

1 **ENTICEMENT OF A MINOR AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronald M. Winterton**

5 House Sponsor: Christine F. Watkins

7 **LONG TITLE**

8 **General Description:**

9 This bill concerns the offense of enticement of a minor.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends provisions concerning the offense of enticement of a minor; and
- 13 ▶ makes technical and conforming changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **52-4-103**, as last amended by Laws of Utah 2022, Chapter 422

21 **53-10-403**, as last amended by Laws of Utah 2022, Chapters 116, 430

22 **76-3-407**, as last amended by Laws of Utah 2022, Chapter 185

23 **76-4-401**, as last amended by Laws of Utah 2022, Chapter 181

24 **77-41-106**, as last amended by Laws of Utah 2022, Chapters 185, 430

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

27 Section 1. Section **52-4-103** is amended to read:

28 **52-4-103. Definitions.**

29 As used in this chapter:

30 (1) "Anchor location" means the physical location from which:

31 (a) an electronic meeting originates; or

32 (b) the participants are connected.

33 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by
34 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake
35 City.

36 (3) (a) "Convening" means the calling together of a public body by a person authorized
37 to do so for the express purpose of discussing or acting upon a subject over which that public
38 body has jurisdiction or advisory power.

39 (b) "Convening" does not include the initiation of a routine conversation between
40 members of a board of trustees of a large public transit district if the members involved in the
41 conversation do not, during the conversation, take a tentative or final vote on the matter that is
42 the subject of the conversation.

43 (4) "Electronic meeting" means a public meeting convened or conducted by means of a
44 conference using electronic communications.

45 (5) "Electronic message" means a communication transmitted electronically, including:

46 (a) electronic mail;

47 (b) instant messaging;

48 (c) electronic chat;

49 (d) text messaging, [~~as that term is defined in Section 76-4-401~~] which means a
50 communication in the form of electronic text or one or more electronic images sent by the actor
51 from a telephone, computer, or other electronic communication device to another person's
52 telephone, computer, or electronic communication device by addressing the communication to
53 the person's telephone number or other electronic communication access code or number; or

54 (e) any other method that conveys a message or facilitates communication
55 electronically.

56 (6) (a) "Meeting" means the convening of a public body or a specified body, with a
57 quorum present, including a workshop or an executive session, whether in person or by means

58 of electronic communications, for the purpose of discussing, receiving comments from the
59 public about, or acting upon a matter over which the public body or specific body has
60 jurisdiction or advisory power.

61 (b) "Meeting" does not mean:

62 (i) a chance gathering or social gathering;

63 (ii) a convening of the State Tax Commission to consider a confidential tax matter in
64 accordance with Section 59-1-405; or

65 (iii) a convening of a three-member board of trustees of a large public transit district as
66 defined in Section 17B-2a-802 if:

67 (A) the board members do not, during the conversation, take a tentative or final vote on
68 the matter that is the subject of the conversation; or

69 (B) the conversation pertains only to day-to-day management and operation of the
70 public transit district.

71 (c) "Meeting" does not mean the convening of a public body that has both legislative
72 and executive responsibilities if:

73 (i) no public funds are appropriated for expenditure during the time the public body is
74 convened; and

75 (ii) the public body is convened solely for the discussion or implementation of
76 administrative or operational matters:

77 (A) for which no formal action by the public body is required; or

78 (B) that would not come before the public body for discussion or action.

79 (7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the
80 public statements of each member of the public body who is participating in a meeting.

81 (8) "Participate" means the ability to communicate with all of the members of a public
82 body, either verbally or electronically, so that each member of the public body can hear or
83 observe the communication.

84 (9) (a) "Public body" means:

85 (i) any administrative, advisory, executive, or legislative body of the state or its

86 political subdivisions that:

- 87 (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- 88 (B) consists of two or more persons;
- 89 (C) expends, disburses, or is supported in whole or in part by tax revenue; and
- 90 (D) is vested with the authority to make decisions regarding the public's business; or
- 91 (ii) any administrative, advisory, executive, or policymaking body of an association, as

92 that term is defined in Section [53G-7-1101](#), that:

- 93 (A) consists of two or more persons;
- 94 (B) expends, disburses, or is supported in whole or in part by dues paid by a public
- 95 school or whose employees participate in a benefit or program described in Title 49, Utah State
- 96 Retirement and Insurance Benefit Act; and
- 97 (C) is vested with authority to make decisions regarding the participation of a public
- 98 school or student in an interscholastic activity, as that term is defined in Section [53G-7-1101](#).

99 (b) "Public body" includes:

- 100 (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in
- 101 Section [11-13-103](#);
- 102 (ii) a governmental nonprofit corporation as that term is defined in Section [11-13a-102](#);
- 103 (iii) the Utah Independent Redistricting Commission; and
- 104 (iv) a project entity, as that term is defined in Section [11-13-103](#).

105 (c) "Public body" does not include:

- 106 (i) a political party, a political group, or a political caucus;
- 107 (ii) a conference committee, a rules committee, or a sifting committee of the
- 108 Legislature;
- 109 (iii) a school community council or charter trust land council, as that term is defined in
- 110 Section [53G-7-1203](#);
- 111 (iv) a taxed interlocal entity, as that term is defined in Section [11-13-602](#), if the taxed
- 112 interlocal entity is not a project entity; or
- 113 (v) the following Legislative Management subcommittees, which are established in

114 Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to
115 recommend for employment, except that the meeting in which a subcommittee votes to
116 recommend that a candidate be employed shall be subject to the provisions of this act:

- 117 (A) the Research and General Counsel Subcommittee;
- 118 (B) the Budget Subcommittee; and
- 119 (C) the Audit Subcommittee.

120 (10) "Public statement" means a statement made in the ordinary course of business of
121 the public body with the intent that all other members of the public body receive it.

122 (11) (a) "Quorum" means a simple majority of the membership of a public body, unless
123 otherwise defined by applicable law.

124 (b) "Quorum" does not include a meeting of two elected officials by themselves when
125 no action, either formal or informal, is taken.

126 (12) "Recording" means an audio, or an audio and video, record of the proceedings of a
127 meeting that can be used to review the proceedings of the meeting.

128 (13) "Specified body":

129 (a) means an administrative, advisory, executive, or legislative body that:

- 130 (i) is not a public body;
- 131 (ii) consists of three or more members; and
- 132 (iii) includes at least one member who is:

133 (A) a legislator; and

134 (B) officially appointed to the body by the president of the Senate, speaker of the
135 House of Representatives, or governor; and

136 (b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(v).

137 (14) "Transmit" means to send, convey, or communicate an electronic message by
138 electronic means.

139 Section 2. Section 53-10-403 is amended to read:

140 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

141 (1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to

142 any person who:

143 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
144 (2)(a) or (b) on or after July 1, 2002;

145 (b) has pled guilty to or has been convicted by any other state or by the United States
146 government of an offense which if committed in this state would be punishable as one or more
147 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

148 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
149 offense under Subsection (2)(c);

150 (d) has been booked:

151 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
152 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

153 (ii) on or after January 1, 2015, for any felony offense; or

154 (e) is a minor under Subsection (3).

155 (2) Offenses referred to in Subsection (1) are:

156 (a) any felony or class A misdemeanor under the Utah Code;

157 (b) any offense under Subsection (2)(a):

158 (i) for which the court enters a judgment for conviction to a lower degree of offense
159 under Section 76-3-402; or

160 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
161 defined in Section 77-2a-1; or

162 (c) (i) any violent felony as defined in Section 53-10-403.5;

163 (ii) sale or use of body parts, Section 26-28-116;

164 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

165 (iv) operating a motor vehicle with any amount of a controlled substance in an
166 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
167 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

168 (v) a felony violation of enticing a minor [~~over the Internet~~], Section 76-4-401;

169 (vi) negligently operating a vehicle resulting in injury, Subsection 76-5-102.1(2)(b);

- 170 (vii) a felony violation of propelling a substance or object at a correctional officer, a
171 peace officer, or an employee or a volunteer, including health care providers, Section
172 76-5-102.6;
- 173 (viii) negligently operating a vehicle resulting in death, Subsection 76-5-207(2)(b);
- 174 (ix) aggravated human trafficking, Section 76-5-310, and aggravated human
175 smuggling, Section 76-5-310.1;
- 176 (x) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 177 (xi) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 178 (xii) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 179 (xiii) sale of a child, Section 76-7-203;
- 180 (xiv) aggravated escape, Subsection 76-8-309(2);
- 181 (xv) a felony violation of assault on an elected official, Section 76-8-315;
- 182 (xvi) influencing, impeding, or retaliating against a judge or member of the Board of
183 Pardons and Parole, Section 76-8-316;
- 184 (xvii) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 185 (xviii) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 186 (xix) a felony violation of sexual battery, Section 76-9-702.1;
- 187 (xx) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 188 (xxi) a felony violation of abuse or desecration of a dead human body, Section
189 76-9-704;
- 190 (xxii) manufacture, possession, sale, or use of a weapon of mass destruction, Section
191 76-10-402;
- 192 (xxiii) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
193 Section 76-10-403;
- 194 (xxiv) possession of a concealed firearm in the commission of a violent felony,
195 Subsection 76-10-504(4);
- 196 (xxv) assault with the intent to commit bus hijacking with a dangerous weapon,
197 Subsection 76-10-1504(3);

- 198 (xxvi) commercial obstruction, Subsection 76-10-2402(2);
- 199 (xxvii) a felony violation of failure to register as a sex or kidnap offender, Section
- 200 77-41-107;
- 201 (xxviii) repeat violation of a protective order, Subsection 77-36-1.1(4); or
- 202 (xxix) violation of condition for release after arrest under Section 78B-7-802.

203 (3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated
204 by the juvenile court due to the commission of any offense described in Subsection (2), and
205 who:

206 (a) committed an offense under Subsection (2) within the jurisdiction of the juvenile
207 court on or after July 1, 2002; or

208 (b) is in the legal custody of the Division of Juvenile Justice Services on or after July 1,
209 2002 for an offense under Subsection (2).

210 Section 3. Section 76-3-407 is amended to read:

211 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
212 **felony convictions.**

213 (1) As used in this section:

214 (a) "Prior sexual offense" means:

215 (i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;

216 (ii) sexual exploitation of a minor, Section 76-5b-201;

217 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

218 (iv) a felony offense of enticing a minor [~~over the Internet~~], Section 76-4-401;

219 (v) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
220 (iv); or

221 (vi) an offense in another state, territory, or district of the United States that, if
222 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (v).

223 (b) "Sexual offense" means:

224 (i) an offense that is a felony of the second or third degree, or an attempted offense,
225 which attempt is a felony of the second or third degree, described in Chapter 5, Part 4, Sexual

226 Offenses;
 227 (ii) sexual exploitation of a minor, Section [76-5b-201](#);
 228 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
 229 (iv) a felony offense of enticing a minor [~~over the Internet~~], Section [76-4-401](#);
 230 (v) a felony attempt to commit an offense described in Subsections (1)(b)(ii) through
 231 (iv); or

232 (vi) an offense in another state, territory, or district of the United States that, if
 233 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (v).

234 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual
 235 offense is increased by five years for each conviction of the defendant for a prior sexual offense
 236 that arose from a separate criminal episode, if the trier of fact finds that:

- 237 (a) the defendant was convicted of a prior sexual offense; and
- 238 (b) the defendant was convicted of the prior sexual offense described in Subsection
 239 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is
 240 being sentenced.

241 (3) The increased maximum term described in Subsection (2) shall be in addition to,
 242 and consecutive to, any other prison term served by the defendant.

243 Section 4. Section **76-4-401** is amended to read:

244 **76-4-401. Enticing a minor -- Elements -- Penalties.**

245 (1) (a) As used in this section:

246 [~~(a)~~] (i) "Minor" means ~~[a person]~~ an individual who is under ~~[the age of]~~ 18 years old.

247 (ii) "Electronic communication" means the same as that term is defined in Section
 248 [76-9-201](#).

249 (iii) "Electronic communication device" means the same as that term is defined in
 250 Section [76-9-201](#).

251 [~~(b)~~] "Text messaging" means ~~a communication in the form of electronic text or one or~~
 252 ~~more electronic images sent by the actor from a telephone, computer, or other electronic~~
 253 ~~communication device to another person's telephone, computer, or other electronic~~

254 communication device by addressing the communication to the person's telephone number or
255 other electronic communication access code or number.]

256 (b) Terms defined in Section 76-1-101.5 apply to this section.

257 (2) ~~[(a) A person]~~ An actor commits enticement of a minor ~~[when the person]~~ if the
258 actor knowingly:

259 (a) uses ~~[the Internet or text messaging]~~ an electronic communication or an electronic
260 communication device to:

261 (i) solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or
262 entice a minor, or another person that the actor believes to be a minor, to engage in ~~[any]~~
263 sexual activity ~~[which]~~ that is a violation of state criminal law~~[-];~~ or

264 ~~[(b) A person commits enticement of a minor when the person knowingly uses the~~
265 ~~Internet or text messaging to:]~~

266 ~~[(i)]~~ (ii) (A) initiate contact with a minor or a person the actor believes to be a minor;
267 and

268 ~~[(ii)]~~ (B) ~~[subsequently]~~ subsequent to the action ~~[under]~~ described in Subsection
269 ~~[(2)(b)(i)]~~ (2)(a)(ii)(A), by any electronic or written means, solicits, seduces, lures, or entices,
270 or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the
271 minor to engage in ~~[any]~~ sexual activity ~~[which]~~ that is a violation of state criminal law~~[-];~~ or

272 (b) develops a relationship of trust with the minor or the minor's parent or guardian
273 with the intent to solicit, seduce, lure, or entice, or attempt to solicit, seduce, lure, or entice the
274 minor to engage in sexual activity that is a violation of state criminal law.

275 (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an
276 attempt to commit this offense, that a law enforcement officer or an undercover operative who
277 is employed by a law enforcement agency was involved in the detection or investigation of the
278 offense.

279 (4) Enticement of a minor under Subsection ~~[(2)(a) or (b)]~~ (2) is punishable as follows:

280 (a) enticement to engage in sexual activity ~~[which]~~ that would be a first degree felony
281 for the actor is a:

- 282 (i) second degree felony upon the first conviction for violation of this Subsection
283 (4)(a); and
- 284 (ii) first degree felony punishable by imprisonment for an indeterminate term of not
285 fewer than three years and which may be for life, upon a second or any subsequent conviction
286 for a violation of this Subsection (4)(a);
- 287 (b) enticement to engage in sexual activity [~~which~~] that would be a second degree
288 felony for the actor is a third degree felony;
- 289 (c) enticement to engage in sexual activity [~~which~~] that would be a third degree felony
290 for the actor is a class A misdemeanor;
- 291 (d) enticement to engage in sexual activity [~~which~~] that would be a class A
292 misdemeanor for the actor is a class B misdemeanor; and
- 293 (e) enticement to engage in sexual activity [~~which~~] that would be a class B
294 misdemeanor for the actor is a class C misdemeanor.
- 295 (5) (a) When [~~a person~~] an actor who commits a felony violation of this section has
296 been previously convicted of an offense under Subsection (5)(b), the court may not in any way
297 shorten the prison sentence, and the court may not:
- 298 (i) grant probation;
- 299 (ii) suspend the execution or imposition of the sentence;
- 300 (iii) enter a judgment for a lower category of offense; or
- 301 (iv) order hospitalization.
- 302 (b) The sections referred to in Subsection (5)(a) are:
- 303 (i) Section 76-4-401, enticing a minor;
- 304 (ii) Section 76-5-301.1, child kidnapping;
- 305 (iii) Section 76-5-402, rape;
- 306 (iv) Section 76-5-402.1, rape of a child;
- 307 (v) Section 76-5-402.2, object rape;
- 308 (vi) Section 76-5-402.3, object rape of a child;
- 309 (vii) [~~Subsection 76-5-403(2)~~] Section 76-5-403, forcible sodomy;

- 310 (viii) Section 76-5-403.1, sodomy on a child;
- 311 (ix) Section 76-5-404, forcible sexual abuse;
- 312 (x) Section 76-5-404.1, sexual abuse of a child and Section 76-5-404.3, aggravated
313 sexual abuse of a child;
- 314 (xi) Section 76-5-405, aggravated sexual assault;
- 315 (xii) Section 76-5-308.5, human trafficking of a child;
- 316 (xiii) any offense in any other state or federal jurisdiction [~~which~~] that constitutes or
317 would constitute a crime in Subsections (5)(b)(i) through (xii); or
- 318 (xiv) the attempt, solicitation, or conspiracy to commit any of the offenses in
319 Subsections (5)(b)(i) through (xiii).

320 Section 5. Section 77-41-106 is amended to read:

321 **77-41-106. Registerable offenses.**

322 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

- 323 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the
324 conviction, the offender has previously been convicted of an offense listed in Subsection
325 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense
326 committed as a juvenile;
- 327 (2) a conviction for any of the following offenses, including attempting, soliciting, or
328 conspiring to commit any felony of:
 - 329 (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
330 the victim;
 - 331 (b) Section 76-5-402, rape;
 - 332 (c) Section 76-5-402.1, rape of a child;
 - 333 (d) Section 76-5-402.2, object rape;
 - 334 (e) Section 76-5-402.3, object rape of a child;
 - 335 (f) Section 76-5-403.1, sodomy on a child;
 - 336 (g) Section 76-5-404.3, aggravated sexual abuse of a child; or
 - 337 (h) Section 76-5-405, aggravated sexual assault;

- 338 (3) Section 76-5-308.1, human trafficking for sexual exploitation;
- 339 (4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 340 (5) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 341 (6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 342 (7) Section 76-4-401, a felony violation of enticing a minor [~~over the Internet~~];
- 343 (8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 344 of the victim;
- 345 (9) Section 76-5-403, forcible sodomy;
- 346 (10) Section 76-5-404.1, sexual abuse of a child;
- 347 (11) Section 76-5b-201, sexual exploitation of a minor;
- 348 (12) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- 349 (13) Subsection 76-5b-204(2)(b), aggravated sexual extortion; or
- 350 (14) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10,
- 351 2011.