

CHILD PORNOGRAPHY AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

This act modifies provisions of the Utah Criminal Code relating to the sexual exploitation of children. The act defines terms related to child pornography. The act modifies the crime related to sexual exploitation of a minor. The act also makes technical changes.

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

AMENDS:

76-5a-2, as last amended by Chapter 226, Laws of Utah 1985

76-5a-3, as last amended by Chapter 128, Laws of Utah 2000

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

Section 1. Section **76-5a-2** is amended to read:

76-5a-2. Definitions.

As used in this chapter:

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

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

(b) the visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;

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

(d) the visual depiction is advertised, promoted, presented, described, or distributed in a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.

28 ~~[(1)]~~ (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,
29 providing, giving, granting admission to, or otherwise transferring or presenting [~~material or live~~
30 ~~performances~~] child pornography with or without consideration.

31 (3) "Identifiable minor":

32 (a) means a person:

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

34 or

35 (B) whose image as a minor was used in creating, adapting, or modifying the visual

36 depiction; and

37 (ii) who is recognizable as an actual person by the person's face, likeness, or other

38 distinguishing characteristic, such as a birthmark, or other recognizable feature; and

39 (b) does not require proof of the actual identity of the identifiable minor.

40 ~~[(2)]~~ (4) "Live performance" means any act, play, dance, pantomime, song, or other
41 activity performed by live actors in person.

42 ~~[(3)]~~ "~~Material~~" ~~means any visual representation including photographs, motion pictures,~~
43 ~~slides, videotapes, or other pictorial representations produced or recorded by any mechanical,~~
44 ~~chemical, photographic, or electrical means and includes undeveloped photographs, negatives, or~~
45 ~~other latent representational objects.]~~

46 ~~[(4)]~~ (5) "Minor" means a person younger than 18 years of age, or who is explicitly
47 represented or described by any person possessing or distributing the child pornography as being
48 under the 18 years of age.

49 ~~[(5)]~~ "~~Nude or partially nude~~" ~~means any state of dress or undress in which the human~~
50 ~~genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less~~
51 ~~than completely and opaquely covered.]~~

52 (6) "Produce" means the photographing, filming, taping, directing, producing, creating,
53 designing, or composing of [~~material or live performances~~] child pornography or the securing or
54 hiring of persons to engage in the production of [~~material or live performances~~] child pornography.

55 (7) "~~[Sexual]~~ Sexually explicit conduct" means [~~and includes the following acts, whether~~
56 ~~actual or simulated, regardless of the gender of the participants or their state of dress]~~ actual or
57 simulated:

58 (a) sexual intercourse [~~or deviate sexual intercourse~~], including genital-genital,

59 oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

60 (b) masturbation;

61 (c) [~~sodomy or~~] bestiality;

62 (d) [~~sadomasochistic activities~~] sadistic or masochistic abuse;

63 (e) lascivious exhibition of the genitals or pubic area of any person;

64 [~~(e)~~] (f) the fondling or touching for purpose of sexual arousal of the genitals, pubic region,
65 buttocks, or female breast; or

66 [~~(f)~~] (g) the explicit representation of the defecation or urination functions.

67 (8) "Simulated sexual conduct" means a feigned or pretended act of sexual conduct which
68 duplicates, within the perception of an average person, the appearance of an actual act of sexual
69 conduct.

70 Section 2. Section **76-5a-3** is amended to read:

71 **76-5a-3. Sexual exploitation of a minor -- Offenses.**

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

73 (a) when [~~he~~] the person knowingly produces, distributes, possesses, or possesses with
74 intent to distribute, [~~material or a live performance depicting:~~] child pornography; or

75 [~~(i) a nude or partially nude minor for the purpose of causing sexual arousal of any person;~~
76 ~~or~~]

77 [~~(ii) any minor's engagement in sexual conduct alone or with another person; or~~]

78 (b) if [~~he~~] the person is a minor's parent or legal guardian and knowingly consents to or
79 permits that minor to be sexually exploited under Subsection (1)(a) [~~above~~].

80 (2) Sexual exploitation of a minor is a felony of the second degree.

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

82 (a) for each minor depicted, and if more than one minor is depicted in the [~~same material~~
83 ~~or live performance~~] child pornography in violation of this section, the depiction of each individual
84 minor in the [~~material or live performance~~] child pornography is a separate offense; and

85 (b) each time the same minor is depicted in different [~~material; and~~] child pornography.

86 [~~(c) each time the same minor is depicted in a separate live performance.~~]

Legislative Review Note

as of 1-26-01 11:22 AM

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

Office of Legislative Research and General Counsel