

**Senator Chris H. Wilson** proposes the following substitute bill:

**REPRODUCTION OF CHILD PORNOGRAPHY PROHIBITION**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Chris H. Wilson**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill address the reproduction of child pornography evidence.

**Highlighted Provisions:**

This bill:

- ▶ prohibits the reproduction of child pornography evidence;
- ▶ allows the defendant or victim to inspect child pornography evidence at a government facility before trial; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5b-201**, as last amended by Laws of Utah 2022, Chapters 181, 185

**76-5b-201.1**, as enacted by Laws of Utah 2022, Chapter 185 and last amended by

Coordination Clause, Laws of Utah 2022, Chapter 185

ENACTS:



26 77-4-201, Utah Code Annotated 1953

27 RENUMBERS AND AMENDS:

28 77-4-101, (Renumbered from 77-4-1, as enacted by Laws of Utah 1980, Chapter 15)

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

31 Section 1. Section 76-5b-201 is amended to read:

32 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

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

34 (2) An actor commits sexual exploitation of a minor when the actor knowingly  
35 possesses or intentionally views child pornography.

36 (3) (a) A violation of Subsection (2) is a second degree felony.

37 (b) It is a separate offense under this section:

38 (i) for each minor depicted in the child pornography; and

39 (ii) for each time the same minor is depicted in different child pornography.

40 (4) (a) It is an affirmative defense to a charge of violating this section that no minor  
41 was actually depicted in the visual depiction or used in producing or advertising the visual  
42 depiction.

43 (b) For a charge of violating this section, it is an affirmative defense that:

44 (i) the defendant:

45 (A) did not solicit the child pornography from the minor depicted in the child  
46 pornography;

47 (B) is not more than two years older than the minor depicted in the child pornography;  
48 and

49 (C) upon request of a law enforcement agent or the minor depicted in the child  
50 pornography, removes from an electronic device or destroys the child pornography and all  
51 copies of the child pornography in the defendant's possession; and

52 (ii) the child pornography does not depict an offense under Chapter 5, Part 4, Sexual  
53 Offenses.

54 (5) In proving a violation of this section in relation to an identifiable minor, proof of  
55 the actual identity of the identifiable minor is not required.

56 (6) [~~This section may not be construed to impose criminal or civil liability on~~] The

57 following are not criminally or civilly liable under this section when acting in good faith  
58 compliance with Section [77-4-201](#):

59 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
60 the scope of employment, for the good faith performance of:

61 (i) reporting or data preservation duties required under federal or state law; or

62 (ii) implementing a policy of attempting to prevent the presence of child pornography  
63 on tangible or intangible property, or of detecting and reporting the presence of child  
64 pornography on the property;

65 (b) a law enforcement officer acting within the scope of a criminal investigation;

66 (c) an employee of a court who may be required to view child pornography during the  
67 course of and within the scope of the employee's employment;

68 (d) a juror who may be required to view child pornography during the course of the  
69 individual's service as a juror;

70 (e) an attorney or employee of an attorney who is required to view child pornography  
71 during the course of a judicial process and while acting within the scope of employment;

72 (f) an employee of the Department of Human Services who is required to view child  
73 pornography within the scope of the employee's employment; or

74 (g) an attorney who is required to view child pornography within the scope of the  
75 attorney's responsibility to represent the Department of Human Services, including the  
76 divisions and offices within the Department of Human Services.

77 Section 2. Section **76-5b-201.1** is amended to read:

78 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

79 (1) As used in this section:

80 (a) "Physical abuse" or "physically abused" means the same as the term "physical  
81 abuse" is defined in Section [80-1-102](#).

82 (b) The terms defined in Section [76-1-101.5](#) apply to this section.

83 (2) An actor commits aggravated sexual exploitation of a minor if the actor:

84 (a) intentionally distributes child pornography;

85 (b) knowingly produces child pornography; or

86 (c) is the minor's parent or legal guardian and knowingly consents to or permits the  
87 minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section [76-5b-201](#).

88 (3) (a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a  
89 first degree felony.

90 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection  
91 (2) is a second degree felony.

92 (c) A violation of Subsection (2)(a) is a second degree felony if the child pornography  
93 depicts an individual who is:

94 (i) 14 years old or older; or

95 (ii) pubescent.

96 (4) It is a separate offense under this section:

97 (a) for each minor depicted in the child pornography; and

98 (b) for each time the same minor is depicted in different child pornography.

99 (5) (a) It is an affirmative defense to a charge of violating this section that no minor  
100 was actually depicted in the visual depiction or used in producing or advertising the visual  
101 depiction.

102 (b) In proving a violation of this section in relation to an identifiable minor, proof of  
103 the actual identity of the identifiable minor is not required.

104 (6) ~~[This section may not be construed to impose criminal or civil liability on]~~ The  
105 following are not criminally or civilly liable under this section when acting in good faith  
106 compliance with Section [77-4-201](#):

107 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
108 the scope of employment, for the good faith performance of:

109 (i) reporting or data preservation duties required under federal or state law; or

110 (ii) implementing a policy of attempting to prevent the presence of child pornography  
111 on tangible or intangible property, or of detecting and reporting the presence of child  
112 pornography on the property;

113 (b) a law enforcement officer acting within the scope of a criminal investigation;

114 (c) an employee of a court who may be required to view child pornography during the  
115 course of and within the scope of the employee's employment;

116 (d) a juror who may be required to view child pornography during the course of the  
117 individual's service as a juror;

118 (e) an attorney or employee of an attorney who is required to view child pornography

119 during the course of a judicial process and while acting within the scope of employment;

120 (f) an employee of the Department of Health and Human Services who is required to  
121 view child pornography within the scope of the employee's employment; or

122 (g) an attorney who is required to view child pornography within the scope of the  
123 attorney's responsibility to represent the Department of Health and Human Services, including  
124 the divisions and offices within the Department of Health and Human Services.

125 Section 3. Section ~~77-4-101~~, which is renumbered from Section 77-4-1 is renumbered  
126 and amended to read:

127 **CHAPTER 4. PLEADINGS AND PROCEEDINGS BEFORE TRIAL**

128 **Part 1. Suppression of Resistance to Service of Process**

129 ~~[77-4-1]~~. **77-4-101. Force by officer -- Arrest.**

130 A public officer authorized to execute process issued by any court may use such force  
131 as is reasonable and necessary to execute service of process. If necessary, he may seize, arrest,  
132 and confine persons resisting or aiding and abetting resistance to his service of process.

133 Section 4. Section ~~77-4-201~~ is enacted to read:

134 **Part 2. Evidence**

135 **77-4-201. Reproduction of child pornography -- Prohibition.**

136 (1) As used in this section:

137 (a) "Child pornography" means the same as that term is defined in Section [76-5b-103](#).

138 (b) "Law enforcement agency" means the same as that term is defined in Section  
139 [53-1-102](#).

140 (c) "Victim" means the same as that term is defined in Section [77-37-2](#).

141 (2) In a proceeding involving child pornography, the child pornography shall remain in  
142 the care, custody, and control of:

143 (a) a law enforcement agency; or

144 (b) a court.

145 (3) (a) A court shall deny, in a proceeding involving child pornography, a request by a  
146 party to copy, photograph, duplicate, or otherwise reproduce the child pornography if the child  
147 pornography is reasonably available for inspection by the party.

148 (b) The court shall deem child pornography reasonably available to a party for  
149 inspection under Subsection (3)(a) if the party, the party's attorney, or an individual the party

150 may seek to qualify as an expert, is provided an adequate opportunity to view and examine the  
151 child pornography.

152 (c) An individual described in Subsection (3)(b) may view or examine the child  
153 pornography only at the law enforcement agency or court that has custody and control of the  
154 child pornography.

155 (4) (a) In a proceeding involving child pornography, a victim, the victim's attorney, or  
156 an individual the victim may seek to qualify as an expert, may view and examine the child  
157 pornography that depicts the victim upon request.

158 (b) An individual described in Subsection (4)(a) may not copy, photograph, duplicate,  
159 or otherwise reproduce the child pornography.

160 (c) An individual described in Subsection (4)(a) may view or examine the child  
161 pornography only at the law enforcement agency or court that has custody and control of the  
162 child pornography.

163 (d) The child pornography described in this Subsection (4) may be redacted to protect  
164 the privacy of a third party.