

PERSONS WITH DISABILITIES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill amends provisions regarding sexual offenses against a victim without consent of the victim.

Highlighted Provisions:

This bill:

- ▶ amends provisions regarding a victim's capacity to consent to a sexual act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-406, as last amended by Laws of Utah 2015, Chapter 57

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

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

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

Circumstances.

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a



28 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
 29 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
 30 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
 31 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
 32 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
 33 victim under any of the following circumstances:

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

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

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

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

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

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

47 (5) the actor knows the victim is unconscious, unaware that the act is occurring, or
 48 physically unable to resist;

49 (6) the actor knows ~~that as a result of mental disease or defect, or for any other~~
 50 ~~reason,~~

50a the victim is at the time of the act] or reasonably should know that the victim has a mental
disease or defect, which renders the victim unable to ←Ŝ :

51 (a) ~~incapable [either] of appraising~~ appraise ←Ŝ the nature of the act [or];

52 (b) ~~incapable of resisting~~ resist ←Ŝ [it] the act; ~~or~~ ←Ŝ

53 (c) ~~incapable of understanding the~~ understand the possible ←Ŝ consequences ~~or~~ [

53a ~~of the act;]~~ to the victim's health or safety; or

53b (d) appraise the nature of the relationship between the actor and the victim. ←Ŝ

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

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

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

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

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

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

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

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

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