

SB0057S01 compared with SB0057

~~text~~ shows text that was in SB0057 but was deleted in SB0057S01.

text shows text that was not in SB0057 but was inserted into SB0057S01.

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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

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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:

77-4-201, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

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

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

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

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

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child pornography.
- (3) (a) A violation of Subsection (2) is a second degree felony.
(b) It is a separate offense under this section:
 - (i) for each minor depicted in the child pornography; and
 - (ii) for each time the same minor is depicted in different child pornography.
- (4) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.
 - (b) For a charge of violating this section, it is an affirmative defense that:
 - (i) the defendant:
 - (A) did not solicit the child pornography from the minor depicted in the child pornography;
 - (B) is not more than two years older than the minor depicted in the child pornography;
 - (ii) the defendant:
 - (C) upon request of a law enforcement agent or the minor depicted in the child pornography, removes from an electronic device or destroys the child pornography and all

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copies of the child pornography in the defendant's possession; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

(a) intentionally distributes child pornography;

(b) knowingly produces child pornography; or

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

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

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

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

(i) 14 years old or older; or

(ii) pubescent.

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

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

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

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

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

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

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

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

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

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- (b) a law enforcement officer acting within the scope of a criminal investigation;
- (c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;
- (d) a juror who may be required to view child pornography during the course of the individual's service as a juror;
- (e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;
- (f) an employee of the Department of Health and Human Services who is required to view child pornography within the scope of the employee's employment; or
- (g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

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

CHAPTER 4. PLEADINGS AND PROCEEDINGS BEFORE TRIAL

Part 1. Suppression of Resistance to Service of Process

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

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

Section 4. Section **77-4-201** is enacted to read:

Part 2. Evidence

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

(1) As used in this section:

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

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

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

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

(a) a law enforcement agency; or

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(b) a court.

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

(b) The court shall deem child pornography reasonably available to a {defendant} party for inspection under Subsection (3)(a) if the {defendant} party, the {defendant's} party's attorney, or an individual the {defendant} party may seek to qualify as an expert {at trial}, is provided an adequate opportunity to view and examine the child pornography.

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

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

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

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

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