

KIDNAPPING AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Glenn L. Way

This act modifies the Criminal Code regarding kidnapping offenses, by amending the elements of offenses, stating defenses, and specifying lesser included offenses. This act also includes cross reference amendments.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-3-202, as last amended by Chapter 69, Laws of Utah 1998

76-5-301, as last amended by Chapter 88, Laws of Utah 1983

76-5-301.1, as last amended by Chapter 40, Laws of Utah 1996

76-5-302, as last amended by Chapter 69, Laws of Utah 1998

76-5-304, as enacted by Chapter 196, Laws of Utah 1973

77-27-7, as last amended by Chapter 69, Laws of Utah 1998

ENACTS:

76-5-305, Utah Code Annotated 1953

76-5-306, Utah Code Annotated 1953

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

Section 1. Section **76-3-202** is amended to read:

76-3-202. Paroled persons -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.

(1) Except as otherwise provided in this section, every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, be terminated from his sentence unless the person is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole



28 be recommitted to prison to serve the portion of the balance of his term as determined by the Board
29 of Pardons and Parole, but not to exceed the maximum term.

30 (2) Every person convicted of a second degree felony for violating Section 76-5-404 or
31 76-5-404.1, or attempting to violate any of those sections, upon completion of ten years parole
32 outside of confinement and without violation, shall be terminated from his sentence unless the
33 person is earlier terminated by the Board of Pardons and Parole. Any person who violates the
34 terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole
35 be recommitted to prison to serve the portion of the balance of his term as determined by the Board
36 of Pardons and Parole, but not to exceed the maximum term.

37 (3) Every person convicted of a first degree felony for violating Section 76-5-301.1,
38 Subsection 76-5-302(1)(b)~~(v)~~(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3,
39 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, shall
40 complete a term of lifetime parole outside of confinement and without violation unless the person
41 is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of
42 his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole be
43 recommitted to prison to serve the portion of the balance of his term as determined by the Board
44 of Pardons and Parole, but not to exceed the maximum term.

45 (4) In order for a parolee convicted on or after May 5, 1997, to be eligible for early
46 termination from parole, the parolee must provide:

47 (a) evidence to the Board of Pardons and Parole that the parolee has completed high school
48 classwork and has obtained a high school graduation diploma, a GED certificate, or a vocational
49 certificate; or

50 (b) documentation of the inability to obtain one of the items listed in Subsection (4)(a)
51 because of:

- 52 (i) a diagnosed learning disability; or
- 53 (ii) other justified cause.

54 (5) Any person paroled following a former parole revocation may not be discharged from
55 his sentence until either:

56 (a) he has served three years or ten years as provided in Subsection (2) on parole outside
57 of confinement and without violation, or in the case of a person convicted of a first degree felony
58 violation of Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), Section 76-5-402, 76-5-402.1,

59 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting to violate
60 any of those sections, lifetime parole outside of confinement and without violation;

61 (b) his maximum sentence has expired; or

62 (c) the Board of Pardons and Parole so orders.

63 (6) (a) All time served on parole, outside of confinement and without violation constitutes
64 service of the total sentence but does not preclude the requirement of serving a three-year, ten-year,
65 or lifetime parole term, as the case may be, outside of confinement and without violation.

66 (b) Any time a person spends outside of confinement after commission of a parole
67 violation does not constitute service of the total sentence unless the person is exonerated at a
68 hearing to revoke the parole.

69 (c) Any time spent in confinement awaiting a hearing before the Board of Pardons and
70 Parole or a decision by the board concerning revocation of parole constitutes service of the
71 sentence. In the case of exoneration by the board, the time spent shall be included in computing
72 the total parole term.

73 (7) When any parolee without authority from the Board of Pardons and Parole absents
74 himself from the state or avoids or evades parole supervision, the period of absence, avoidance,
75 or evasion tolls the parole period.

76 (8) While on parole, time spent in confinement outside the state may not be credited
77 toward the service of any Utah sentence. Time in confinement outside the state for a conviction
78 obtained in another jurisdiction shall toll the expiration of the Utah sentence.

79 (9) This section does not preclude the Board of Pardons and Parole from paroling or
80 discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless
81 otherwise specifically provided by law.

82 (10) The parolee may petition the Board of Pardons and Parole for termination of lifetime
83 parole as provided by this section [~~76-3-202~~] in the case of a person convicted of a first degree
84 felony violation Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), Section 76-5-402,
85 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting
86 to violate any of those sections.

87 Section 2. Section **76-5-301** is amended to read:

88 **76-5-301. Kidnapping.**

89 (1) [~~A person~~] An actor commits [~~kidnaping when he~~] kidnapping if the actor intentionally

90 or knowingly [~~and~~], without authority of law, and against the will of the victim:

91 (a) detains or restrains [~~another~~] the victim for any substantial period of time; [~~or~~]

92 (b) detains or restrains [~~another~~] the victim in circumstances exposing [~~him~~] the victim to
93 risk of [~~serious~~] bodily injury; [~~or~~]

94 (c) holds [~~another~~] the victim in involuntary servitude; [~~or~~]

95 (d) detains or restrains a minor without the consent of [its] the minor's parent or legal
96 guardian or the consent of a person acting in loco parentis, if the minor is 14 years of age or older
97 but younger than 18 years of age; or

98 (e) moves the victim any substantial distance or across a state line.

99 (2) As used in this section, acting "against the will of the victim" includes acting without
100 the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.

101 [~~(2) Kidnaping~~] (3) Kidnapping is a second degree felony [of the second degree].

102 Section 3. Section **76-5-301.1** is amended to read:

103 **76-5-301.1. Child kidnapping.**

104 (1) [~~A person~~] An actor commits child [~~kidnaping when~~] kidnapping if the [~~person~~] actor
105 intentionally or knowingly, without authority of law, and [~~against the will of the victim,~~] by any
106 means and in any manner, seizes, confines, detains, or transports a child under the age of 14 [~~with~~
107 ~~intent to keep or conceal the child from its parent, guardian, or other person having lawful custody~~
108 ~~or control of the child.~~ (2) ~~A seizure, confinement, detention, or transportation is deemed to be~~
109 ~~against the will of the victim if the victim is younger than 14 years of age at the time of the offense,~~
110 ~~and the seizure, confinement, detention, or transportation, is]~~ without the [~~effective~~] consent of the
111 victim's [~~custodial~~] parent[;] or guardian, or the consent of a person acting in loco parentis.

112 [~~(3)~~] (2) Violation of Section 76-5-303 is not a violation of this section.

113 [~~(4)~~] (3) Child [~~kidnaping~~] kidnapping is a first degree felony punishable by imprisonment
114 for an indeterminate term of not less than 6, 10, or 15 years and which may be for life.

115 Imprisonment is mandatory in accordance with Section 76-3-406.

116 Section 4. Section **76-5-302** is amended to read:

117 **76-5-302. Aggravated kidnapping.**

118 (1) [~~A person~~] An actor commits aggravated [~~kidnaping~~] kidnapping if the [~~person~~
119 ~~intentionally or knowingly, without authority of law and against the will of the victim, by any~~
120 ~~means and in any manner, seizes, confines, detains, or transports the victim]~~ actor, in the course

121 of committing unlawful detention or kidnapping:

122 (a) [~~and in committing, attempting to commit, or in the immediate flight after the attempt~~
123 ~~or commission of the kidnaping, the actor~~] possesses, uses, or threatens to use a dangerous weapon
124 as defined in Section 76-1-601; or

125 (b) acts with intent:

126 (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third
127 person to engage in particular conduct or to forbear from engaging in particular conduct;

128 (ii) to facilitate the commission, attempted commission, or flight after commission or
129 attempted commission of a felony;

130 (iii) to hinder or delay the discovery of or reporting of a felony;

131 ~~[(iii)]~~ (iv) to inflict bodily injury on or to terrorize the victim or another;

132 ~~[(iv)]~~ (v) to interfere with the performance of any governmental or political function; or

133 ~~[(v)]~~ (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4 [~~of this~~
134 ~~chapter~~], Sexual Offenses.

135 ~~[(2) A detention or moving is deemed to be the result of force, threat, or deceit if the~~
136 ~~victim is mentally incompetent or younger than 16 years and the detention or moving is~~
137 ~~accomplished without the effective consent of the victim's custodial parent, guardian, or person~~
138 ~~acting in loco parentis to the victim.]~~

139 (2) As used in this ~~h~~ **SECTION h**, "in the course of committing unlawful
139a detention or

140 kidnapping" means in the course of committing, attempting to commit, or in the immediate flight
141 after the attempt or commission of a violation of:

142 (a) Section 76-5-301, kidnapping; or

143 (b) Section 76-5-304, unlawful detention.

144 (3) Aggravated [~~kidnaping~~] kidnapping is a first degree felony punishable by imprisonment
145 for an indeterminate term of not less than 6, 10, or 15 years and which may be for life.

146 Imprisonment is mandatory in accordance with Section 76-3-406.

147 Section 5. Section **76-5-304** is amended to read:

148 **76-5-304. Unlawful detention.**

149 (1) [~~A person~~] An actor commits unlawful detention if [~~he~~] the actor intentionally or
150 knowingly, without authority of law, and against the will of the victim, detains or restrains [~~another~~
151 ~~unlawfully so as to interfere substantially with his liberty~~] the victim under circumstances not

152 constituting a violation of:

153 (a) kidnapping, Section 76-5-301;

154 (b) child kidnapping, Section 76-5-301.1; or

155 (c) aggravated kidnapping, Section 76-5-302.

156 (2) As used in this section, acting "against the will of the victim" includes acting without
157 the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.

158 [~~2~~] (3) Unlawful detention is a class B misdemeanor.

159 Section 6. Section **76-5-305** is enacted to read:

160 **76-5-305. Defenses.**

161 It is a defense under this part that:

162 (1) the actor was acting under a reasonable belief that:

163 (a) the conduct was necessary to protect any person from imminent bodily injury or death;

164 or

165 (b) the detention or restraint was authorized by law; or

166 (2) the alleged victim is younger than 18 years of age or is mentally incompetent, and the
167 actor was acting under a reasonable belief that the custodian, guardian, legal guardian, custodial
168 parent, or person acting in loco parentis to the victim would, if present, have consented to the
169 actor's conduct.

170 Section 7. Section **76-5-306** is enacted to read:

171 **76-5-306. Lesser included offenses.**

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

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

175 (2) Section 76-5-304, unlawful detention.

176 Section 8. Section **77-27-7** is amended to read:

177 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**
178 **Mental competency.**

179 (1) The Board of Pardons and Parole shall determine within six months after the date of
180 an offender's commitment to the custody of the Department of Corrections, for serving a sentence
181 upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall
182 be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly

183 notify the offender of the date.

184 (2) Before reaching a final decision to release any offender under this chapter, the chair
185 shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who
186 shall personally interview the offender to consider his fitness for release and verify as far as
187 possible information furnished from other sources. Any offender may waive a personal appearance
188 before the board. Any offender outside of the state shall, if ordered by the board, submit to a
189 courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender
190 is housed in lieu of an appearance before the board. The offender shall be promptly notified in
191 writing of the board's decision.

192 (3) In the case of an offender convicted of violating or attempting to violate any of the
193 provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), ~~[Sections]~~ Section 76-5-402,
194 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, ~~and~~ or
195 76-5-405, the chair shall appoint one or more alienists who shall examine the offender within six
196 months prior to a hearing at which an original parole date is granted on any offense listed in this
197 subsection. The alienists shall report in writing the results of the examination to the board prior
198 to the hearing. The report of the appointed alienists shall specifically address the question of the
199 offender's current mental condition and attitudes as they relate to any danger the offender may pose
200 to children or others if the offender is released on parole.

201 (4) The parolee may petition the board for termination of lifetime parole as provided in
202 Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted
203 of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), ~~[Sections]~~ Section
204 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, ~~and~~ or
205 76-5-405.

206 (5) In any case where an offender's mental competency is questioned by the board, the
207 chair shall appoint one or more alienists to examine the offender and report in writing to the board,
208 specifically addressing the issue of competency.

209 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
210 board shall make rules governing:

- 211 (a) the hearing process;
- 212 (b) alienist examination; and
- 213 (c) parolee petitions for termination of parole.

Legislative Review Note
as of 1-15-01 12:50 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel