

1 **OFFENSES AGAINST THE PERSON AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies the Utah Criminal Code regarding aggravated assault and child
8 abuse.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ amends the crime of aggravated assault to include the act of impeding the breathing
- 12 or blood circulation of another person by the use of unlawful force that is likely to
- 13 result in a loss of consciousness;
- 14 ▶ provides that the commission of the aggravated assault offense of impeding
- 15 breathing or blood circulation is the offense of strangulation, and is a second degree
- 16 felony if action results in a loss of consciousness; and
- 17 ▶ modifies the crime of child abuse to include the act of impeding the breathing or
- 18 circulation of blood by applying pressure to the neck or throat, or by obstructing the
- 19 nose, mouth, or airway, in a manner that is likely to cause unconsciousness.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **76-5-103**, as last amended by Laws of Utah 2015, Chapter 430

27 **76-5-109**, as last amended by Laws of Utah 2015, Chapter 258

28

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

30 Section 1. Section **76-5-103** is amended to read:

31 **76-5-103. Aggravated assault -- Penalties.**

32 (1) Aggravated assault is an actor's conduct:

33 (a) that is:

34 (i) an attempt, with unlawful force or violence, to do bodily injury to another;

35 (ii) a threat, accompanied by a show of immediate force or violence, to do bodily injury
36 to another; or

37 (iii) an act, committed with unlawful force or violence, that causes bodily injury to
38 another or creates a substantial risk of bodily injury to another; and

39 (b) that includes the use of:

40 (i) a dangerous weapon as defined in Section 76-1-601; [or]

41 (ii) any act that impedes the breathing or the circulation of blood of another person by
42 the actor's use of unlawful force or violence that is likely to produce a loss of consciousness by:

43 (A) applying pressure to the neck or throat of a person; or

44 (B) obstructing the nose, mouth, or airway of a person; or

45 ~~[(ii)]~~ (iii) other means or force likely to produce death or serious bodily injury.

46 ~~[(2)(a) A violation of Subsection (1) is a third degree felony, except under Subsection~~
47 ~~(2)(b).]~~

48 ~~[(b) A violation of Subsection (1) that results in serious bodily injury is a second~~
49 ~~degree felony.]~~

50 (2) Any act under this section is punishable as a third degree felony, except that an act
51 under this section is punishable as a second degree felony if:

52 (a) the act results in serious bodily injury; or

53 (b) an act under Subsection (1)(b)(ii) produces a loss of consciousness.

54 Section 2. Section **76-5-109** is amended to read:

55 **76-5-109. Child abuse -- Child abandonment.**

56 (1) As used in this section:

57 (a) "Child" means a human being who is under 18 years of age.

58 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:

59 (A) intentionally ceases to maintain physical custody of the child;

60 (B) intentionally fails to make reasonable arrangements for the safety, care, and
61 physical custody of the child; and

62 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;

63 (II) manifests an intent to permanently not resume physical custody of the child; or

- 64 (III) for a period of at least 30 days:
- 65 (Aa) intentionally fails to resume physical custody of the child; and
- 66 (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- 67 (ii) "Child abandonment" does not include:
- 68 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
- 69 (B) giving legal consent to a court order for termination of parental rights:
- 70 (I) in a legal adoption proceeding; or
- 71 (II) in a case where a petition for the termination of parental rights, or the termination
- 72 of a guardianship, has been filed.
- 73 (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in
- 74 Section 76-5-109.1.
- 75 (d) "Enterprise" is as defined in Section 76-10-1602.
- 76 (e) "Physical injury" means an injury to or condition of a child which impairs the
- 77 physical condition of the child, including:
- 78 (i) a bruise or other contusion of the skin;
- 79 (ii) a minor laceration or abrasion;
- 80 (iii) failure to thrive or malnutrition; or
- 81 (iv) any other condition which imperils the child's health or welfare and which is not a
- 82 serious physical injury as defined in Subsection (1)(f).
- 83 (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
- 84 (A) seriously impairs the child's health;
- 85 (B) involves physical torture;
- 86 (C) causes serious emotional harm to the child; or
- 87 (D) involves a substantial risk of death to the child.
- 88 (ii) "Serious physical injury" includes:
- 89 (A) fracture of any bone or bones;
- 90 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
- 91 shaking, or causing the child's head to impact with an object or surface;
- 92 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
- 93 object upon the skin or body of the child;
- 94 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

95 (E) any combination of two or more physical injuries inflicted by the same person,
96 either at the same time or on different occasions;

97 (F) any damage to internal organs of the body;

98 (G) any conduct toward a child that results in severe emotional harm, severe
99 developmental delay or intellectual disability, or severe impairment of the child's ability to
100 function;

101 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
102 of the function of a bodily member, limb, or organ;

103 ~~[(I) any conduct that causes a child to cease breathing, even if resuscitation is
104 successful following the conduct, or]~~

105 (I) any impediment of the breathing or the circulation of blood by application of
106 pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely to
107 produce a loss of consciousness;

108 (J) any conduct that results in starvation or failure to thrive or malnutrition that
109 jeopardizes the child's life[-]; or

110 (K) unconsciousness caused by the unlawful infliction of a brain injury or unlawfully
111 causing any deprivation of oxygen to the brain.

112 (2) Any person who inflicts upon a child serious physical injury or, having the care or
113 custody of such child, causes or permits another to inflict serious physical injury upon a child is
114 guilty of an offense as follows:

115 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

116 (b) if done recklessly, the offense is a felony of the third degree; or

117 (c) if done with criminal negligence, the offense is a class A misdemeanor.

118 (3) Any person who inflicts upon a child physical injury or, having the care or custody
119 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
120 offense as follows:

121 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

122 (b) if done recklessly, the offense is a class B misdemeanor; or

123 (c) if done with criminal negligence, the offense is a class C misdemeanor.

124 (4) A person who commits child abandonment, or encourages or causes another to
125 commit child abandonment, or an enterprise that encourages, commands, or causes another to

126 commit child abandonment, is:

127 (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

128 (b) guilty of a felony of the second degree, if, as a result of the child abandonment:

129 (i) the child suffers a serious physical injury; or

130 (ii) the person or enterprise receives, directly or indirectly, any benefit.

131 (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the

132 person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and

133 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection

134 (5)(b).

135 (b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to

136 criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

137 (6) A parent or legal guardian who provides a child with treatment by spiritual means

138 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices

139 of an established church or religious denomination of which the parent or legal guardian is a

140 member or adherent shall not, for that reason alone, be considered to have committed an

141 offense under this section.

142 (7) A parent or guardian of a child does not violate this section by selecting a treatment

143 option for the medical condition of the child, if the treatment option is one that a reasonable

144 parent or guardian would believe to be in the best interest of the child.

145 (8) A person is not guilty of an offense under this section for conduct that constitutes:

146 (a) reasonable discipline or management of a child, including withholding privileges;

147 (b) conduct described in Section 76-2-401; or

148 (c) the use of reasonable and necessary physical restraint or force on a child:

149 (i) in self-defense;

150 (ii) in defense of others;

151 (iii) to protect the child; or

152 (iv) to remove a weapon in the possession of a child for any of the reasons described in

153 Subsections (8)(c)(i) through (iii).

Legislative Review Note
Office of Legislative Research and General Counsel