

1 **SEXUAL EXPLOITATION OF A MINOR AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Michael S. Kennedy

2
3 **LONG TITLE**

4 **General Description:**

5 This bill criminalizes certain conduct relating to child sexual abuse material.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ amends the definition of child sexual abuse material;
- 9 ▸ provides a severability clause; and
- 10 ▸ makes technical and conforming changes.

11 **Money Appropriated in this Bill:**

12 None

13 **Other Special Clauses:**

14 None

15 **Utah Code Sections Affected:**

16 AMENDS:

17 **76-5b-103**, as last amended by Laws of Utah 2023, Chapter 231

18 **76-5b-201**, as last amended by Laws of Utah 2023, Chapters 231, 330

19 **76-5b-201.1**, as last amended by Laws of Utah 2023, Chapter 231

20 ENACTS:

21 **76-5b-303**, Utah Code Annotated 1953

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

24 Section 1. Section **76-5b-103** is amended to read:

25 **76-5b-103 . Definitions.**

26 As used in this chapter:

27 (1) "Child sexual abuse material" means any visual depiction, including any live

28 performance, photograph, film, video, picture, or computer or computer-generated

- 29 image or picture, whether made or produced by electronic, mechanical, or other means,
30 of sexually explicit conduct, where:
- 31 (a) the production of the visual depiction involves the use of a minor engaging in
32 sexually explicit conduct;
- 33 (b) the visual depiction is[-] :
- 34 (i) of a minor engaging in sexually explicit conduct; or
35 (ii) artificially generated and depicts an individual with substantial characteristics of a
36 minor engaging in sexually explicit conduct; or
- 37 (c) the visual depiction has been created, adapted, or modified to appear that an
38 identifiable minor is engaging in sexually explicit conduct.
- 39 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing,
40 giving, granting admission to, or otherwise transferring or presenting child sexual abuse
41 material or vulnerable adult sexual abuse material with or without consideration.
- 42 (3) "Identifiable minor" means [~~a person~~] an individual:
- 43 (a) (i) who was a minor at the time the visual depiction was created, adapted, or
44 modified; or
45 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
46 depiction; and
- 47 (b) who is recognizable as an actual [~~person~~] individual by the [~~person's~~] individual's
48 face, likeness, or other distinguishing characteristic, such as a birthmark, or other
49 recognizable feature.
- 50 (4) "Identifiable vulnerable adult" means [~~a person~~] an individual:
- 51 (a) (i) who was a vulnerable adult at the time the visual depiction was created,
52 adapted, or modified; or
53 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
54 the visual depiction; and
- 55 (b) who is recognizable as an actual [~~person~~] individual by the [~~person's~~] individual's
56 face, likeness, or other distinguishing characteristic, such as a birthmark, or other
57 recognizable feature.
- 58 (5) "Lacks capacity to consent" [~~is as~~] means the same as that term is defined in Section
59 76-5-111.4.
- 60 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
61 performed by live actors in person.
- 62 (7) "Minor" means [~~a person~~] an individual who is younger than 18 years old.

- 63 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
64 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
65 areola, is less than completely and opaquely covered.
- 66 (9) "Produce" means:
- 67 (a) the photographing, filming, taping, directing, producing, creating, designing, or
68 composing of child sexual abuse material or vulnerable adult sexual abuse material; or
- 69 (b) the securing or hiring of [~~persons~~] individuals to engage in the photographing,
70 filming, taping, directing, producing, creating, designing, or composing of child
71 sexual abuse material or vulnerable adult sexual abuse material.
- 72 (10) "Sexually explicit conduct" means actual or simulated:
- 73 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
74 whether between [~~persons~~] individuals of the same or opposite sex;
- 75 (b) masturbation;
- 76 (c) bestiality;
- 77 (d) sadistic or masochistic activities;
- 78 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any [
79 ~~person~~] individual;
- 80 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
81 arousal of any [~~person~~] individual;
- 82 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 83 (h) the explicit representation of the defecation or urination functions.
- 84 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually
85 explicit conduct which duplicates, within the perception of an average person, the
86 appearance of an actual act of sexually explicit conduct.
- 87 (12) "Vulnerable adult" [~~is-as~~] means the same as that term is defined in Subsection 76-5-111
88 (1).
- 89 (13) "Vulnerable adult sexual abuse material" means any visual depiction, including any
90 live performance, photograph, film, video, picture, or computer or computer-generated
91 image or picture, whether made or produced by electronic, mechanical, or other means,
92 of sexually explicit conduct, where:
- 93 (a) the production of the visual depiction involves the use of a vulnerable adult engaging
94 in sexually explicit conduct;
- 95 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
- 96 (c) the visual depiction has been created, adapted, or modified to appear that an

97 identifiable vulnerable adult is engaging in sexually explicit conduct.

98 Section 2. Section **76-5b-201** is amended to read:

99 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**

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

101 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or
102 intentionally views child sexual abuse material.

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

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

105 (i) for each minor depicted in the child sexual abuse material; and

106 (ii) for each time the same minor is depicted in different child sexual abuse material.

107 [~~(4) (a) It is an affirmative defense to a charge of violating this section that no minor was~~
108 ~~actually depicted in the visual depiction or used in producing or advertising the visual~~
109 ~~depiction.~~]

110 [~~(b)~~] (4) For a charge of violating this section, it is an affirmative defense that:

111 [~~(i)~~] (a) the defendant:

112 [~~(A)~~] (i) did not solicit the child sexual abuse material from the minor depicted in the
113 child sexual abuse material;

114 [~~(B)~~] (ii) is not more than two years older than the minor depicted in the child sexual
115 abuse material; and

116 [~~(C)~~] (iii) upon request of a law enforcement agent or the minor depicted in the child
117 sexual abuse material, removes from an electronic device or destroys the child
118 sexual abuse material and all copies of the child sexual abuse material in the
119 defendant's possession; and

120 [~~(i)~~] (b) the child sexual abuse material does not depict an offense under Chapter 5, Part
121 4, Sexual Offenses.

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

124 (6) The following are not criminally or civilly liable under this section when acting in good
125 faith compliance with Section 77-4-201:

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

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

129 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
130 material on tangible or intangible property, or of detecting and reporting the

- 131 presence of child sexual abuse material on the property;
- 132 (b) a law enforcement officer acting within the scope of a criminal investigation;
- 133 (c) an employee of a court who may be required to view child sexual abuse material
- 134 during the course of and within the scope of the employee's employment;
- 135 (d) a juror who may be required to view child sexual abuse material during the course of
- 136 the individual's service as a juror;
- 137 (e) an attorney or employee of an attorney who is required to view child sexual abuse
- 138 material during the course of a judicial process and while acting within the scope of
- 139 employment;
- 140 (f) an employee of the Department of Health and Human Services who is required to
- 141 view child sexual abuse material within the scope of the employee's employment; or
- 142 (g) an attorney who is required to view child sexual abuse material within the scope of
- 143 the attorney's responsibility to represent the Department of Health and Human
- 144 Services, including the divisions and offices within the Department of Health and
- 145 Human Services.

146 Section 3. Section **76-5b-201.1** is amended to read:

147 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

- 148 (1) As used in this section:
- 149 (a) "Physical abuse" or "physically abused" means the same as the term "physical abuse"
- 150 is defined in Section 80-1-102.
- 151 (b) The terms defined in Section 76-1-101.5 apply to this section.
- 152 (2) An actor commits aggravated sexual exploitation of a minor if the actor:
- 153 (a) intentionally distributes child sexual abuse material;
- 154 (b) knowingly produces child sexual abuse material; or
- 155 (c) is the minor's parent or legal guardian and knowingly consents to or permits the
- 156 minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section
- 157 76-5b-201.
- 158 (3) (a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a
- 159 first degree felony.
- 160 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection
- 161 (2) is a second degree felony.
- 162 (c) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse
- 163 material depicts an individual who is:
- 164 (i) 14 years old or older; or

- 165 (ii) pubescent.
- 166 (4) It is a separate offense under this section:
- 167 (a) for each minor depicted in the child sexual abuse material; and
- 168 (b) for each time the same minor is depicted in different child sexual abuse material.
- 169 ~~[(5) (a) It is an affirmative defense to a charge of violating this section that no minor was~~
 170 ~~actually depicted in the visual depiction or used in producing or advertising the visual~~
 171 ~~depiction.]~~
- 172 ~~[(b)]~~ (5) In proving a violation of this section in relation to an identifiable minor, proof of
 173 the actual identity of the identifiable minor is not required.
- 174 (6) The following are not criminally or civilly liable under this section when acting in good
 175 faith compliance with Section 77-4-201:
- 176 (a) an entity or an employee, director, officer, or agent of an entity when acting within
 177 the scope of employment, for the good faith performance of:
- 178 (i) reporting or data preservation duties required under federal or state law; or
- 179 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
 180 material on tangible or intangible property, or of detecting and reporting the
 181 presence of child sexual abuse material on the property;
- 182 (b) a law enforcement officer acting within the scope of a criminal investigation;
- 183 (c) an employee of a court who may be required to view child sexual abuse material
 184 during the course of and within the scope of the employee's employment;
- 185 (d) a juror who may be required to view child sexual abuse material during the course of
 186 the individual's service as a juror;
- 187 (e) an attorney or employee of an attorney who is required to view child sexual abuse
 188 material during the course of a judicial process and while acting within the scope of
 189 employment;
- 190 (f) an employee of the Department of Health and Human Services who is required to
 191 view child sexual abuse material within the scope of the employee's employment; or
- 192 (g) an attorney who is required to view child sexual abuse material within the scope of
 193 the attorney's responsibility to represent the Department of Health and Human
 194 Services, including the divisions and offices within the Department of Health and
 195 Human Services.

196 Section 4. Section **76-5b-303** is enacted to read:

197 **76-5b-303 . Severability.**

- 198 (1) If any provision of this chapter or the application of any provision to any person or

199 circumstance is held invalid by a final decision of a court, the remainder of this chapter
200 shall be given effect without the invalid provision or application.

201 (2) The provisions of this chapter are severable.

202 Section 5. **Effective date.**

203 This bill takes effect on May 1, 2024.