not necessarily define a single age at which an individual can legally consent to sex. While some states have a single age of consent,¹ other states, like Alaska, have statutes where a number of different factors are taken into consideration including age differentials, the age of the victim, the age of the defendant, and the relationship between the parties. In New Jersey, for example, the age of consent is 16 years of age, but an individual who is at least 13 years of age can legally consent to sexual activities if the other person is less than four years older than the individual.²

You asked whether other states increase penalty levels based on the age difference between a defendant and a victim, with higher penalties for increased difference in age. This is common in states where multiple factors are taken into consideration to determine whether a minor is capable of consent. It is my understanding, however, that you were specifically requesting information as to whether there are any states that increase offense levels for age differences that are outside the range crafted to allow minors within the same age group to engage in sexual conduct. Utah is an example of a state that increases the offense level based on a higher age gap between the victim and the defendant.

¹ Massachusetts, for example, has a statutory age of 16. Massachusetts General Law c.265, §23.

² New Jersey Statutes Annotated 2C:14-2.

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Specifically, Utah increases the offense level for circumstances in which the defendant is seven to 10 years of age older than the victim, or 10 or more years older than the victim.³

As I previously stated, this is a brief follow-up to our telephone conversation relating to age differences between victim and offender in sexual abuse of a minor cases. It may be helpful to contact legislative research or to request a NCSL 50 state survey relating to how these statutes are constructed in each state, as such a survey may provide a more in-depth look at the variations between states.

If I may be of further assistance, please advise.

CER:mjt

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³ Utah Statutes Annotated 76-5-401.2.