

CONSENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the offense of sexual conduct without affirmative consent.

Highlighted Provisions:

This bill:

▶ creates a third degree felony offense of sexual conduct without affirmative consent;

and

▶ amends the Sex and Kidnap Offender Registry to include the offense of sexual conduct without affirmative consent.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-41-102, as last amended by Laws of Utah 2020, Chapter 108

ENACTS:

76-5-406.1, Utah Code Annotated 1953

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

Section 1. Section **76-5-406.1** is enacted to read:



28 76-5-406.1. Sexual conduct without affirmative consent.

29 (1) As used in this section:

30 (a) "Affirmative consent" means words or overt actions by an individual who is
31 competent to give informed consent indicating a freely given agreement to have sexual conduct
32 at the time of the act.

33 (b) "Sexual conduct" means:

34 (i) engaging in sexual intercourse with another individual;

35 (ii) causing the penetration, however slight, of the genital or anal opening of another
36 individual who is 14 years old or older, by any foreign object, substance, instrument, or device,
37 including a part of the human body other than the mouth or genitals, with intent to cause
38 substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the
39 sexual desire of any individual; or

40 (iii) engaging in any sexual act with an individual who is 14 years old or older
41 involving the genitals of one individual and the mouth or anus of another individual, regardless
42 of the sex of either participant.

43 (2) Except as provided in Subsection (3), an individual commits sexual conduct
44 without affirmative consent if the individual intentionally, knowingly, or recklessly engages in
45 sexual conduct with another individual without that other individual's affirmative consent.

46 (3) This section does not apply if, for the same conduct, the individual is guilty of a
47 violation of another provision of this part that is punishable by a higher penalty.

48 (4) Affirmative consent to one sexual act, or prior consensual sexual activity between
49 or with any individual, does not necessarily constitute affirmative consent to another sexual act.

50 (5) Affirmative consent initially given may be withdrawn through words or conduct at
51 any time before or during sexual activity.

52 (6) A violation of Subsection (2) is a third degree felony.

53 Section 2. Section **77-41-102** is amended to read:

54 **77-41-102. Definitions.**

55 As used in this chapter:

56 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
57 Safety established in section [53-10-201](#).

58 (2) "Business day" means a day on which state offices are open for regular business.

59 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
60 Identification showing that the offender has met the requirements of Section 77-41-112.

61 (4) "Department" means the Department of Corrections.

62 (5) "Division" means the Division of Juvenile Justice Services.

63 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
64 time, whether financially compensated, volunteered, or for the purpose of government or
65 educational benefit.

66 (7) "Indian Country" means:

67 (a) all land within the limits of any Indian reservation under the jurisdiction of the
68 United States government, regardless of the issuance of any patent, and includes rights-of-way
69 running through the reservation;

70 (b) all dependent Indian communities within the borders of the United States whether
71 within the original or subsequently acquired territory, and whether or not within the limits of a
72 state; and

73 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
74 not been extinguished, including rights-of-way running through the allotments.

75 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
76 property under the jurisdiction of the United States military, Canada, the United Kingdom,
77 Australia, or New Zealand.

78 (9) "Kidnap offender" means any individual other than a natural parent of the victim
79 who:

80 (a) has been convicted in this state of a violation of:

81 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;

82 (ii) Section 76-5-301.1, child kidnapping;

83 (iii) Section 76-5-302, aggravated kidnapping;

84 (iv) Section 76-5-308, human trafficking for labor and human smuggling;

85 (v) Section 76-5-308, human smuggling, when the individual smuggled is under 18
86 years of age;

87 (vi) Section 76-5-308.5, human trafficking of a child for labor;

88 (vii) Section 76-5-310, aggravated human trafficking and aggravated human
89 smuggling, on or after May 10, 2011;

- 90 (viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or
- 91 (ix) attempting, soliciting, or conspiring to commit any felony offense listed in
- 92 Subsections (9)(a)(i) through (iii);
- 93 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 94 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 95 substantially equivalent to the offenses listed in Subsection (9)(a) and who is:
- 96 (i) a Utah resident; or
- 97 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 98 10 or more days, regardless of whether or not the offender intends to permanently reside in this
- 99 state;
- 100 (c) (i) is required to register as a kidnap offender in any other jurisdiction of original
- 101 conviction, who is required to register as a kidnap offender by any state, federal, or military
- 102 court, or who would be required to register as a kidnap offender if residing in the jurisdiction of
- 103 the conviction regardless of the date of the conviction or any previous registration
- 104 requirements; and
- 105 (ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of
- 106 whether or not the offender intends to permanently reside in this state;
- 107 (d) is a nonresident regularly employed or working in this state, or who is a student in
- 108 this state, and was convicted of one or more offenses listed in Subsection (9), or any
- 109 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
- 110 required to register in the individual's state of residence;
- 111 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of
- 112 one or more offenses listed in Subsection (9); or
- 113 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a)
- 114 and who has been committed to the division for secure confinement for that offense and
- 115 remains in the division's custody 30 days prior to the individual's 21st birthday.
- 116 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the
- 117 minor's noncustodial parent.
- 118 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
- 119 as defined in Subsection (17).
- 120 (12) "Online identifier" or "Internet identifier":

121 (a) means any electronic mail, chat, instant messenger, social networking, or similar
122 name used for Internet communication; and

123 (b) does not include date of birth, social security number, PIN number, or Internet
124 passwords.

125 (13) "Primary residence" means the location where the offender regularly resides, even
126 if the offender intends to move to another location or return to another location at any future
127 date.

128 (14) "Register" means to comply with the requirements of this chapter and
129 administrative rules of the department made under this chapter.

130 (15) "Registration website" means the Sex and Kidnap Offender Notification and
131 Registration website described in Section 77-41-110 and the information on the website.

132 (16) "Secondary residence" means any real property that the offender owns or has a
133 financial interest in, or any location where, in any 12-month period, the offender stays
134 overnight a total of 10 or more nights when not staying at the offender's primary residence.

135 (17) "Sex offender" means any individual:

136 (a) convicted in this state of:

137 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

138 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
139 2011;

140 (iii) Section 76-5-308, human trafficking for sexual exploitation;

141 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

142 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

143 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

144 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in
145 Subsection 76-5-401(3)(b) or (c);

146 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection
147 76-5-401.1(3);

148 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

149 (x) Section 76-5-402, rape;

150 (xi) Section 76-5-402.1, rape of a child;

151 (xii) Section 76-5-402.2, object rape;

- 152 (xiii) Section 76-5-402.3, object rape of a child;
- 153 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- 154 (xv) Section 76-5-403.1, sodomy on a child;
- 155 (xvi) Section 76-5-404, forcible sexual abuse;
- 156 (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a
- 157 child;
- 158 (xviii) Section 76-5-405, aggravated sexual assault;
- 159 (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is
- 160 younger than 18 years of age, if the offense is committed on or after May 10, 2011;
- 161 (xx) Section 76-5b-201, sexual exploitation of a minor;
- 162 (xxi) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 163 (xxii) Section 76-7-102, incest;
- 164 (xxiii) Section 76-9-702, lewdness, if the individual has been convicted of the offense
- 165 four or more times;
- 166 (xxiv) Section 76-9-702.1, sexual battery, if the individual has been convicted of the
- 167 offense four or more times;
- 168 (xxv) any combination of convictions of Section 76-9-702, lewdness, and of Section
- 169 76-9-702.1, sexual battery, that total four or more convictions;
- 170 (xxvi) Section 76-9-702.5, lewdness involving a child;
- 171 (xxvii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 172 (xxviii) Section 76-10-1306, aggravated exploitation of prostitution; [~~or~~]
- 173 (xxix) Section 76-5-406.1, sexual conduct without affirmative consent; or
- 174 [~~(xxix)~~] (xxx) attempting, soliciting, or conspiring to commit any felony offense listed
- 175 in this Subsection (17)(a);
- 176 (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 177 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 178 substantially equivalent to the offenses listed in Subsection (17)(a) and who is:
- 179 (i) a Utah resident; or
- 180 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 181 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 182 (c) (i) who is required to register as a sex offender in any other jurisdiction of original

183 conviction, who is required to register as a sex offender by any state, federal, or military court,
184 or who would be required to register as a sex offender if residing in the jurisdiction of the
185 original conviction regardless of the date of the conviction or any previous registration
186 requirements; and

187 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,
188 regardless of whether or not the offender intends to permanently reside in this state;

189 (d) who is a nonresident regularly employed or working in this state or who is a student
190 in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any
191 substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required
192 to register in the individual's jurisdiction of residence;

193 (e) who is found not guilty by reason of insanity in this state, or in any other
194 jurisdiction of one or more offenses listed in Subsection (17)(a); or

195 (f) who is adjudicated delinquent based on one or more offenses listed in Subsection
196 (17)(a) and who has been committed to the division for secure confinement for that offense and
197 remains in the division's custody 30 days prior to the individual's 21st birthday.

198 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
199 Driving Under the Influence and Reckless Driving.

200 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
201 any jurisdiction.