

Representative Katherine M. Bryson proposes to substitute the following bill:

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 of a minor engaging in sexually explicit conduct; or

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

~~[(+)]~~ (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting ~~[material or live~~



26 ~~performances]~~ child pornography with or without consideration.

27 (3) "Identifiable minor":

28 (a) means a person:

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

30 or

31 (B) whose image as a minor was used in creating, adapting, or modifying the visual
32 depiction; and

33 (ii) who is recognizable as an actual person by the person's face, likeness, or other
34 distinguishing characteristic, such as a birthmark, or other recognizable feature; and

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

36 ~~[(2)]~~ (4) "Live performance" means any act, play, dance, pantomime, song, or other
37 activity performed by live actors in person.

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

42 ~~[(4)]~~ (5) "Minor" means a person younger than 18 years of age.

43 ~~[(5)]~~ "Nude" (6) "Nudity or [partially nude] partial nudity" means any state of dress or
44 undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below
45 the top of the areola, is less than completely and opaquely covered.

46 ~~[(6)]~~ (7) "Produce" means the photographing, filming, taping, directing, producing,
47 creating, designing, or composing of ~~[material or live performances]~~ child pornography or the
48 securing or hiring of persons to engage in the production of ~~[material or live performances]~~ child
49 pornography.

50 ~~[(7)]~~ "Sexual" (8) "Sexually explicit conduct" means ~~[and includes the following acts,~~
51 ~~whether actual or simulated, regardless of the gender of the participants or their state of dress]~~
52 actual or simulated:

53 (a) sexual intercourse [or deviate sexual intercourse], including genital-genital,
54 oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

55 (b) masturbation;

56 (c) [sodomy or] bestiality;

57 (d) ~~[sodomasochistic activities]~~ sadistic or masochistic activities;
 58 (e) lascivious exhibition of the genitals or pubic area of any person;
 59 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal
 60 of any person;

61 ~~[(e)]~~ (g) the fondling or touching ~~[for purpose of sexual arousal]~~ of the genitals, pubic
 62 region, buttocks, or female breast; or

63 ~~[(f)]~~ (h) the explicit representation of the defecation or urination functions.

64 ~~[(8)]~~ (9) "Simulated ~~[sexual]~~ sexually explicit conduct" means a feigned or pretended act
 65 of ~~[sexual]~~ sexually explicit conduct which duplicates, within the perception of an average person,
 66 the appearance of an actual act of ~~[sexual]~~ sexually explicit conduct.

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

68 **76-5a-3. Sexual exploitation of a minor -- Offenses.**

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

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

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

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

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

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

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

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

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

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

84 (4) It is an affirmative defense to a charge of violating this section that no person under
 85 18 years of age was actually depicted in the visual depiction or used in producing or advertising
 86 the visual depiction.

87 (5) This section does not apply to:

88 (a) any person, including a law enforcement officer or a prosecutor, who is charged by law
89 to prosecute this section and who possesses child pornography solely in connection with that
90 individual's official duties; or

91 (b) a defense attorney who possesses child pornography solely in connection with the
92 defense of a person charged under this section.