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## S.B. 144, Sexual Crime Amendments

This document provides a bill analysis for [S.B. 144, Sexual Crimes Amendments](#) as substituted. S.B. 144 amends definitions related to Child Sexual Abuse Material (CSAM) and other sexual offenses and adds protections for certain employees who are required to view CSAM as part of their employment.

### Female Breast Definition

S.B. 144 defines a female breast as **"the undeveloped, partially developed, or developed breast of a female individual."**

#### Defining female breast:

This new definition clears up uncertainties as to what a female breast entails. The Utah Attorney General's (AGs) Office indicated other states are facing challenges when prosecuting child sexual abuse situations because female children are not considered to have breasts because their chests are not developed. As such, touching that area of a child's body may not be considered sexual abuse or sexual misconduct even if done with intent to arouse or sexually gratify the actor.

#### **Utah code that S.B. 144's definition of female breast will impact:**

- Sexual abuse of a minor
- Unlawful sexual conduct with a 16 or 17 year old
- Forcible sexual abuse
- Sexual abuse of a child
- Custodial sexual misconduct
- Custodial sexual misconduct with a youth receiving state services

### Child Sexual Abuse Material Definition

Currently in [Utah Code Section 76-5b-103](#), CSAM is "any visual depiction of sexually explicit conduct where the production of the visual depiction involves the use of a minor **engaging in** sexually explicit conduct." CSAM can be modified, real, or artificially generated.

S.B. 144 amends the definition of CSAM to include a child who is **"observing or being used for** sexually explicit conduct."

#### Adding "observing or being used for" to the definition of CSAM:

According to the AGs Office, if interpreted literally, the current definition of CSAM, which says a child must be "engaging in" the sexual conduct, does not encompass children who are not necessarily engaging in the abuse. An example of this would be if a child is asleep during the abuse. The child is not actively engaging in the CSAM and rather is "being used for" sexually explicit conduct.



## Sexually Explicit Conduct Definition

[Utah Code Section 76-5b-103](#) defines sexually explicit conduct as the “*explicit representation of the defecation or urination functions.*” S.B. 144 amends this definition to say, “**the visual depiction of defecation or urination for the purpose of causing sexual arousal of any individual.**”

Changing the definition of sexually explicit conduct:

The AGs Office indicated that by removing the statutorily undefined terms of “explicit” and “representation” to “visual depiction” helps fix an issue of uncertainty that can arise when prosecuting CSAM cases.

## Sexual Exploitation of a Minor Definition

Currently in [Utah Code Section 76-5b-201](#) an “actor commits sexual exploitation of a minor if they knowingly possess or intentionally view child sexual abuse material.”

S.B. 144 amends this definition to include that “an actor commits sexual exploitation of a minor when the actor knowingly possesses, views, **accesses with the intent to view**, or **maintains access with the intent to view**, child sexual abuse material.”

Amending the definition of sexual exploitation:

In [Utah Code Section 76-1-101.5](#) possession means “*having physical possession of or to exercise dominion or control over tangible property.*”

The current definition does not consider an actor with digital CSAM. Digital CSAM is not always possessed physically or considered tangible property. For example, an actor who watches livestream CSAM may not be viewed as possessing CSAM because the CSAM is not stored to their device. Amending the definition to say “accesses with intent to view” or “maintains access with the intent to view” covers CSAM obtained through electronic, or online, methods. The new definition also changes the mental state needed for an actor to commit sexual exploitation of a minor.

S.B. 144 also amends [Utah Code Section 76-5b-201.1](#) to increase the penalty for sexual exploitation of minors who are **14 years old but younger than 18**. S.B. 144 raises the penalty from a second degree felony to **first degree felony**.

## Employees Not Criminally Liable for Handling CSAM

Currently [Utah Code Section 76-5b-201](#) lists the following employees as not liable if, when acting in the scope of their employment, they must access CSAM:

- a law enforcement officer,
- an employee of the court,
- a juror during their service,
- an attorney or employee of an attorney,
- a Department of Health and Human Services employee, and
- An attorney representing DHHS.

S.B. 44 expands this list to include:

- **civilian employees or independent contractors working with law enforcement agencies, or**
- **an employee, contractor, or designated interviewer of the Children’s Justice Center.**