

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

(2) Every person convicted of a second degree felony for violating Section 76-5-404 or 76-5-404.1, or attempting to violate any of those sections, upon completion of ten years parole outside of confinement and without violation, shall 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 be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(3) Every person convicted of a first degree felony for violating Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), Section 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, or 76-5-405, or attempting to violate any of those sections, shall complete a term of lifetime parole outside of confinement and without violation 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 be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

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

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

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

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

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

(a) he has served three years or ten years as provided in Subsection (2) on parole outside of confinement and without violation, or in the case of a person convicted of a first degree felony

violation of Section 76-5-301.1, Subsection 76-5-302(1)(b)(~~(v)~~)(vi), Section 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, or 76-5-405, or attempting to violate any of those sections, lifetime parole outside of confinement and without violation;

(b) his maximum sentence has expired; or

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

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

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

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

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

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

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

(10) The parolee may petition the Board of Pardons and Parole for termination of lifetime parole as provided by this section [~~76-3-202~~] in the case of a person convicted of a first degree felony

violation Section 76-5-301.1, Subsection 76-5-302(1)(b)(~~(v)~~)(vi), Section 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, or 76-5-405, or attempting to violate any

of those sections.

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

76-5-301. Kidnapping.

(1) ~~[A person]~~ An actor commits ~~[kidnaping when he]~~ kidnapping if the actor intentionally or knowingly ~~[and]~~, without authority of law, and against the will of the victim:

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

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

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

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

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

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

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

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

76-5-301.1. Child kidnapping.

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

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

~~[(4)]~~ (3) Child ~~[kidnaping]~~ kidnapping is a first degree felony punishable by imprisonment

for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

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

76-5-302. Aggravated kidnapping.

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

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

(b) acts with intent:

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

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

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

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

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

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

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

(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

- (a) Section 76-5-301, kidnapping; or
- (b) Section 76-5-304, unlawful detention.

(3) Aggravated [~~kidnaping~~] kidnapping is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

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

76-5-304. Unlawful detention.

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

- (a) kidnapping, Section 76-5-301;
- (b) child kidnapping, Section 76-5-301.1; or
- (c) aggravated kidnapping, Section 76-5-302.

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

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

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

76-5-305. Defenses.

It is a defense under this part that:

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

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

or

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

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

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

76-5-306. Lesser included offenses.

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

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

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

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

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

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

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

(3) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), ~~[Sections]~~ Section 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, 76-5-404.1, [and] or 76-5-405, the chair shall appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3). The alienists shall report in writing the results of the examination to the board prior to the hearing.

The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)~~(v)~~(vi), ~~Sections~~ Section 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 76-5-405.

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

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

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