

1                                   **AGGRAVATED KIDNAPPING AMENDMENTS**

2   2019 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: V. Lowry Snow**

5   Senate Sponsor: Daniel W. Thatcher

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7 **LONG TITLE**

8 **General Description:**

9                   This bill clarifies the relationship between kidnapping and unlawful detention as  
10 predicate offenses for aggravated kidnapping.

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ clarifies the relationship between kidnapping and unlawful detention as lesser  
14 included offenses of aggravated kidnapping.

15 **Money Appropriated in this Bill:**

16                   None

17 **Other Special Clauses:**

18                   None

19 **Utah Code Sections Affected:**

20 AMENDS:

21                   **76-5-302**, as last amended by Laws of Utah 2013, Chapter 81

22                   **76-5-304**, as last amended by Laws of Utah 2012, Chapter 39

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

25                   Section 1. Section **76-5-302** is amended to read:

26                   **76-5-302. Aggravated kidnapping.**

27                   (1) An actor commits aggravated kidnapping if the actor, in the course of committing  
28 unlawful detention or kidnapping:

29                   (a) [~~possesses;~~] uses[;] or threatens to use a dangerous weapon as defined in Section

30 76-1-601; or

31 (b) acts with intent:

32 (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a  
33 third person to engage in particular conduct or to forbear from engaging in particular conduct;

34 (ii) to facilitate the commission, attempted commission, or flight after commission or  
35 attempted commission of a felony;

36 (iii) to hinder or delay the discovery of or reporting of a felony;

37 (iv) to inflict bodily injury on or to terrorize the victim or another;

38 (v) to interfere with the performance of any governmental or political function; or

39 (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual  
40 Offenses.

41 (2) As used in this section, "in the course of committing unlawful detention or  
42 kidnapping" means in the course of committing, attempting to commit, or in the immediate  
43 flight after the attempt or commission of a violation of:

44 (a) Section 76-5-301, kidnapping; or

45 (b) Section 76-5-304, unlawful detention.

46 (3) Aggravated kidnapping in the course of committing unlawful detention is a third  
47 degree felony.

48 [~~(3)~~] (4) Aggravated kidnapping is a first degree felony punishable by a term of  
49 imprisonment of:

50 (a) except as provided in Subsection [~~(3)(b), (3)(c), or (4)~~] (4)(b), (4)(c), or (5), not less  
51 than 15 years and which may be for life;

52 (b) except as provided in Subsection [~~(3)(c) or (4)~~] (4)(c) or (5), life without parole, if  
53 the trier of fact finds that during the course of the commission of the aggravated kidnapping the  
54 defendant caused serious bodily injury to another; or

55 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
56 aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

57 [~~(4)~~] (5) If, when imposing a sentence under Subsection [~~(3)~~] (4)(a) or (b), a court finds

58 that a lesser term than the term described in Subsection ~~[(3)]~~ (4)(a) or (b) is in the interests of  
59 justice and states the reasons for this finding on the record, the court may impose a term of  
60 imprisonment of not less than:

- 61 (a) for purposes of Subsection ~~[(3)]~~ (4)(b), 15 years and which may be for life; or
- 62 (b) for purposes of Subsection ~~[(3)]~~ (4)(a) or (b):
- 63 (i) 10 years and which may be for life; or
- 64 (ii) six years and which may be for life.

65 ~~[(5)]~~ (6) The provisions of Subsection ~~[(4)]~~ (5) do not apply when a person is  
66 sentenced under Subsection ~~[(3)]~~ (4)(c).

67 ~~[(6)]~~ (7) Subsections ~~[(3)(b) and (3)(c)]~~ (4)(b) and (c) do not apply if the defendant was  
68 younger than 18 years of age at the time of the offense.

69 ~~[(7)]~~ (8) Imprisonment under ~~[this section]~~ Subsection (4) is mandatory in accordance  
70 with Section 76-3-406.

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

72 **76-5-304. Unlawful detention and unlawful detention of a minor.**

73 (1) An actor commits unlawful detention if the actor intentionally or knowingly,  
74 without authority of law, and against the will of the victim, detains or restrains the victim under  
75 circumstances not constituting a violation of:

- 76 (a) kidnapping, Section 76-5-301; or
- 77 (b) child kidnapping, Section 76-5-301.1~~[-or]~~;
- 78 ~~[(c) aggravated kidnapping, Section 76-5-302:]~~

79 (2) An actor commits unlawful detention of a minor if the actor intentionally or  
80 knowingly, without authority of law, and against the will of the victim, coerces or exerts  
81 influence over the victim with the intent to cause the victim to remain with the actor for an  
82 unreasonable period of time under the circumstances, and:

- 83 (a) the act is under circumstances not constituting a violation of:
- 84 (i) kidnapping, Section 76-5-301; or
- 85 (ii) child kidnapping, Section 76-5-301.1; ~~[-or]~~ and

- 86            [~~(iii) aggravated kidnapping, Section 76-5-302, and~~]
- 87            (b) the actor is at least four or more years older than the victim.
- 88            (3) As used in this section, acting "against the will of the victim" includes acting
- 89 without the consent of the legal guardian or custodian of a victim who is:
- 90            (a) a mentally incompetent person; or
- 91            (b) a minor who is 14 or 15 years of age.
- 92            (4) Unlawful detention is a class B misdemeanor.