

1 UNLAWFUL DETENTION AMENDMENTS

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Ryan D. Wilcox

5 Senate Sponsor: J. Stuart Adams

7 LONG TITLE

8 General Description:

9 This bill modifies the Criminal Code regarding the offense of unlawful detention.

10 Highlighted Provisions:

11 This bill:

12 ▶ creates the offense of unlawful detention of a minor when a person who is at least
13 four or more years older than the victim coerces or influences a minor who is 14 or
14 15 years of age to stay with the person without the consent of the minor's parent or
15 guardian, for an unreasonable amount of time, and in a situation that is not the
16 offense of kidnapping.

17 Money Appropriated in this Bill:

18 None

19 Other Special Clauses:

20 None

21 Utah Code Sections Affected:

22 AMENDS:

23 31A-21-501, as last amended by Laws of Utah 2011, Chapter 320

24 76-5-304, as last amended by Laws of Utah 2001, Chapter 301

25 76-5-306, as enacted by Laws of Utah 2001, Chapter 301

26 77-36-1, as last amended by Laws of Utah 2011, Chapters 113 and 320

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

29 Section 1. Section 31A-21-501 is amended to read:

30 **31A-21-501. Definitions.**

31 For purposes of this part:

32 (1) "Applicant" means:

33 (a) in the case of an individual life or accident and health policy, the person who seeks
34 to contract for insurance benefits; or

35 (b) in the case of a group life or accident and health policy, the proposed certificate
36 holder.

37 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
38 individual who is 16 years of age or older who:

39 (a) is or was a spouse of the other party;

40 (b) is or was living as if a spouse of the other party;

41 (c) is related by blood or marriage to the other party;

42 (d) has one or more children in common with the other party; or

43 (e) resides or has resided in the same residence as the other party.

44 (3) "Child abuse" means the commission or attempt to commit against a child a
45 criminal offense described in:

46 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

47 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

48 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or

49 (d) Section 76-9-702.5, Lewdness Involving a Child.

50 (4) "Domestic violence" means any criminal offense involving violence or physical
51 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
52 commit a criminal offense involving violence or physical harm, when committed by one
53 cohabitant against another and includes commission or attempt to commit, any of the following
54 offenses by one cohabitant against another:

55 (a) aggravated assault, as described in Section 76-5-103;

56 (b) assault, as described in Section 76-5-102;

57 (c) criminal homicide, as described in Section 76-5-201;

- 58 (d) harassment, as described in Section 76-5-106;
- 59 (e) electronic communication harassment, as described in Section 76-9-201;
- 60 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 61 76-5-301, 76-5-301.1, and 76-5-302;
- 62 (g) mayhem, as described in Section 76-5-105;
- 63 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Section 76-5b-201;
- 64 (i) stalking, as described in Section 76-5-106.5;
- 65 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 66 76-5-304;
- 67 (k) violation of a protective order or ex parte protective order, as described in Section
- 68 76-5-108;
- 69 (l) any offense against property described in Title 76, Chapter 6, Part 1, [~~2, or 3~~]
- 70 Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 71 (m) possession of a deadly weapon with intent to assault, as described in Section
- 72 76-10-507; or
- 73 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 74 person, building, or vehicle, as described in Section 76-10-508.
- 75 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
- 76 be, or may have been subject to domestic violence or child abuse.
- 77 Section 2. Section **76-5-304** is amended to read:
- 78 **76-5-304. Unlawful detention and unlawful detention of a minor.**
- 79 (1) An actor commits unlawful detention if the actor intentionally or knowingly,
- 80 without authority of law, and against the will of the victim, detains or restrains the victim under
- 81 circumstances not constituting a violation of:
- 82 (a) kidnapping, Section 76-5-301;
- 83 (b) child kidnapping, Section 76-5-301.1; or
- 84 (c) aggravated kidnapping, Section 76-5-302.
- 85 (2) An actor commits unlawful detention of a minor if the actor intentionally or

86 knowingly, without authority of law, and against the will of the victim, coerces or exerts
87 influence over the victim with the intent to cause the victim to remain with the actor for an
88 unreasonable period of time under the circumstances, and:

89 (a) the act is under circumstances not constituting a violation of:

90 (i) kidnapping, Section 76-5-301;

91 (ii) child kidnapping, Section 76-5-301.1; or

92 (iii) aggravated kidnapping, Section 76-5-302; and

93 (b) the actor is at least four or more years older than the victim.

94 [~~2~~] (3) As used in this section, acting "against the will of the victim" includes acting
95 without the consent of the legal guardian or custodian of a victim who is:

96 (a) a mentally incompetent person[-]; or

97 (b) a minor who is 14 or 15 years of age.

98 [~~3~~] (4) Unlawful detention is a class B misdemeanor.

99 Section 3. Section **76-5-306** is amended to read:

100 **76-5-306. Lesser included offenses.**

101 In this part, the following offenses are lesser included offenses of Section 76-5-302,
102 aggravated kidnapping:

103 (1) Section 76-5-301, kidnapping; and

104 (2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

105 Section 4. Section **77-36-1** is amended to read:

106 **77-36-1. Definitions.**

107 As used in this chapter:

108 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.

109 (2) "Department" means the Department of Public Safety.

110 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
111 3, Divorce.

112 (4) "Domestic violence" means any criminal offense involving violence or physical
113 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to

114 commit a criminal offense involving violence or physical harm, when committed by one
115 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
116 any of the following offenses by one cohabitant against another:

- 117 (a) aggravated assault, as described in Section 76-5-103;
- 118 (b) assault, as described in Section 76-5-102;
- 119 (c) criminal homicide, as described in Section 76-5-201;
- 120 (d) harassment, as described in Section 76-5-106;
- 121 (e) electronic communication harassment, as described in Section 76-9-201;
- 122 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
123 76-5-301, 76-5-301.1, and 76-5-302;
- 124 (g) mayhem, as described in Section 76-5-105;
- 125 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
126 Section 76-5b-201, Sexual Exploitation of a Minor;
- 127 (i) stalking, as described in Section 76-5-106.5;
- 128 (j) unlawful detention or unlawful detention of a minor, as described in Section
129 76-5-304;
- 130 (k) violation of a protective order or ex parte protective order, as described in Section
131 76-5-108;
- 132 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
133 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 134 (m) possession of a deadly weapon with intent to assault, as described in Section
135 76-10-507;
- 136 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
137 person, building, or vehicle, as described in Section 76-10-508;
- 138 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
139 conduct is the result of a plea agreement in which the defendant was originally charged with
140 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction
141 of disorderly conduct as a domestic violence offense, in the manner described in this

142 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
143 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.
144 Section 921 et seq.; or

145 (p) child abuse as described in Section 76-5-109.1.

146 (5) "Jail release agreement" means a written agreement:

147 (a) specifying and limiting the contact a person arrested for a domestic violence offense
148 may have with an alleged victim or other specified individuals; and

149 (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5
150 (2).

151 (6) "Jail release court order" means a written court order:

152 (a) specifying and limiting the contact a person arrested for a domestic violence offense
153 may have with an alleged victim or other specified individuals; and

154 (b) specifying other conditions of release from jail as required in Subsection
155 77-36-2.5(2).

156 (7) "Marital status" means married and living together, divorced, separated, or not
157 married.

158 (8) "Married and living together" means a man and a woman whose marriage was
159 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

160 (9) "Not married" means any living arrangement other than married and living together,
161 divorced, or separated.

162 (10) "Pretrial protective order" means a written order:

163 (a) specifying and limiting the contact a person who has been charged with a domestic
164 violence offense may have with an alleged victim or other specified individuals; and

165 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(3)(c),
166 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

167 (11) "Sentencing protective order" means a written order of the court as part of
168 sentencing in a domestic violence case that limits the contact a person who has been convicted
169 of a domestic violence offense may have with a victim or other specified individuals pursuant

170 to Sections 77-36-5 and 77-36-5.1.

171 (12) "Separated" means a man and a woman who have had their marriage solemnized
172 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

173 (13) "Victim" means a cohabitant who has been subjected to domestic violence.