

1 **CYBER EXPLOITATION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **77-41-102**, as last amended by Laws of Utah 2016, Chapter 372

25 **77-41-106**, as last amended by Laws of Utah 2015, Chapter 210

26 ENACTS:

27 **76-5b-204**, Utah Code Annotated 1953



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

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

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

(1) As used in this section:

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

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

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

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

(e) "Position of special trust" means the same as that term is defined in Section [76-5-401.1](#).

(f) "Sexually explicit conduct" means the same as that term is defined in Subsection [76-5b-203\(1\)\(c\)](#).

(g) "Simulated sexually explicit conduct" means the same as that term is defined in Section [76-5b-203](#).

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

(2) An individual commits the offense of sexual extortion if the individual:

(a) with an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual naked or engaged in sexually explicit conduct, communicates in person or by electronic means a threat:

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

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

(b) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual naked or engaged in sexually explicit conduct.

(3) (a) Sexual extortion is a third degree felony.

(b) Aggravated sexual extortion of an adult is a second degree felony.

(c) Aggravated sexual extortion of a child or a vulnerable adult is a first degree felony.

(4) An individual commits aggravated sexual extortion when, in conjunction with the offense described in Subsection (2), any of the following circumstances have been charged and

59 admitted or found true in the action for the offense:

60 (a) the victim is a child or vulnerable adult;

61 (b) the offense was committed by the use of a dangerous weapon, as defined in Section

62 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or was

63 committed during the course of a kidnapping;

64 (c) the individual caused bodily injury or severe psychological injury to the victim

65 during or as a result of the offense;

66 (d) the individual was a stranger to the victim or became a friend of the victim for the

67 purpose of committing the offense;

68 (e) the individual, before sentencing for the offense, was previously convicted of any

69 sexual offense;

70 (f) the individual occupied a position of special trust in relation to the victim;

71 (g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution or

72 sexual acts by the victim with any other individual, or sexual performance by the victim before

73 any other individual, human trafficking, or human smuggling; or

74 (h) the individual caused the penetration, however slight, of the genital or anal opening

75 of the victim by any part or parts of the human body, or by any other object.

76 (5) An individual commits a separate offense under this section:

77 (a) for each victim the individual subjects to the offense outlined in Subsection (2); and

78 (b) for each separate time the individual subjects a victim to the offense outlined

79 Subsection (2).

80 (6) This section does not preclude an individual from being charged and convicted of a

81 separate criminal act if the individual commits the separate criminal act while the individual

82 violates or attempts to violate this section.

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

84 **77-41-102. Definitions.**

85 As used in this chapter:

86 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public

87 Safety established in section [53-10-201](#).

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

89 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal

90 Identification showing that the offender has met the requirements of Section 77-41-112.

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

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

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

96 (7) "Indian Country" means:

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

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

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

105 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
106 property under the jurisdiction of the United States military, Canada, the United Kingdom,
107 Australia, or New Zealand.

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

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

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

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

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

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

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

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

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

119 (i) a Utah resident; or

120 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of

121 10 or more days, regardless of whether or not the offender intends to permanently reside in this
122 state;

123 (c) (i) is required to register as a kidnap offender in any other jurisdiction of original
124 conviction, who is required to register as a kidnap offender by any state, federal, or military
125 court, or who would be required to register as a kidnap offender if residing in the jurisdiction of
126 the conviction regardless of the date of the conviction or any previous registration
127 requirements; and

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

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

134 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of
135 one or more offenses listed in Subsection (9); or

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

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

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

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

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

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

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

151 (14) "Register" means to comply with the requirements of this chapter and

152 administrative rules of the department made under this chapter.

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

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

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

159 (a) convicted in this state of:

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

161 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
162 2011;

163 (iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

164 (iv) Section 76-5-401.1, sexual abuse of a minor, except under Subsection
165 76-5-401.1(3)(a);

166 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

167 (vi) Section 76-5-402, rape;

168 (vii) Section 76-5-402.1, rape of a child;

169 (viii) Section 76-5-402.2, object rape;

170 (ix) Section 76-5-402.3, object rape of a child;

171 (x) a felony violation of Section 76-5-403, forcible sodomy;

172 (xi) Section 76-5-403.1, sodomy on a child;

173 (xii) Section 76-5-404, forcible sexual abuse;

174 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

175 (xiv) Section 76-5-405, aggravated sexual assault;

176 (xv) Section 76-5-412, custodial sexual relations, when the person in custody is
177 younger than 18 years of age, if the offense is committed on or after May 10, 2011;

178 (xvi) Section 76-5b-201, sexual exploitation of a minor;

179 (xvii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;

180 [~~xvii~~] (xviii) Section 76-7-102, incest;

181 [~~xviii~~] (xix) Section 76-9-702, lewdness, if the person has been convicted of the
182 offense four or more times;

183 [~~(xix)~~] (xx) Section 76-9-702.1, sexual battery, if the person has been convicted of the
184 offense four or more times;

185 [~~(xx)~~] (xxi) any combination of convictions of Section 76-9-702, lewdness, and of
186 Section 76-9-702.1, sexual battery, that total four or more convictions;

187 [~~(xxi)~~] (xxii) Section 76-9-702.5, lewdness involving a child;

188 [~~(xxii)~~] (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7,
189 voyeurism;

190 [~~(xxiii)~~] (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or

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

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

196 (i) a Utah resident; or

197 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
198 10 or more days, regardless of whether the offender intends to permanently reside in this state;

199 (c) (i) who is required to register as a sex offender in any other jurisdiction of original
200 conviction, who is required to register as a sex offender by any state, federal, or military court,
201 or who would be required to register as a sex offender if residing in the jurisdiction of the
202 original conviction regardless of the date of the conviction or any previous registration
203 requirements; and

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

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

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

212 (f) who is adjudicated delinquent based on one or more offenses listed in Subsection
213 (17)(a) and who has been committed to the division for secure confinement for that offense and

214 remains in the division's custody 30 days prior to the person's 21st birthday.

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

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

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

220 **77-41-106. Registerable offenses.**

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

222 (1) any offense listed in Subsection **77-41-102(9)** or (17) if, at the time of the
223 conviction, the offender has previously been convicted of an offense listed in Subsection
224 **77-41-102(9)** or (17) or has previously been required to register as a sex offender for an offense
225 committed as a juvenile;

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

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

230 (b) Section **76-5-402**, rape;

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

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

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

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

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

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

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

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

240 (5) Section **76-5-403**, forcible sodomy;

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

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

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

244 [~~(8)~~] (9) Section **76-10-1306**, aggravated exploitation of prostitution, on or after May

245 10, 2011.

Legislative Review Note
Office of Legislative Research and General Counsel