

1 **SEXUAL OFFENSES AND STATUTORY NONCONSENT**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Justin L. Fawson**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill amends provisions related to sexual offenses without the consent of the victim
10 to include sexual contact without disclosing infection of Human Immunodeficiency
11 Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS).
12

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ amends statutory nonconsent to sexual activity to include sexual contact in
- 16 situations where:
 - 17 • the actor knows that the actor is infected with HIV or AIDS; and
 - 18 • the victim is unaware of the infection;
- 19 ▶ expands the definitions of rape and other criminal sexual offenses to include
- 20 nonconsensual sexual contact by an actor infected with HIV or AIDS;
- 21 ▶ includes conduct in the definition of "harmful sexual conduct"; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **62A-15-602**, as last amended by Laws of Utah 2012, Chapter 248

30 **76-5-406**, as last amended by Laws of Utah 2015, Chapter 57

31

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

33 Section 1. Section **62A-15-602** is amended to read:

34 **62A-15-602. Definitions.**

35 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
36 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
37 Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

38 (1) "Adult" means a person 18 years of age or older.

39 (2) "Commitment to the custody of a local mental health authority" means that an adult
40 is committed to the custody of the local mental health authority that governs the mental health
41 catchment area in which the proposed patient resides or is found.

42 (3) "Designated examiner" means a licensed physician familiar with severe mental
43 illness, preferably a psychiatrist, designated by the division as specially qualified by training or
44 experience in the diagnosis of mental or related illness or another licensed mental health
45 professional designated by the division as specially qualified by training and at least five years'
46 continual experience in the treatment of mental or related illness. At least one designated
47 examiner in any case shall be a licensed physician. No person who is the applicant, or who
48 signs the certification, under Section **62A-15-631** may be a designated examiner in the same
49 case.

50 (4) "Designee" means a physician who has responsibility for medical functions
51 including admission and discharge, an employee of a local mental health authority, or an
52 employee of an agency that has contracted with a local mental health authority to provide
53 mental health services under Section **17-43-304**.

54 (5) "Harmful sexual conduct" means any of the following conduct upon an individual
55 without the individual's consent, or upon an individual who cannot legally consent to the
56 conduct including under the circumstances described in Subsections **76-5-406(1)** through ~~[(12)]~~
57 (13):

58 (a) sexual intercourse;

59 (b) penetration, however slight, of the genital or anal opening of the individual;

60 (c) any sexual act involving the genitals or anus of the actor or the individual and the
61 mouth or anus of either individual, regardless of the gender of either participant; or

62 (d) any sexual act causing substantial emotional injury or bodily pain.

63 (6) "Institution" means a hospital, or a health facility licensed under the provisions of
64 Section 26-21-9.

65 (7) "Licensed physician" means an individual licensed under the laws of this state to
66 practice medicine, or a medical officer of the United States government while in this state in
67 the performance of official duties.

68 (8) "Local comprehensive community mental health center" means an agency or
69 organization that provides treatment and services to residents of a designated geographic area,
70 operated by or under contract with a local mental health authority, in compliance with state
71 standards for local comprehensive community mental health centers.

72 (9) "Mental health facility" means the Utah State Hospital or other facility that
73 provides mental health services under contract with the division, a local mental health
74 authority, or organization that contracts with a local mental health authority.

75 (10) "Mental health officer" means an individual who is designated by a local mental
76 health authority as qualified by training and experience in the recognition and identification of
77 mental illness, to interact with and transport persons to any mental health facility.

78 (11) "Mental illness" means a psychiatric disorder as defined by the current edition of
79 the Diagnostic and Statistical Manual of Mental Disorders published by the American
80 Psychiatric Association which substantially impairs a person's mental, emotional, behavioral,
81 or related functioning.

82 (12) "Patient" means an individual under commitment to the custody or to the
83 treatment services of a local mental health authority.

84 (13) "Serious bodily injury" means bodily injury which involves a substantial risk of
85 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
86 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

87 (14) "Substantial danger" means the person, by his or her behavior, due to mental
88 illness:

89 (a) is at serious risk to:

- 90 (i) commit suicide;
- 91 (ii) inflict serious bodily injury on himself or herself; or
- 92 (iii) because of his or her actions or inaction, suffer serious bodily injury because he or
- 93 she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or
- 94 (b) is at serious risk to cause or attempt to cause serious bodily injury or engage in
- 95 harmful sexual conduct.

96 (15) "Treatment" means psychotherapy, medication, including the administration of

97 psychotropic medication, and other medical treatments that are generally accepted medical and

98 psychosocial interventions for the purpose of restoring the patient to an optimal level of

99 functioning in the least restrictive environment.

100 Section 2. Section **76-5-406** is amended to read:

101 **76-5-406. Sexual offenses against the victim without consent of victim --**

102 **Circumstances.**

103 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a

104 child, object rape, attempted object rape, object rape of a child, attempted object rape of a

105 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a

106 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,

107 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,

108 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the

109 victim under any of the following circumstances:

- 110 (1) the victim expresses lack of consent through words or conduct;
- 111 (2) the actor overcomes the victim through the actual application of physical force or
- 112 violence;
- 113 (3) the actor is able to overcome the victim through concealment or by the element of
- 114 surprise;
- 115 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
- 116 immediate future against the victim or any other person, and the victim perceives at the time
- 117 that the actor has the ability to execute this threat; or
- 118 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
- 119 against the victim or any other person, and the victim believes at the time that the actor has the
- 120 ability to execute this threat;

121 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
122 kidnapping, or extortion;

123 (5) the actor knows the victim is unconscious, unaware that the act is occurring, or
124 physically unable to resist;

125 (6) the actor knows that as a result of mental disease or defect, or for any other reason
126 the victim is at the time of the act incapable either of appraising the nature of the act or of
127 resisting it;

128 (7) the actor knows that the victim submits or participates because the victim
129 erroneously believes that the actor is the victim's spouse;

130 (8) the actor intentionally impaired the power of the victim to appraise or control his or
131 her conduct by administering any substance without the victim's knowledge;

132 (9) the victim is younger than 14 years of age;

133 (10) the victim is younger than 18 years of age and at the time of the offense the actor
134 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
135 special trust in relation to the victim as defined in Section [76-5-404.1](#);

136 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
137 actor is more than three years older than the victim and entices or coerces the victim to submit
138 or participate, under circumstances not amounting to the force or threat required under
139 Subsection (2) or (4); [or]

140 (12) the actor is a health professional or religious counselor, as those terms are defined
141 in this Subsection (12), the act is committed under the guise of providing professional
142 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
143 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
144 to the extent that resistance by the victim could not reasonably be expected to have been
145 manifested; for purposes of this Subsection (12):

146 (a) "health professional" means an individual who is licensed or who holds himself or
147 herself out to be licensed, or who otherwise provides professional physical or mental health
148 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
149 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
150 social service worker, clinical social worker, certified social worker, marriage and family
151 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse

152 specialist, or substance abuse counselor; and

153 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
154 member of the clergy[-]; or

155 (13) the actor knows that the actor is infected with the Human Immunodeficiency Virus
156 or Acquired Immunodeficiency Syndrome and engages in the sexual act knowing that the
157 victim is unaware of the infection.

Legislative Review Note
Office of Legislative Research and General Counsel