

HB0059S01 compared with HB0059

~~{deleted text}~~ shows text that was in HB0059 but was deleted in HB0059S01.

inserted text shows text that was not in HB0059 but was inserted into HB0059S01.

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~~{LAW ENFORCEMENT INVESTIGATION AMENDMENTS}~~ Representative Andrew Stoddard proposes the following substitute bill:

INTIMATE IMAGE DISTRIBUTION PROHIBITION REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides criminal penalties for ~~{certain}~~the misuse of evidence ~~{by a law enforcement official}~~in certain types of criminal actions.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ provides criminal penalties for ~~{a law enforcement officer and a prosecutor}~~any individual to duplicate, share, copy, or display an intimate image ~~{, except in specified circumstances}~~during a criminal action.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

76-5b-203, as last amended by Laws of Utah 2019, Chapter 378

ENACTS:

76-5b-203.5, Utah Code Annotated 1953

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

Section 1. Section **76-5b-203** is amended to read:

76-5b-203. Distribution of an intimate image -- Penalty.

(1) As used in this section:

(a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

(b) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(iii) the individual engaged in any sexually explicit conduct.

(c) "Sexually explicit conduct" means actual or simulated:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) masturbation;

(iii) bestiality;

(iv) sadistic or masochistic activities;

(v) exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(vi) visual depiction of nudity or partial nudity;

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- (vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- (viii) explicit representation of the defecation or urination functions.

(d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(2) An actor commits the offense of distribution of intimate images if the actor knowingly or intentionally distributes to any third party, or knowingly duplicates or copies, any intimate image of an individual who is 18 years of age or older and knows or should know that the distribution, duplication or copying would cause a reasonable person to suffer emotional distress or harm, if:

(a) the actor ~~[knows that]~~ has not received consent from the depicted individual ~~[has not given consent to the actor]~~ to distribute the intimate image;

(b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and

(c) actual emotional distress or harm is caused to the person as a result of the distribution under this section.

(3) This section does not apply to:

(a) except as provided in Section 76-5b-203.5:

(i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

(iv) court proceedings or any other judicial proceeding; or

(v) lawful and generally accepted medical practices and procedures;

(b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image;

(c) an intimate image that is portrayed in a lawful commercial setting; or

(d) an intimate image that is related to a matter of public concern or interest.

(4) (a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a

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commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(i) the distribution of an intimate image by the Internet service provider occurs only incidentally through the provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the provider does not intentionally aid or abet in the distribution of the intimate image; and

(iii) the provider does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the intimate image.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and

(iii) the hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

(c) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(5) (a) Distribution of an intimate image is a class A misdemeanor except under Subsection (5)(b).

(b) Distribution of an intimate image is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.

Section 2. Section **76-5b-203.5** is enacted to read:

76-5b-203.5. ~~Law enforcement use~~ Misuse of intimate image during a criminal action.

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(1) As used in this section ~~;~~

~~(a) ;~~ "~~{Intimate}~~ intimate image" ~~{means}~~ has the same meaning as ~~{that term is defined}~~ in Section 76-5b-203. ~~;~~

~~(b) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.~~

~~(c) "Law officer" means a law enforcement officer or a prosecutor.~~

~~(d) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.~~

(2) ~~{A law officer}~~ Any actor who obtains access to an intimate image in the course of ~~{the law officer's official duties}~~ a criminal action as defined in Subsection 77-1-3(1) may not intentionally display, duplicate, copy, or share the intimate image, unless:

(a) displaying, duplicating, copying, or sharing the intimate image is done solely for the purpose of the adjudication, defense, prosecution or investigation of a criminal matter involving the intimate image; ~~{or}~~

(b) each individual who is the subject of the intimate image gives written permission to display, duplicate, copy, or share the intimate image; or

(c) the intimate image was not created by or provided to the actor under circumstances in which the depicted individual has a reasonable expectation of privacy.

(3) ~~{A law officer}~~ An actor who violates Subsection (2) is guilty of:

(a) a class A misdemeanor for a first offense; or

(b) a third degree felony for each subsequent offense.

(4) Nothing in this section precludes an agency that employs ~~{a law officer}~~ an individual who is involved in a criminal action from establishing internal policies for an ~~{officer's}~~ individual's violation of this section.