



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

29 Section 1. Section **76-5-406** is amended to read:

30 **76-5-406. Sexual offenses against the victim without consent of victim --**

31 **Circumstances.**

32 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a  
33 child, object rape, attempted object rape, object rape of a child, attempted object rape of a  
34 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a  
35 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,  
36 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,  
37 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the  
38 victim under any of the following circumstances:

39 (1) the victim expresses lack of consent through words or conduct;

40 (2) the actor overcomes the victim through the actual application of physical force or  
41 violence;

42 (3) the actor is able to overcome the victim through concealment or by the element of  
43 surprise;

44 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the  
45 immediate future against the victim or any other person, and the victim perceives at the time  
46 that the actor has the ability to execute this threat; or

47 (ii) the actor coerces the victim to submit by threatening to retaliate in the future  
48 against the victim or any other person, and the victim believes at the time that the actor has the  
49 ability to execute this threat;

50 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,  
51 kidnapping, or extortion;

52 (5) [~~the victim has not consented and~~] the actor knows the victim is unconscious,  
53 unaware that the act is occurring, or physically unable to resist;

54 (6) the actor knows that [~~as a result of mental disease or defect,~~] the victim is at the  
55 time of the act incapable either of appraising the nature of the act or of resisting it;

56 (7) the actor knows that the victim submits or participates because the victim  
57 erroneously believes that the actor is the victim's spouse;

58 (8) the actor intentionally impaired the power of the victim to appraise or control his or

59 her conduct by administering any substance without the victim's knowledge;

60 (9) the victim is younger than 14 years of age;

61 (10) the victim is younger than 18 years of age and at the time of the offense the actor  
62 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of  
63 special trust in relation to the victim as defined in Section 76-5-404.1;

64 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the  
65 actor is more than three years older than the victim and entices or coerces the victim to submit  
66 or participate, under circumstances not amounting to the force or threat required under  
67 Subsection (2) or (4); or

68 (12) the actor is a health professional or religious counselor, as those terms are defined  
69 in this Subsection (12), the act is committed under the guise of providing professional  
70 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed  
71 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment  
72 to the extent that resistance by the victim could not reasonably be expected to have been  
73 manifested; for purposes of this Subsection (12):

74 (a) "health professional" means an individual who is licensed or who holds himself or  
75 herself out to be licensed, or who otherwise provides professional physical or mental health  
76 services, diagnosis, treatment, or counseling including, but not limited to, a physician,  
77 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,  
78 social service worker, clinical social worker, certified social worker, marriage and family  
79 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse  
80 specialist, or substance abuse counselor; and

81 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
82 member of the clergy.

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**Legislative Review Note**  
**as of 11-18-14 5:47 PM**

**Office of Legislative Research and General Counsel**