

**Representative Ryan D. Wilcox** proposes the following substitute bill:

**UNLAWFUL DETENTION AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding the offense of unlawful detention.

**Highlighted Provisions:**

This bill:

- ▶ creates the offense of unlawful detention of a minor when a person 18 years of age or older coerces or influences a minor who is 14 or 15 years of age to stay with the person without the consent of the minor's parent or guardian, for an unreasonable amount of time, and in a situation that is not the offense of kidnapping.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-21-501**, as last amended by Laws of Utah 2011, Chapter 320

**76-5-304**, as last amended by Laws of Utah 2001, Chapter 301

**76-5-306**, as enacted by Laws of Utah 2001, Chapter 301

**77-36-1**, as last amended by Laws of Utah 2011, Chapters 113 and 320



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

Section 1. Section **31A-21-501** is amended to read:

**31A-21-501. Definitions.**

For purposes of this part:

(1) "Applicant" means:

(a) in the case of an individual life or accident and health policy, the person who seeks to contract for insurance benefits; or

(b) in the case of a group life or accident and health policy, the proposed certificate holder.

(2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an individual who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party; or

(e) resides or has resided in the same residence as the other party.

(3) "Child abuse" means the commission or attempt to commit against a child a criminal offense described in:

(a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(b) Title 76, Chapter 5, Part 4, Sexual Offenses;

(c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or

(d) Section 76-9-702.5, Lewdness Involving a Child.

(4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another and includes commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

- 57 (d) harassment, as described in Section 76-5-106;
- 58 (e) electronic communication harassment, as described in Section 76-9-201;
- 59 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 60 76-5-301, 76-5-301.1, and 76-5-302;
- 61 (g) mayhem, as described in Section 76-5-105;
- 62 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Section 76-5b-201;
- 63 (i) stalking, as described in Section 76-5-106.5;
- 64 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 65 76-5-304;
- 66 (k) violation of a protective order or ex parte protective order, as described in Section
- 67 76-5-108;
- 68 (l) any offense against property described in Title 76, Chapter 6, Part 1, [~~2, or 3~~]
- 69 Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 70 (m) possession of a deadly weapon with intent to assault, as described in Section
- 71 76-10-507; or
- 72 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 73 person, building, or vehicle, as described in Section 76-10-508.
- 74 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
- 75 be, or may have been subject to domestic violence or child abuse.

76 Section 2. Section **76-5-304** is amended to read:

77 **76-5-304. Unlawful detention and unlawful detention of a minor.**

78 (1) An actor commits unlawful detention if the actor intentionally or knowingly,

79 without authority of law, and against the will of the victim, detains or restrains the victim under

80 circumstances not constituting a violation of:

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

84 (2) An actor commits unlawful detention of a minor if the actor intentionally or

85 knowingly, without authority of law, and against the will of the victim, coerces or exerts

86 influence over the victim with the intent to cause the victim to remain with the actor for an

87 unreasonable period of time under the circumstances, and:

88 (a) the act is under circumstances not constituting a violation of:

89 (i) kidnapping, Section 76-5-301;

90 (ii) child kidnapping, Section 76-5-301.1; or

91 (iii) aggravated kidnapping, Section 76-5-302; and

92 (b) the actor is 18 years of age or older.

93 [~~2~~] (3) As used in this section, acting "against the will of the victim" includes acting  
94 without the consent of the legal guardian or custodian of a victim who is:

95 (a) a mentally incompetent person[-]; or

96 (b) a minor who is 14 or 15 years of age.

97 [~~3~~] (4) Unlawful detention is a class B misdemeanor.

98 Section 3. Section **76-5-306** is amended to read:

99 **76-5-306. Lesser included offenses.**

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

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

103 (2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

104 Section 4. Section **77-36-1** is amended to read:

105 **77-36-1. Definitions.**

106 As used in this chapter:

107 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.

108 (2) "Department" means the Department of Public Safety.

109 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
110 3, Divorce.

111 (4) "Domestic violence" means any criminal offense involving violence or physical  
112 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to  
113 commit a criminal offense involving violence or physical harm, when committed by one  
114 cohabitant against another. "Domestic violence" also means commission or attempt to commit,  
115 any of the following offenses by one cohabitant against another:

116 (a) aggravated assault, as described in Section 76-5-103;

117 (b) assault, as described in Section 76-5-102;

118 (c) criminal homicide, as described in Section 76-5-201;

- 119 (d) harassment, as described in Section 76-5-106;
  - 120 (e) electronic communication harassment, as described in Section 76-9-201;
  - 121 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
122 76-5-301, 76-5-301.1, and 76-5-302;
  - 123 (g) mayhem, as described in Section 76-5-105;
  - 124 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
125 Section 76-5b-201, Sexual Exploitation of a Minor;
  - 126 (i) stalking, as described in Section 76-5-106.5;
  - 127 (j) unlawful detention or unlawful detention of a minor, as described in Section  
128 76-5-304;
  - 129 (k) violation of a protective order or ex parte protective order, as described in Section  
130 76-5-108;
  - 131 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property  
132 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
  - 133 (m) possession of a deadly weapon with intent to assault, as described in Section  
134 76-10-507;
  - 135 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
136 person, building, or vehicle, as described in Section 76-10-508;
  - 137 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
138 conduct is the result of a plea agreement in which the defendant was originally charged with  
139 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction  
140 of disorderly conduct as a domestic violence offense, in the manner described in this  
141 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18  
142 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.  
143 Section 921 et seq.; or
  - 144 (p) child abuse as described in Section 76-5-109.1.
- 145 (5) "Jail release agreement" means a written agreement:
- 146 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
147 may have with an alleged victim or other specified individuals; and
  - 148 (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5  
149 (2).

- 150 (6) "Jail release court order" means a written court order:  
151 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
152 may have with an alleged victim or other specified individuals; and  
153 (b) specifying other conditions of release from jail as required in Subsection  
154 77-36-2.5(2).
- 155 (7) "Marital status" means married and living together, divorced, separated, or not  
156 married.
- 157 (8) "Married and living together" means a man and a woman whose marriage was  
158 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- 159 (9) "Not married" means any living arrangement other than married and living together,  
160 divorced, or separated.
- 161 (10) "Pretrial protective order" means a written order:  
162 (a) specifying and limiting the contact a person who has been charged with a domestic  
163 violence offense may have with an alleged victim or other specified individuals; and  
164 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(3)(c),  
165 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.
- 166 (11) "Sentencing protective order" means a written order of the court as part of  
167 sentencing in a domestic violence case that limits the contact a person who has been convicted  
168 of a domestic violence offense may have with a victim or other specified individuals pursuant  
169 to Sections 77-36-5 and 77-36-5.1.
- 170 (12) "Separated" means a man and a woman who have had their marriage solemnized  
171 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.
- 172 (13) "Victim" means a cohabitant who has been subjected to domestic violence.