

AGGRAVATED KIDNAPPING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

► clarifies the relationship between kidnapping and unlawful detention as lesser included offenses of aggravated kidnapping.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

76-5-302. Aggravated kidnapping.

(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.