

**CYBER EXPLOITATION AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Steve Eliason

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**LONG TITLE**

**General Description:**

This bill amends and enacts provisions related to criminal sexual offenses.

**Highlighted Provisions:**

This bill:

- ▶ defines the crimes of sexual extortion and aggravated sexual extortion;
- ▶ provides criminal penalties for the crimes of sexual extortion and aggravated sexual extortion;
- ▶ provides that aggravated sexual extortion is a registerable offense under the Sex and Kidnap Offender Registry; and
- ▶ defines terms.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-41-102**, as last amended by Laws of Utah 2016, Chapter 372

**77-41-106**, as last amended by Laws of Utah 2015, Chapter 210

ENACTS:

**76-5b-204**, Utah Code Annotated 1953

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

30 Section 1. Section **76-5b-204** is enacted to read:

31 **76-5b-204. Sexual extortion -- Penalties.**

32 (1) As used in this section:

33 (a) "Adult" means an individual 18 years of age or older.

34 (b) "Child" means any individual under the age of 18.

35 (c) "Distribute" means the same as that term is defined in Section [76-5b-203](#).

36 (d) "Intimate image" means the same as that term is defined in Section [76-5b-203](#).

37 (e) "Position of special trust" means the same as that term is defined in Section

38 [76-5-401.1](#).

39 (f) "Sexually explicit conduct" means the same as that term is defined in Subsection

40 [76-5b-203\(1\)\(c\)](#).

41 (g) "Simulated sexually explicit conduct" means the same as that term is defined in

42 Section [76-5b-203](#).

43 (h) "Vulnerable adult" means the same as that term is defined in Section [76-5-111](#).

44 (2) An individual who is 18 years old or older commits the offense of sexual extortion

45 if the individual:

46 (a) with an intent to coerce a victim to engage in sexual contact, in sexually explicit

47 conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an

48 image, video, or other recording of any individual naked or engaged in sexually explicit

49 conduct, communicates in person or by electronic means a threat:

50 (i) to the victim's person, property, or reputation; or

51 (ii) to distribute an intimate image or video of the victim; or

52 (b) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct,

53 or in simulated sexually explicit conduct, or to produce, provide, or distribute any image,

54 video, or other recording of any individual naked or engaged in sexually explicit conduct by

55 means of a threat:

56 (i) to the victim's person, property, or reputation; or

57 (ii) to distribute an intimate image or video of the victim.

- 58           (3) (a) Sexual extortion is a third degree felony.
- 59           (b) Aggravated sexual extortion of an adult is a second degree felony.
- 60           (c) Aggravated sexual extortion of a child or a vulnerable adult is a first degree felony.
- 61           (4) An individual commits aggravated sexual extortion when, in conjunction with the  
62 offense described in Subsection (2), any of the following circumstances have been charged and  
63 admitted or found true in the action for the offense:
  - 64           (a) the victim is a child or vulnerable adult;
  - 65           (b) the offense was committed by the use of a dangerous weapon, as defined in Section  
66 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or was  
67 committed during the course of a kidnapping;
  - 68           (c) the individual caused bodily injury or severe psychological injury to the victim  
69 during or as a result of the offense;
  - 70           (d) the individual was a stranger to the victim or became a friend of the victim for the  
71 purpose of committing the offense;
  - 72           (e) the individual, before sentencing for the offense, was previously convicted of any  
73 sexual offense;
  - 74           (f) the individual occupied a position of special trust in relation to the victim;
  - 75           (g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution or  
76 sexual acts by the victim with any other individual, or sexual performance by the victim before  
77 any other individual, human trafficking, or human smuggling; or
  - 78           (h) the individual caused the penetration, however slight, of the genital or anal opening  
79 of the victim by any part or parts of the human body, or by any other object.
- 80           (5) An individual commits a separate offense under this section:
  - 81           (a) for each victim the individual subjects to the offense outlined in Subsection (2); and
  - 82           (b) for each separate time the individual subjects a victim to the offense outlined  
83 Subsection (2).
- 84           (6) This section does not preclude an individual from being charged and convicted of a  
85 separate criminal act if the individual commits the separate criminal act while the individual

86 violates or attempts to violate this section.

87 (7) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not subject to  
88 liability under this section related to content provided by a user of the interactive computer  
89 service.

90 Section 2. Section **77-41-102** is amended to read:

91 **77-41-102. Definitions.**

92 As used in this chapter:

93 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
94 Safety established in section [53-10-201](#).

95 (2) "Business day" means a day on which state offices are open for regular business.

96 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
97 Identification showing that the offender has met the requirements of Section [77-41-112](#).

98 (4) "Department" means the Department of Corrections.

99 (5) "Division" means the Division of Juvenile Justice Services.

100 (6) "Employed" or "carries on a vocation" includes employment that is full time or part  
101 time, whether financially compensated, volunteered, or for the purpose of government or  
102 educational benefit.

103 (7) "Indian Country" means:

104 (a) all land within the limits of any Indian reservation under the jurisdiction of the  
105 United States government, regardless of the issuance of any patent, and includes rights-of-way  
106 running through the reservation;

107 (b) all dependent Indian communities within the borders of the United States whether  
108 within the original or subsequently acquired territory, and whether or not within the limits of a  
109 state; and

110 (c) all Indian allotments, including the Indian allotments to which the Indian titles have  
111 not been extinguished, including rights-of-way running through the allotments.

112 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any  
113 property under the jurisdiction of the United States military, Canada, the United Kingdom,

114 Australia, or New Zealand.

115 (9) "Kidnap offender" means any person other than a natural parent of the victim who:

116 (a) has been convicted in this state of a violation of:

117 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;

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

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

120 (iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

121 (v) attempting, soliciting, or conspiring to commit any felony offense listed in

122 Subsections (9)(a)(i) through (iv);

123 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to  
124 commit a crime in another jurisdiction, including any state, federal, or military court that is  
125 substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

126 (i) a Utah resident; or

127 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of  
128 10 or more days, regardless of whether or not the offender intends to permanently reside in this  
129 state;

130 (c) (i) is required to register as a kidnap offender in any other jurisdiction of original  
131 conviction, who is required to register as a kidnap offender by any state, federal, or military  
132 court, or who would be required to register as a kidnap offender if residing in the jurisdiction of  
133 the conviction regardless of the date of the conviction or any previous registration  
134 requirements; and

135 (ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of  
136 whether or not the offender intends to permanently reside in this state;

137 (d) is a nonresident regularly employed or working in this state, or who is a student in  
138 this state, and was convicted of one or more offenses listed in Subsection (9), or any  
139 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is  
140 required to register in the person's state of residence;

141 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of

142 one or more offenses listed in Subsection (9); or

143 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a)  
144 and who has been committed to the division for secure confinement for that offense and  
145 remains in the division's custody 30 days prior to the person's 21st birthday.

146 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the  
147 minor's noncustodial parent.

148 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender  
149 as defined in Subsection (17).

150 (12) "Online identifier" or "Internet identifier":

151 (a) means any electronic mail, chat, instant messenger, social networking, or similar  
152 name used for Internet communication; and

153 (b) does not include date of birth, social security number, PIN number, or Internet  
154 passwords.

155 (13) "Primary residence" means the location where the offender regularly resides, even  
156 if the offender intends to move to another location or return to another location at any future  
157 date.

158 (14) "Register" means to comply with the requirements of this chapter and  
159 administrative rules of the department made under this chapter.

160 (15) "Registration website" means the Sex and Kidnap Offender Notification and  
161 Registration website described in Section 77-41-110 and the information on the website.

162 (16) "Secondary residence" means any real property that the offender owns or has a  
163 financial interest in, or any location where, in any 12-month period, the offender stays  
164 overnight a total of 10 or more nights when not staying at the offender's primary residence.

165 (17) "Sex offender" means any person:

166 (a) convicted in this state of:

167 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

168 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,  
169 2011;

- 170 (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
- 171 (iv) Section 76-5-401.1, sexual abuse of a minor, except under Subsection
- 172 76-5-401.1(3)(a);
- 173 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 174 (vi) Section 76-5-402, rape;
- 175 (vii) Section 76-5-402.1, rape of a child;
- 176 (viii) Section 76-5-402.2, object rape;
- 177 (ix) Section 76-5-402.3, object rape of a child;
- 178 (x) a felony violation of Section 76-5-403, forcible sodomy;
- 179 (xi) Section 76-5-403.1, sodomy on a child;
- 180 (xii) Section 76-5-404, forcible sexual abuse;
- 181 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 182 (xiv) Section 76-5-405, aggravated sexual assault;
- 183 (xv) Section 76-5-412, custodial sexual relations, when the person in custody is
- 184 younger than 18 years of age, if the offense is committed on or after May 10, 2011;
- 185 (xvi) Section 76-5b-201, sexual exploitation of a minor;
- 186 (xvii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 187 [~~xvii~~] (xviii) Section 76-7-102, incest;
- 188 [~~xviii~~] (xix) Section 76-9-702, lewdness, if the person has been convicted of the
- 189 offense four or more times;
- 190 [~~xix~~] (xx) Section 76-9-702.1, sexual battery, if the person has been convicted of the
- 191 offense four or more times;
- 192 [~~xx~~] (xxi) any combination of convictions of Section 76-9-702, lewdness, and of
- 193 Section 76-9-702.1, sexual battery, that total four or more convictions;
- 194 [~~xxi~~] (xxii) Section 76-9-702.5, lewdness involving a child;
- 195 [~~xxii~~] (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7,
- 196 voyeurism;
- 197 [~~xxiii~~] (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or

198            [~~xxiv~~] xxv attempting, soliciting, or conspiring to commit any felony offense listed  
199 in Subsection (17)(a);

200            (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to  
201 commit a crime in another jurisdiction, including any state, federal, or military court that is  
202 substantially equivalent to the offenses listed in Subsection (17)(a) and who is:

203            (i) a Utah resident; or

204            (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of  
205 10 or more days, regardless of whether the offender intends to permanently reside in this state;

206            (c) (i) who is required to register as a sex offender in any other jurisdiction of original  
207 conviction, who is required to register as a sex offender by any state, federal, or military court,  
208 or who would be required to register as a sex offender if residing in the jurisdiction of the  
209 original conviction regardless of the date of the conviction or any previous registration  
210 requirements; and

211            (ii) who, in any 12-month period, is in the state for a total of 10 or more days,  
212 regardless of whether or not the offender intends to permanently reside in this state;

213            (d) who is a nonresident regularly employed or working in this state or who is a student  
214 in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any  
215 substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required  
216 to register in the person's jurisdiction of residence;

217            (e) who is found not guilty by reason of insanity in this state, or in any other  
218 jurisdiction of one or more offenses listed in Subsection (17)(a); or

219            (f) who is adjudicated delinquent based on one or more offenses listed in Subsection  
220 (17)(a) and who has been committed to the division for secure confinement for that offense and  
221 remains in the division's custody 30 days prior to the person's 21st birthday.

222            (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,  
223 Driving Under the Influence and Reckless Driving.

224            (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in  
225 any jurisdiction.



226 Section 3. Section 77-41-106 is amended to read:

227 **77-41-106. Registerable offenses.**

228 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

229 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the  
230 conviction, the offender has previously been convicted of an offense listed in Subsection  
231 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense  
232 committed as a juvenile;

233 (2) a conviction for any of the following offenses, including attempting, soliciting, or  
234 conspiring to commit any felony of:

235 (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of  
236 the victim;

237 (b) Section 76-5-402, rape;

238 (c) Section 76-5-402.1, rape of a child;

239 (d) Section 76-5-402.2, object rape;

240 (e) Section 76-5-402.3, object rape of a child;

241 (f) Section 76-5-403.1, sodomy on a child;

242 (g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

243 (h) Section 76-5-405, aggravated sexual assault;

244 (3) Section 76-4-401, a felony violation of enticing a minor over the Internet;

245 (4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent  
246 of the victim;

247 (5) Section 76-5-403, forcible sodomy;

248 (6) Section 76-5-404.1, sexual abuse of a child;

249 (7) Section 76-5b-201, sexual exploitation of a minor; [~~or~~]

250 (8) Subsection 76-5b-204(4), aggravated sexual extortion; or

251 [~~(8)~~] (9) Section 76-10-1306, aggravated exploitation of prostitution, on or after May  
252 10, 2011.