

Representative Brady Brammer proposes the following substitute bill:

SEXUAL EXPLOITATION OF A MINOR AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

76-5b-303, Utah Code Annotated 1953



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

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

76-5b-103. Definitions.

As used in this chapter:

(1) "Child sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is:

(i) of a minor engaging in sexually explicit conduct; or

(ii) artificially generated and depicts an individual with substantial characteristics of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child sexual abuse material or vulnerable adult sexual abuse material with or without consideration.

(3) "Identifiable minor" means [~~a person~~] an individual:

(a) (i) who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual [~~person~~] individual by the [~~person's~~] individual's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

(4) "Identifiable vulnerable adult" means [~~a person~~] an individual:

(a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted, or modified; or

57 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the
58 visual depiction; and

59 (b) who is recognizable as an actual ~~[person]~~ individual by the ~~[person's]~~ individual's
60 face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable
61 feature.

62 (5) "Lacks capacity to consent" ~~[is-as]~~ means the same as that term is defined in
63 Section [76-5-111.4](#).

64 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
65 performed by live actors in person.

66 (7) "Minor" means ~~[a person]~~ an individual who is younger than 18 years old.

67 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
68 genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is
69 less than completely and opaquely covered.

70 (9) "Produce" means:

71 (a) the photographing, filming, taping, directing, producing, creating, designing, or
72 composing of child sexual abuse material or vulnerable adult sexual abuse material; or

73 (b) the securing or hiring of ~~[persons]~~ individuals to engage in the photographing,
74 filming, taping, directing, producing, creating, designing, or composing of child sexual abuse
75 material or vulnerable adult sexual abuse material.

76 (10) "Sexually explicit conduct" means actual or simulated:

77 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
78 whether between ~~[persons]~~ individuals of the same or opposite sex;

79 (b) masturbation;

80 (c) bestiality;

81 (d) sadistic or masochistic activities;

82 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
83 ~~[person]~~ individual;

84 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
85 arousal of any ~~[person]~~ individual;

86 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

87 (h) the explicit representation of the defecation or urination functions.

88 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of
89 sexually explicit conduct which duplicates, within the perception of an average person, the
90 appearance of an actual act of sexually explicit conduct.

91 (12) "Vulnerable adult" ~~[is as]~~ means the same as that term is defined in Subsection
92 76-5-111(1).

93 (13) "Vulnerable adult sexual abuse material" means any visual depiction, including
94 any live performance, photograph, film, video, picture, or computer or computer-generated
95 image or picture, whether made or produced by electronic, mechanical, or other means, of
96 sexually explicit conduct, where:

97 (a) the production of the visual depiction involves the use of a vulnerable adult
98 engaging in sexually explicit conduct;

99 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

100 or

101 (c) the visual depiction has been created, adapted, or modified to appear that an
102 identifiable vulnerable adult is engaging in sexually explicit conduct.

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

104 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

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

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

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

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

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

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

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

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

116 ~~[(†)]~~ (a) the defendant:

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

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

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

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

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

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

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

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

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

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

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

139 (d) a juror who may be required to view child sexual abuse material during the course
140 of the individual's service as a juror;

141 (e) an attorney or employee of an attorney who is required to view child sexual abuse
142 material during the course of a judicial process and while acting within the scope of
143 employment;

144 (f) an employee of the Department of Health and Human Services who is required to
145 view child sexual abuse material within the scope of the employee's employment; or

146 (g) an attorney who is required to view child sexual abuse material within the scope of
147 the attorney's responsibility to represent the Department of Health and Human Services,
148 including the divisions and offices within the Department of Health and Human Services.

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

150 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

151 (1) As used in this section:

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

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

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

156 (a) intentionally distributes child sexual abuse material;

157 (b) knowingly produces child sexual abuse material; or

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

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

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

164 (c) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse
165 material depicts an individual who is:

166 (i) 14 years old or older; or

167 (ii) pubescent.

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

169 (a) for each minor depicted in the child sexual abuse material; and

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

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

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

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

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

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

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

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

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

187 (d) a juror who may be required to view child sexual abuse material during the course
188 of the individual's service as a juror;

189 (e) an attorney or employee of an attorney who is required to view child sexual abuse
190 material during the course of a judicial process and while acting within the scope of
191 employment;

192 (f) an employee of the Department of Health and Human Services who is required to
193 view child sexual abuse material within the scope of the employee's employment; or

194 (g) an attorney who is required to view child sexual abuse material within the scope of
195 the attorney's responsibility to represent the Department of Health and Human Services,
196 including the divisions and offices within the Department of Health and Human Services.

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

198 **76-5b-303. Severability.**

199 (1) If any provision of this chapter or the application of any provision to any person or
200 circumstance is held invalid by a final decision of a court, the remainder of this chapter shall be
201 given effect without the invalid provision or application.

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

203 Section 5. **Effective date.**

204 This bill takes effect on May 1, 2024.