

**SEXUAL ASSAULT MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

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

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**LONG TITLE**

**General Description:**

This bill adds an offense to the list of sexual assault offenses against a victim.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ adds removal of a sexually protective device without consent to the list of sexual assault offenses against a victim; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-406**, as last amended by Laws of Utah 2020, Chapter 92

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

Section 1. Section **76-5-406** is amended to read:

**76-5-406. Sexual offenses against the victim without consent of victim --**

**Circumstances.**



28 (1) As used in this section:

29 (a) "Health professional" means an individual who is licensed or who holds the  
30 individual out to be licensed, or who otherwise provides professional physical or mental health  
31 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,  
32 osteopathic physician, physician assistant, nurse, dentist, physical therapist, chiropractor,  
33 mental health therapist, social service worker, clinical social worker, certified social worker,  
34 marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric  
35 mental health nurse specialist, or substance abuse counselor.

36 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
37 member of the clergy.

38 (c) (i) "Sexually protective device" means a device intended to prevent pregnancy or  
39 sexually transmitted infection.

40 (ii) "Sexually protective device" includes a male or female condom, spermicide,  
41 diaphragm, cervical cap, contraceptive sponge, or dental dam.

42 [~~(c)~~] (d) "To retaliate" includes threats of physical force, kidnapping, or extortion.

43 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of  
44 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a  
45 child, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a  
46 child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted  
47 sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse  
48 of a child, or simple sexual abuse is without consent of the victim under any of the following  
49 circumstances:

50 (a) the victim expresses lack of consent through words or conduct;

51 (b) the actor overcomes the victim through the actual application of physical force or  
52 violence;

53 (c) the actor is able to overcome the victim through concealment or by the element of  
54 surprise;

55 (d) (i) the actor coerces the victim to submit by threatening to retaliate in the  
56 immediate future against the victim or any other person, and the victim perceives at the time  
57 that the actor has the ability to execute this threat; or

58 (ii) the actor coerces the victim to submit by threatening to retaliate in the future

59 against the victim or any other person, and the victim believes at the time that the actor has the  
60 ability to execute this threat;

61 (e) the actor knows the victim is unconscious, unaware that the act is occurring, or is  
62 physically unable to resist;

63 (f) the actor knows or reasonably should know that the victim has a mental disease or  
64 defect, which renders the victim unable to:

65 (i) appraise the nature of the act;

66 (ii) resist the act;

67 (iii) understand the possible consequences to the victim's health or safety; or

68 (iv) appraise the nature of the relationship between the actor and the victim;

69 (g) the actor knows that the victim participates because the victim erroneously believes  
70 that the actor is someone else;

71 (h) the actor intentionally impaired the power of the victim to appraise or control his or  
72 her conduct by administering any substance without the victim's knowledge;

73 (i) the victim is younger than 14 years [~~of age~~] old;

74 (j) the victim is younger than 18 years [~~of age~~] old and at the time of the offense the  
75 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a  
76 position of special trust in relation to the victim as defined in Section [76-5-404.1](#);

77 (k) the victim is 14 years [~~of age~~] old or older, but younger than 18 years [~~of age~~] old,  
78 and the actor is more than three years older than the victim and entices or coerces the victim to  
79 submit or participate, under circumstances not amounting to the force or threat required under  
80 Subsection (2)(b) or (d); [~~or~~]

81 (l) the actor is a health professional or religious counselor, the act is committed under  
82 the guise of providing professional diagnosis, counseling, or treatment, and at the time of the  
83 act the victim reasonably believed that the act was for medically or professionally appropriate  
84 diagnosis, counseling, or treatment to the extent that resistance by the victim could not  
85 reasonably be expected to have been manifested; or

86 (m) the actor intentionally removes a sexually protective device without the consent of  
87 the victim.

88 (3) Consent to any sexual act or prior consensual activity between or with any party  
89 does not necessarily constitute consent to any other sexual act. Consent may be initially given

90 but may be withdrawn through words or conduct at any time prior to or during sexual activity.