

1 **AGGRAVATED SEXUAL EXPLOITATION OF A MINOR**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill increases the penalty for sexual exploitation of a minor under certain
10 circumstances.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ increases the penalty for sexual exploitation of a minor when the offense is
15 committed under certain circumstances, including by a family member or an
16 individual in a position of special trust in relation to the minor, or against an infant
17 or toddler; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **76-5b-103**, as last amended by Laws of Utah 2013, Chapter 290

26 **76-5b-201**, as last amended by Laws of Utah 2018, Chapter 285



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

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

30 **76-5b-103. Definitions.**

31 As used in this chapter:

32 (1) "Child pornography" means any visual depiction, including any live performance,
33 photograph, film, video, picture, or computer or computer-generated image or picture, whether
34 made or produced by electronic, mechanical, or other means, of sexually explicit conduct,
35 where:

36 (a) the production of the visual depiction involves the use of a minor engaging in
37 sexually explicit conduct;

38 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

39 (c) the visual depiction has been created, adapted, or modified to appear that an
40 identifiable minor is engaging in sexually explicit conduct.

41 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,
42 providing, giving, granting admission to, or otherwise transferring or presenting child
43 pornography or vulnerable adult pornography with or without consideration.

44 (3) "Family member" means an adult who is a parent, grandparent, great grandparent,
45 aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin,
46 stepsibling, or sibling.

47 [~~3~~] (4) "Identifiable minor" means [~~a person~~] an individual:

48 (a) (i) who was a minor at the time the visual depiction was created, adapted, or
49 modified; or

50 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
51 depiction; and

52 (b) who is recognizable as an actual [~~person~~] individual by the [~~person's~~] individual's
53 face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable
54 feature.

55 [~~4~~] (5) "Identifiable vulnerable adult" means [~~a person~~] an individual:

56 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,
57 or modified; or

58 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the

59 visual depiction; and

60 (b) who is recognizable as an actual ~~[person]~~ individual by the ~~[person's]~~ individual's
61 face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable
62 feature.

63 (6) "Infant or toddler" means an individual under five years of age.

64 ~~[(5)]~~ (7) "Lacks capacity to consent" is as defined in Subsection 76-5-111(1).

65 ~~[(6)]~~ (8) "Live performance" means any act, play, dance, pantomime, song, or other
66 activity performed by live actors in person.

67 ~~[(7)]~~ (9) "Minor" means ~~[a person]~~ an individual younger than 18 years of age.

68 ~~[(8)]~~ (10) "Nudity or partial nudity" means any state of dress or undress in which the
69 human genitals, pubic region, buttocks, or the female breast, at a point below the top of the
70 areola, is less than completely and opaquely covered.

71 ~~[(9)]~~ (11) "Produce" means:

72 (a) the photographing, filming, taping, directing, producing, creating, designing, or
73 composing of child pornography or vulnerable adult pornography; or

74 (b) the securing or hiring of persons to engage in the photographing, filming, taping,
75 directing, producing, creating, designing, or composing of child pornography or vulnerable
76 adult pornography.

77 ~~[(10)]~~ (12) "Sexually explicit conduct" means actual or simulated:

78 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
79 whether between persons of the same or opposite sex;

80 (b) masturbation;

81 (c) bestiality;

82 (d) sadistic or masochistic activities;

83 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
84 person;

85 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
86 arousal of any person;

87 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

88 (h) the explicit representation of the defecation or urination functions.

89 ~~[(11)]~~ (13) "Simulated sexually explicit conduct" means a feigned or pretended act of

90 sexually explicit conduct which duplicates, within the perception of an average person, the
91 appearance of an actual act of sexually explicit conduct.

92 ~~[(12)]~~ (14) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

93 ~~[(13)]~~ (15) "Vulnerable adult pornography" means any visual depiction, including any
94 live performance, photograph, film, video, picture, or computer or computer-generated image
95 or picture, whether made or produced by electronic, mechanical, or other means, of sexually
96 explicit conduct, where:

97 (a) the production of the visual depiction involves the use of a vulnerable adult
98 engaging in sexually explicit conduct;

99 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

100 or

101 (c) the visual depiction has been created, adapted, or modified to appear that an
102 identifiable vulnerable adult is engaging in sexually explicit conduct.

103 Section 2. Section 76-5b-201 is amended to read:

104 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

105 (1) A person is guilty of sexual exploitation of a minor:

106 (a) when the person:

107 (i) knowingly produces, possesses, or possesses with intent to distribute child
108 pornography; or

109 (ii) intentionally distributes or views child pornography; or

110 (b) if the person is a minor's ~~[parent or]~~ family member, legal guardian, or holds a
111 position of special trust, as defined in Section 76-5-404.1, in relation to the minor, and
112 knowingly consents to or permits the minor to be sexually exploited as described in Subsection
113 (1)(a).

114 (2) (a) ~~[Sexual]~~ Except as provided in Subsection (2)(b), sexual exploitation of a minor
115 is a second degree felony.

116 (b) Sexual exploitation of a minor is a first degree felony which may be punishable by
117 a term of imprisonment of not less than three years and which may be for life if:

118 (i) the person knowingly produces child pornography;

119 (ii) the person is the minor's family member, legal guardian, or holds a position of
120 special trust, as defined in Section 76-5-404.1, in relation to the minor;

121 (iii) has been convicted of a prior sexual offense as defined in Subsection 76-3-407(1);

122 or

123 (iv) the offense involved a visual depiction of:

124 (A) an infant or toddler; or

125 (B) material that portrays violence, bestiality, or sadistic or masochistic activity.

126 (3) It is a separate offense under this section:

127 (a) for each minor depicted in the child pornography; and

128 (b) for each time the same minor is depicted in different child pornography.

129 (4) It is an affirmative defense to a charge of violating this section that no [person
130 ~~under 18 years of age~~] minor was actually depicted in the visual depiction or used in producing
131 or advertising the visual depiction.

132 (5) In proving a violation of this section in relation to an identifiable minor, proof of
133 the actual identity of the identifiable minor is not required.

134 (6) This section may not be construed to impose criminal or civil liability on:

135 (a) an entity or an employee, director, officer, or agent of an entity when acting within
136 the scope of employment, for the good faith performance of:

137 (i) reporting or data preservation duties required under any federal or state law; or

138 (ii) implementing a policy of attempting to prevent the presence of child pornography
139 on any tangible or intangible property, or of detecting and reporting the presence of child
140 pornography on the property;

141 (b) a law enforcement officer acting within the scope of a criminal investigation;

142 (c) an employee of a court who may be required to view child pornography during the
143 course of and within the scope of the employee's employment;

144 (d) a juror who may be required to view child pornography during the course of the
145 individual's service as a juror;

146 (e) an attorney or employee of an attorney who is required to view child pornography
147 during the course of a judicial process and while acting within the scope of employment;

148 (f) an employee of the Department of Human Services who is required to view child
149 pornography within the scope of the employee's employment; or

150 (g) an attorney who is required to view child pornography within the scope of the
151 attorney's responsibility to represent the Department of Human Services, including the

152 divisions and offices within the Department of Human Services.