

1 **CONSENT LANGUAGE AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Angela Romero**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill clarifies when consent may be given or withdrawn for sexual activity.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ makes clarifying changes regarding consent to sexual activity.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **76-5-406**, as last amended by Laws of Utah 2019, Chapters 146, 189, and 349

20

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

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

23 **76-5-406. Sexual offenses against the victim without consent of victim --**

24 **Circumstances.**

25 (1) As used in this section:

26 (a) "Health professional" means an individual who is licensed or who holds the
27 individual out to be licensed, or who otherwise provides professional physical or mental health



28 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,
29 osteopathic physician, physician assistant, nurse, dentist, physical therapist, chiropractor,
30 mental health therapist, social service worker, clinical social worker, certified social worker,
31 marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric
32 mental health nurse specialist, or substance abuse counselor.

33 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized
34 member of the clergy.

35 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

36 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of
37 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a
38 child, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a
39 child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted
40 sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse
41 of a child, or simple sexual abuse is without consent of the victim under any of the following
42 circumstances:

43 (a) the victim [~~expresses lack of~~] does not express consent through words or conduct;

44 (b) the actor overcomes the victim through the actual application of physical force or
45 violence;

46 (c) the actor is able to overcome the victim through concealment or by the element of
47 surprise;

48 (d) (i) the actor coerces the victim to submit by threatening to retaliate in the
49 immediate future against the victim or any other person, and the victim perceives at the time
50 that the actor has the ability to execute this threat; or

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

54 (e) the actor knows or reasonably should know the victim is unconscious, unaware that
55 the act is occurring, is unable to express consent due to alcohol, drugs, or other intoxicants, or
56 is physically unable to resist;

57 (f) the actor knows or reasonably should know that the victim has a mental disease or
58 defect, which renders the victim unable to:

- 59 (i) appraise the nature of the act;
- 60 (ii) resist the act;
- 61 (iii) understand the possible consequences to the victim's health or safety; or
- 62 (iv) appraise the nature of the relationship between the actor and the victim;
- 63 (g) the actor knows or reasonably should know that the victim [~~submits or~~] participates
- 64 because the victim erroneously believes that the actor is [~~the victim's spouse~~] someone else;
- 65 (h) the actor intentionally impaired the power of the victim to appraise or control his or
- 66 her conduct by administering any substance without the victim's knowledge;
- 67 (i) the victim is younger than 14 years of age;
- 68 (j) the victim is younger than 18 years of age and at the time of the offense the actor
- 69 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
- 70 special trust in relation to the victim as defined in Section [76-5-404.1](#);
- 71 (k) the victim is 14 years of age or older, but younger than 18 years of age, and the
- 72 actor is more than three years older than the victim and entices or coerces the victim to submit
- 73 or participate, under circumstances not amounting to the force or threat required under
- 74 Subsection (2)(b) or (d); or
- 75 (l) the actor is a health professional or religious counselor, the act is committed under
- 76 the guise of providing professional diagnosis, counseling, or treatment, and at the time of the
- 77 act the victim reasonably believed that the act was for medically or professionally appropriate
- 78 diagnosis, counseling, or treatment to the extent that resistance by the victim could not
- 79 reasonably be expected to have been manifested.
- 80 (3) Consent to any sexual act or prior consensual activity between or with any party
- 81 does not constitute consent to any other sexual act. Consent, even when initially given, may be
- 82 withdrawn at any time prior to or during sexual activity.