

## SB0178S01 compared with SB0178

~~{deleted text}~~ shows text that was in SB0178 but was deleted in SB0178S01.

inserted text shows text that was not in SB0178 but was inserted into SB0178S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Michael K. McKell proposes the following substitute bill:

### SEXUAL ~~{ASSAULT}~~CRIME 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}~~creates the offense of nonconsensual removal of a sexually protective device.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{adds}~~creates the criminal offense of nonconsensual removal of a sexually protective device ~~{without consent to the list of sexual assault offenses against a victim}~~; and
- ▶ ~~{makes technical and conforming changes}~~imposes criminal penalties.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

~~{AMENDS}~~ ENACTS:

~~{76-5-406}~~ 76-5-417, ~~{as last amended by Laws of}~~ Utah ~~{2020, Chapter 92}~~ Code  
Annotated 1953

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

Section 1. Section ~~{76-5-406}~~ 76-5-417 is ~~{amended}~~ enacted to read:

~~{76-5-406}~~ 76-5-417. ~~{ Sexual offenses against the victim without consent of victim~~  
== Circumstances:

~~— (1) Nonconsensual removal of sexually protective device.~~

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

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

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

~~{(c)} (i) "Sexually protective device" means a device intended to prevent pregnancy or sexually transmitted infection.~~

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

~~{(c)} (d) "To retaliate" includes threats of physical force, kidnapping, or extortion.~~

~~— (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted~~

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~~sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:~~

- ~~—— (a) the victim expresses lack of consent through words or conduct;~~
- ~~—— (b) the actor overcomes the victim through the actual application of physical force or violence;~~
- ~~—— (c) the actor is able to overcome the victim through concealment or by the element of surprise;~~
- ~~—— (d) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or~~
  - ~~—— (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;~~
- ~~—— (e) the actor knows the victim is unconscious, unaware that the act is occurring, or is physically unable to resist;~~
- ~~—— (f) the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to:~~
  - ~~—— (i) appraise the nature of the act;~~
  - ~~—— (ii) resist the act;~~
  - ~~—— (iii) understand the possible consequences to the victim's health or safety; or~~
  - ~~—— (iv) appraise the nature of the relationship between the actor and the victim;~~
- ~~—— (g) the actor knows that the victim participates because the victim erroneously believes that the actor is someone else;~~
- ~~—— (h) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;~~
- ~~—— (i) the victim is younger than 14 years [of age] old;~~
- ~~—— (j) the victim is younger than 18 years [of age] old and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as;~~ **(b) Terms** defined in Section ~~{76-5-404.1;~~
- ~~—— (k) the victim is 14 years [of age] old or older, but younger than 18 years [of age] old;~~

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~~and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2)(b) or (d); [or]~~

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

~~—— (m) the actor intentionally} 76-1-101.5 apply to this section.~~

(2) An actor commits nonconsensual removal of a sexually protective device if the actor, during consensual sexual activity with an individual, intentionally or knowingly removes a sexually protective device without the consent of the {victim.

~~—— (3) Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but may be withdrawn through words or conduct at any time prior to or during sexual activity. }individual.~~

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if, as a result of the violation of Subsection (2), the individual:

(i) becomes pregnant; or

(ii) contracts a sexually transmitted infection or disease.