

SEX OFFENSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that sexual contact is without the consent of the victim if the victim is over the age of 18 and the actor holds a position of special trust.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "position of special trust" to a teacher, instructor, or teaching assistant at an institution of higher education;
- ▶ provides that sexual contact is without consent if the victim is over the age of 18 and the actor holds a position of special trust;
- ▶ requires that the actor have the ability to adversely affect the victim's livelihood; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283
- 53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3
- 62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322



28 76-5-406, as last amended by Laws of Utah 2018, Chapter 176
 29 76-7-302, as last amended by Laws of Utah 2018, Chapter 282
 30 76-7-305, as last amended by Laws of Utah 2018, Chapter 282



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 31A-22-726 is amended to read:

34 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**
 35 **insurance exchange.**

36 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

37 (a) that is necessary to avert:

38 (i) the death of the woman on whom the abortion is performed; or

39 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
40 of the woman on whom the abortion is performed;

41 (b) of a fetus that has a defect that is documented by a physician or physicians to be
42 uniformly diagnosable and uniformly lethal; or

43 (c) where the woman is pregnant as a result of:

44 (i) rape, as described in Section 76-5-402;

45 (ii) rape of a child, as described in Section 76-5-402.1; or

46 (iii) incest, as described in Subsection 76-5-406~~(10)~~(1)(j) or Section 76-7-102.

47 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
48 coverage is a type of permitted abortion coverage.

49 (3) A person may not offer a health benefit plan that provides coverage for an abortion
50 in a health insurance exchange [~~created under Title 63N, Chapter 11, Health System Reform~~
51 ~~Act,~~] unless the coverage is a type of permitted abortion coverage.

52 (4) A person may not offer a health benefit plan that provides coverage for an abortion
53 in a health insurance exchange created under the federal Patient Protection and Affordable Care
54 Act, 111 P.L. 148, unless the coverage is a type of permitted abortion coverage.

55 Section 2. Section 53G-6-707 is amended to read:

56 **53G-6-707. Interstate compact students -- Inclusion in attendance count --**
 57 **Foreign exchange students -- Annual report -- Requirements for exchange student**
 58 **agencies.**

59 (1) A school district or charter school may include the following students in the
60 district's or school's membership and attendance count for the purpose of apportionment of
61 state money:

62 (a) a student enrolled under an interstate compact, established between the State Board
63 of Education and the state education authority of another state, under which a student from one
64 compact state would be permitted to enroll in a public school in the other compact state on the
65 same basis as a resident student of the receiving state; or

66 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact
67 on Placement of Children.

68 (2) A school district or charter school may:

69 (a) enroll foreign exchange students that do not qualify for state money; and

70 (b) pay for the costs of those students with other funds available to the school district
71 or charter school.

72 (3) Due to the benefits to all students of having the opportunity to become familiar
73 with individuals from diverse backgrounds and cultures, school districts are encouraged to
74 enroll foreign exchange students, as provided in Subsection (2), particularly in schools with
75 declining or stable enrollments where the incremental cost of enrolling the foreign exchange
76 student may be minimal.

77 (4) The board shall make an annual report to the Legislature on the number of
78 exchange students and the number of interstate compact students sent to or received from
79 public schools outside the state.

80 (5) (a) A local school board or charter school governing board shall require each
81 approved exchange student agency to provide it with a sworn affidavit of compliance prior to
82 the beginning of each school year.

83 (b) The affidavit shall include the following assurances:

84 (i) that the agency has complied with all applicable policies of the board;

85 (ii) that a household study, including a background check of all adult residents, has
86 been made of each household where an exchange student is to reside, and that the study was of
87 sufficient scope to provide reasonable assurance that the exchange student will receive proper
88 care and supervision in a safe environment;

89 (iii) that host parents have received training appropriate to their positions, including

90 information about enhanced criminal penalties under Subsection ~~76-5-406~~(1)(j) for
91 persons who are in a position of special trust;

92 (iv) that a representative of the exchange student agency shall visit each student's place
93 of residence at least once each month during the student's stay in Utah;

94 (v) that the agency will cooperate with school and other public authorities to ensure
95 that no exchange student becomes an unreasonable burden upon the public schools or other
96 public agencies;

97 (vi) that each exchange student will be given in the exchange student's native language
98 names and telephone numbers of agency representatives and others who could be called at any
99 time if a serious problem occurs; and

100 (vii) that alternate placements are readily available so that no student is required to
101 remain in a household if conditions appear to exist which unreasonably endanger the student's
102 welfare.

103 (6) (a) A local school board or charter school governing board shall provide each
104 approved exchange student agency with a list of names and telephone numbers of individuals
105 not associated with the agency who could be called by an exchange student in the event of a
106 serious problem.

107 (b) The agency shall make a copy of the list available to each of its exchange students
108 in the exchange student's native language.

109 (7) Notwithstanding Subsection ~~53F-2-303~~(3)(a), a school district or charter school
110 shall enroll a foreign exchange student if the foreign exchange student:

111 (a) is sponsored by an agency approved by the State Board of Education;

112 (b) attends the same school during the same time period that another student from the
113 school is:

114 (i) sponsored by the same agency; and

115 (ii) enrolled in a school in a foreign country; and

116 (c) is enrolled in the school for one year or less.

117 Section 3. Section ~~62A-15-602~~ is amended to read:

118 **~~62A-15-602. Definitions.~~**

119 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
120 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah

121 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part
122 12, Essential Treatment and Intervention Act:

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

124 (2) "Approved treatment facility or program" means a treatment provider that meets the
125 standards described in Subsection [62A-15-103\(2\)\(a\)\(v\)](#).

126 (3) "Commitment to the custody of a local mental health authority" means that an adult
127 is committed to the custody of the local mental health authority that governs the mental health
128 catchment area where the adult resides or is found.

129 (4) "Community mental health center" means an entity that provides treatment and
130 services to a resident of a designated geographical area, that operates by or under contract with
131 a local mental health authority, and that complies with state standards for community mental
132 health centers.

133 (5) "Designated examiner" means:

134 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
135 specially qualified by training or experience in the diagnosis of mental or related illness; or

136 (b) a licensed mental health professional designated by the division as specially
137 qualified by training and who has at least five years' continual experience in the treatment of
138 mental illness.

139 (6) "Designee" means a physician who has responsibility for medical functions
140 including admission and discharge, an employee of a local mental health authority, or an
141 employee of a person that has contracted with a local mental health authority to provide mental
142 health services under Section [17-43-304](#).

143 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered
144 treatment at a local substance abuse authority or an approved treatment facility or program for
145 the treatment of an adult's substance use disorder.

146 (8) "Harmful sexual conduct" means the following conduct upon an individual without
147 the individual's consent, including the nonconsensual circumstances described in ~~[Subsections]~~
148 Section [76-5-406](#)~~[(1) through (12)]~~:

149 (a) sexual intercourse;

150 (b) penetration, however slight, of the genital or anal opening of the individual;

151 (c) any sexual act involving the genitals or anus of the actor or the individual and the

152 mouth or anus of either individual, regardless of the gender of either participant; or

153 (d) any sexual act causing substantial emotional injury or bodily pain.

154 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

155 (10) "Local substance abuse authority" means the same as that term is defined in
156 Section 62A-15-102 and described in Section 17-43-201.

157 (11) "Mental health facility" means the Utah State Hospital or other facility that
158 provides mental health services under contract with the division, a local mental health
159 authority, a person that contracts with a local mental health authority, or a person that provides
160 acute inpatient psychiatric services to a patient.

161 (12) "Mental health officer" means an individual who is designated by a local mental
162 health authority as qualified by training and experience in the recognition and identification of
163 mental illness, to:

164 (a) apply for and provide certification for a temporary commitment; or

165 (b) assist in the arrangement of transportation to a designated mental health facility.

166 (13) "Mental illness" means:

167 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
168 behavioral, or related functioning; or

169 (b) the same as that term is defined in:

170 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
171 published by the American Psychiatric Association; or

172 (ii) the current edition of the International Statistical Classification of Diseases and
173 Related Health Problems.

174 (14) "Patient" means an individual who is:

175 (a) under commitment to the custody or to the treatment services of a local mental
176 health authority; or

177 (b) undergoing essential treatment and intervention.

178 (15) "Physician" means an individual who is:

179 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

180 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
181 Practice Act.

182 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of

183 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
184 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

185 (17) "Substantial danger" means that due to mental illness, an individual is at serious
186 risk of:

187 (a) suicide;

188 (b) serious bodily self-injury;

189 (c) serious bodily injury because the individual is incapable of providing the basic
190 necessities of life, including food, clothing, or shelter;

191 (d) causing or attempting to cause serious bodily injury to another individual; or

192 (e) engaging in harmful sexual conduct.

193 (18) "Treatment" means psychotherapy, medication, including the administration of
194 psychotropic medication, or other medical treatments that are generally accepted medical or
195 psychosocial interventions for the purpose of restoring the patient to an optimal level of
196 functioning in the least restrictive environment.

197 Section 4. Section **76-5-406** is amended to read:

198 **76-5-406. Sexual offenses against the victim without consent of victim --**

199 **Circumstances.**

200 (1) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of
201 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a
202 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
203 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
204 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
205 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
206 victim under any of the following circumstances:

207 [(1)] (a) the victim expresses lack of consent through words or conduct;

208 [(2)] (b) the actor overcomes the victim through the actual application of physical force
209 or violence;

210 [(3)] (c) the actor is able to overcome the victim through concealment or by the
211 element of surprise;

212 [(4)] (a) (d) (i) the actor coerces the victim to submit by threatening to retaliate in the
213 immediate future against the victim or any other person, and the victim perceives at the time

214 that the actor has the ability to execute this threat; ~~[or]~~

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

218 ~~[(b)]~~ (iii) as used in this Subsection ~~[(4)]~~, (1)(d) "to retaliate" includes threats of
219 physical force, kidnapping, or extortion;

220 ~~[(5)]~~ (e) the actor knows the victim is unconscious, unaware that the act is occurring, or
221 physically unable to resist;

222 ~~[(6)]~~ (f) the actor knows or reasonably should know that the victim has a mental
223 disease or defect, which renders the victim unable to:

224 ~~[(a)]~~ (i) appraise the nature of the act;

225 ~~[(b)]~~ (ii) resist the act;

226 ~~[(c)]~~ (iii) understand the possible consequences to the victim's health or safety; or

227 ~~[(d)]~~ (iv) appraise the nature of the relationship between the actor and the victim~~[-]~~;

228 ~~[(7)]~~ (g) the actor knows that the victim submits or participates because the victim
229 erroneously believes that the actor is the victim's spouse;

230 ~~[(8)]~~ (h) the actor intentionally impaired the power of the victim to appraise or control
231 his or her conduct by administering any substance without the victim's knowledge;

232 ~~[(9)]~~ (i) the victim is younger than 14 years of age;

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

236 (k) the victim is 18 years of age or older at the time of the act, the actor occupied a
237 position of special trust as defined in Subsection (2), and the actor at the time of the act had the
238 ability to adversely affect the victim's employment, educational opportunities, livelihood,
239 access to health care, or ability to gain pay or promotion opportunities;

240 ~~[(11)]~~ (l) the victim is 14 years of age or older, but younger than 18 years of age, and
241 the actor is more than three years older than the victim and entices or coerces the victim to
242 submit or participate, under circumstances not amounting to the force or threat required under
243 Subsection (2) or (4); or

244 ~~[(12)]~~ (m) the actor is a health professional or religious counselor, as those terms are

245 defined in [~~this~~] Subsection [~~(12)~~] (2): and

246 (i) the act is committed under the guise of providing professional diagnosis,
247 counseling, or treatment[~~;~~]; and

248 (ii) at the time of the act the victim reasonably believed that the act was for medically
249 or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by
250 the victim could not reasonably be expected to have been manifested[~~;~~~~for~~].

251 (2) For purposes of [~~this~~] Subsection [~~(12)~~] (1):

252 (a) "health professional" means an individual who is licensed or who holds himself or
253 herself out to be licensed, or who otherwise provides professional physical or mental health
254 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
255 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
256 social service worker, clinical social worker, certified social worker, marriage and family
257 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
258 specialist, or substance abuse counselor; [~~and~~]

259 (b) "livelihood" means the means of supporting an individual's basic necessities of life,
260 including food, clothing, or shelter;

261 (c) "position of special trust" includes a teacher, instructor, professor, or teaching
262 assistant at a public or private institution of higher education in addition to the same actors as
263 listed in Section [76-5-404.1](#); and

264 [~~(b)~~] (d) "religious counselor" means a minister, priest, rabbi, bishop, or other
265 recognized member of the clergy.

266 Section 5. Section **76-7-302** is amended to read:

267 **76-7-302. Circumstances under which abortion authorized.**

268 (1) As used in this section, "viable" means that the unborn child has reached a stage of
269 fetal development when the unborn child is potentially able to live outside the womb, as
270 determined by the attending physician to a reasonable degree of medical certainty.

271 (2) An abortion may be performed in this state only by a physician.

272 (3) An abortion may be performed in this state only under the following circumstances:

273 (a) the unborn child is not viable; or

274 (b) the unborn child is viable, if:

275 (i) the abortion is necessary to avert:

- 276 (A) the death of the woman on whom the abortion is performed; or
- 277 (B) a serious risk of substantial and irreversible impairment of a major bodily function
- 278 of the woman on whom the abortion is performed;
- 279 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
- 280 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
- 281 lethal; or
- 282 (iii) (A) the woman is pregnant as a result of:
- 283 (I) rape, as described in Section 76-5-402;
- 284 (II) rape of a child, as described in Section 76-5-402.1; or
- 285 (III) incest, as described in Subsection 76-5-406~~(10)~~(1)(j) or Section 76-7-102; and
- 286 (B) before the abortion is performed, the physician who performs the abortion:
- 287 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
- 288 law enforcement; and
- 289 (II) complies with the requirements of Section 62A-4a-403.
- 290 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
- 291 necessary to perform the abortion in another location due to a medical emergency.

292 Section 6. Section 76-7-305 is amended to read:

293 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
294 **-- Exceptions.**

295 (1) A person may not perform an abortion, unless, before performing the abortion, the
296 physician who will perform the abortion obtains a voluntary and informed written consent from
297 the woman on whom the abortion is performed, that is consistent with:

298 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
299 Current Opinions; and

300 (b) the provisions of this section.

301 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
302 informed only if, at least 72 hours before the abortion:

303 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
304 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
305 physician's assistant presents the information module to the pregnant woman;

306 (b) the pregnant woman views the entire information module and presents evidence to

307 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
308 information module;

309 (c) after receiving the evidence described in Subsection (2)(b), the individual described
310 in Subsection (2)(a):

311 (i) documents that the pregnant woman viewed the entire information module;

312 (ii) gives the pregnant woman, upon her request, a copy of the documentation
313 described in Subsection (2)(c)(i); and

314 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
315 who is to perform the abortion, upon request of that physician or the pregnant woman;

316 (d) after the pregnant woman views the entire information module, the physician who
317 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
318 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
319 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
320 the woman of:

321 (i) the nature of the proposed abortion procedure;

322 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
323 fetus;

324 (iii) the risks and alternatives to the abortion procedure or treatment;

325 (iv) the options and consequences of aborting a medication-induced abortion, if the
326 proposed abortion procedure is a medication-induced abortion;

327 (v) the probable gestational age and a description of the development of the unborn
328 child at the time the abortion would be performed;

329 (vi) the medical risks associated with carrying her child to term; and

330 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
331 woman, upon her request; and

332 (e) after the pregnant woman views the entire information module, a staff member of
333 the abortion clinic or hospital provides to the pregnant woman:

334 (i) on a document that the pregnant woman may take home:

335 (A) the address for the department's website described in Section [76-7-305.5](#); and

336 (B) a statement that the woman may request, from a staff member of the abortion clinic
337 or hospital where the woman viewed the information module, a printed copy of the material on

338 the department's website; and

339 (ii) a printed copy of the material on the department's website described in Section
340 76-7-305.5, if requested by the pregnant woman.

341 (3) Before performing an abortion, the physician who is to perform the abortion shall:

342 (a) in a face-to-face consultation, provide the information described in Subsection

343 (2)(d), unless the attending physician or referring physician is the individual who provided the
344 information required under Subsection (2)(d); and

345 (b) (i) obtain from the pregnant woman a written certification that the information
346 required to be provided under Subsection (2) and this Subsection (3) was provided in
347 accordance with the requirements of Subsection (2) and this Subsection (3); and

348 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

349 (4) When a serious medical emergency compels the performance of an abortion, the
350 physician shall inform the woman prior to the abortion, if possible, of the medical indications
351 supporting the physician's judgment that an abortion is necessary.

352 (5) If an ultrasound is performed on a woman before an abortion is performed, the
353 individual who performs the ultrasound, or another qualified individual, shall:

354 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
355 manner to permit her to:

356 (i) view the images, if she chooses to view the images; or

357 (ii) not view the images, if she chooses not to view the images;

358 (b) simultaneously display the ultrasound images in order to permit the woman to:

359 (i) view the images, if she chooses to view the images; or

360 (ii) not view the images, if she chooses not to view the images;

361 (c) inform the woman that, if she desires, the person performing the ultrasound, or

362 another qualified person shall provide a detailed description of the ultrasound images,

363 including:

364 (i) the dimensions of the unborn child;

365 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

366 (iii) the presence of external body parts or internal organs, if present and viewable; and

367 (d) provide the detailed description described in Subsection ~~[(6)]~~ (5)(c), if the woman
368 requests it.

369 (6) The information described in Subsections (2), (3), and (5) is not required to be
370 provided to a pregnant woman under this section if the abortion is performed for a reason
371 described in:

372 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
373 concur, in writing, that the abortion is necessary to avert:

374 (i) the death of the woman on whom the abortion is performed; or

375 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
376 of the woman on whom the abortion is performed; or

377 (b) Subsection 76-7-302(3)(b)(ii).

378 (7) In addition to the criminal penalties described in this part, a physician who violates
379 the provisions of this section:

380 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;
381 and

382 (b) shall be subject to:

383 (i) suspension or revocation of the physician's license for the practice of medicine and
384 surgery in accordance with Section 58-67-401 or 58-68-401; and

385 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

386 (8) A physician is not guilty of violating this section for failure to furnish any of the
387 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

388 (a) the physician can demonstrate by a preponderance of the evidence that the
389 physician reasonably believed that furnishing the information would have resulted in a severely
390 adverse effect on the physical or mental health of the pregnant woman;

391 (b) in the physician's professional judgment, the abortion was necessary to avert:

392 (i) the death of the woman on whom the abortion is performed; or

393 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
394 of the woman on whom the abortion is performed;

395 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
396 76-5-402 and 76-5-402.1;

397 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406~~[(10)]~~
398 (1)(j) and Section 76-7-102; or

399 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

400 (9) A physician who complies with the provisions of this section and Section
401 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
402 informed consent under Section 78B-3-406.

403 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
404 of Subsection (5)(b), at no expense to the pregnant woman.

405 (b) A local health department shall refer a pregnant woman who requests an ultrasound
406 described in Subsection (10)(a) to the department.

407 (11) A physician is not guilty of violating this section if:

408 (a) the information described in Subsection (2) is provided less than 72 hours before
409 the physician performs the abortion; and

410 (b) in the physician's professional judgment, the abortion was necessary in a case
411 where:

412 (i) a ruptured membrane, documented by the attending or referring physician, will
413 cause a serious infection; or

414 (ii) a serious infection, documented by the attending or referring physician, will cause a
415 ruptured membrane.