

**SEXUAL OFFENSE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the offense of sexual conduct without affirmative consent.

**Highlighted Provisions:**

This bill:

- ▶ creates a third degree felony offense of sexual conduct without affirmative consent;
- ▶ amends the Sex and Kidnap Offender Registry to include the offense of sexual conduct without affirmative consent; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-41-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2 and further amended by Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2

ENACTS:

**76-5-406.1**, Utah Code Annotated 1953



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

29 Section 1. Section **76-5-406.1** is enacted to read:

30 **76-5-406.1. Sexual conduct without affirmative consent.**

31 (1) As used in this section:

32 (a) "Affirmative consent" means words or actions by an individual who is competent to  
33 give informed consent indicating a freely given agreement to engage in sexual conduct at the  
34 time of the act.

35 (b) "Sexual conduct" means:

36 (i) engaging in sexual intercourse with another individual;

37 (ii) causing the penetration, however slight, of the genital or anal opening of another  
38 individual who is 14 years old or older, by any foreign object, substance, instrument, or device,  
39 including a part of the human body other than the mouth or genitals, with intent to cause  
40 substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the  
41 sexual desire of any individual; or

42 (iii) engaging in any sexual act with an individual who is 14 years old or older  
43 involving the genitals of one individual and the mouth or anus of another individual, regardless  
44 of the sex of either participant.

45 (2) Except as provided in Subsection (4), an individual commits sexual conduct  
46 without affirmative consent if the individual intentionally or knowingly engages in sexual  
47 conduct with another individual without that other individual's affirmative consent.

48 (3) A violation of Subsection (2) is a third degree felony, unless committed by an  
49 individual under 18 years old, in which case the violation of Subsection (2) is a class A  
50 misdemeanor.

51 (4) This section does not apply if, for the same conduct, the individual is guilty of a  
52 violation of another provision of this part that is punishable by a higher penalty.

53 (5) Affirmative consent to one sexual act, or prior consensual sexual activity between  
54 or with any individual, does not necessarily constitute affirmative consent to another sexual act.

55 (6) Affirmative consent initially given may be withdrawn through words or conduct at  
56 any time before or during sexual activity.

57 (7) This section does not alter the requirement in Utah law that the prosecution will  
58 bear the burden of proof under this section on all elements of the offense, as defined in

59 Subsection 76-1-501(2).

60 Section 2. Section 77-41-102 is amended to read:

61 **77-41-102. Definitions.**

62 As used in this chapter:

63 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
64 Safety established in section 53-10-201.

65 (2) "Business day" means a day on which state offices are open for regular business.

66 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
67 Identification showing that the offender has met the requirements of Section 77-41-112.

68 (4) "Department" means the Department of Corrections.

69 (5) "Division" means the Division of Juvenile Justice Services.

70 (6) "Employed" or "carries on a vocation" includes employment that is full time or part  
71 time, whether financially compensated, volunteered, or for the purpose of government or  
72 educational benefit.

73 (7) "Indian Country" means:

74 (a) all land within the limits of any Indian reservation under the jurisdiction of the  
75 United States government, regardless of the issuance of any patent, and includes rights-of-way  
76 running through the reservation;

77 (b) all dependent Indian communities within the borders of the United States whether  
78 within the original or subsequently acquired territory, and whether or not within the limits of a  
79 state; and

80 (c) all Indian allotments, including the Indian allotments to which the Indian titles have  
81 not been extinguished, including rights-of-way running through the allotments.

82 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any  
83 property under the jurisdiction of the United States military, Canada, the United Kingdom,  
84 Australia, or New Zealand.

85 (9) "Kidnap offender" means any individual, other than a natural parent of the victim:

86 (a) who has been convicted in this state of a violation of:

87 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;

88 (ii) Section 76-5-301.1, child kidnapping;

89 (iii) Section 76-5-302, aggravated kidnapping;

- 90 (iv) Section 76-5-308, human trafficking for labor and human smuggling;
- 91 (v) Section 76-5-308, human smuggling, when the individual smuggled is under 18
- 92 years old;
- 93 (vi) Section 76-5-308.5, human trafficking of a child for labor;
- 94 (vii) Section 76-5-310, aggravated human trafficking and aggravated human
- 95 smuggling, on or after May 10, 2011;
- 96 (viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or
- 97 (ix) attempting, soliciting, or conspiring to commit any felony offense listed in
- 98 Subsections (9)(a)(i) through (iii);
- 99 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
- 100 to commit a crime in another jurisdiction, including any state, federal, or military court that is
- 101 substantially equivalent to the offenses listed in Subsection (9)(a); and
- 102 (ii) who is:
- 103 (A) a Utah resident; or
- 104 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 105 10 or more days, regardless of whether or not the offender intends to permanently reside in this
- 106 state;
- 107 (c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of
- 108 original conviction;
- 109 (B) who is required to register as a kidnap offender by any state, federal, or military
- 110 court; or
- 111 (C) who would be required to register as a kidnap offender if residing in the
- 112 jurisdiction of the conviction regardless of the date of the conviction or any previous
- 113 registration requirements; and
- 114 (ii) in any 12-month period, who is in this state for a total of 10 or more days,
- 115 regardless of whether or not the offender intends to permanently reside in this state;
- 116 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
- 117 (B) who is a student in this state; and
- 118 (ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any
- 119 substantially equivalent offense in another jurisdiction; or
- 120 (B) as a result of the conviction, who is required to register in the individual's state of

121 residence;

122 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction  
123 of one or more offenses listed in Subsection (9); or

124 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in  
125 Subsection (9)(a); and

126 (ii) who has been committed to the division for secure care, as defined in Section  
127 80-1-102, for that offense and:

128 (A) the individual remains in the division's custody until 30 days before the individual's  
129 21st birthday; or

130 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual  
131 under Section 80-6-605, the individual remains in the division's custody until 30 days before  
132 the individual's 25th birthday.

133 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the  
134 minor's noncustodial parent.

135 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender  
136 as defined in Subsection (17).

137 (12) "Online identifier" or "Internet identifier":

138 (a) means any electronic mail, chat, instant messenger, social networking, or similar  
139 name used for Internet communication; and

140 (b) does not include date of birth, social security number, PIN number, or Internet  
141 passwords.

142 (13) "Primary residence" means the location where the offender regularly resides, even  
143 if the offender intends to move to another location or return to another location at any future  
144 date.

145 (14) "Register" means to comply with the requirements of this chapter and  
146 administrative rules of the department made under this chapter.

147 (15) "Registration website" means the Sex and Kidnap Offender Notification and  
148 Registration website described in Section 77-41-110 and the information on the website.

149 (16) "Secondary residence" means any real property that the offender owns or has a  
150 financial interest in, or any location where, in any 12-month period, the offender stays  
151 overnight a total of 10 or more nights when not staying at the offender's primary residence.

- 152 (17) "Sex offender" means any individual:
- 153 (a) convicted in this state of:
- 154 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
- 155 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
- 156 2011;
- 157 (iii) Section 76-5-308, human trafficking for sexual exploitation;
- 158 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 159 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 160 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 161 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in
- 162 Subsection 76-5-401(3)(b) or (c);
- 163 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection
- 164 76-5-401.1(3);
- 165 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 166 (x) Section 76-5-402, rape;
- 167 (xi) Section 76-5-402.1, rape of a child;
- 168 (xii) Section 76-5-402.2, object rape;
- 169 (xiii) Section 76-5-402.3, object rape of a child;
- 170 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- 171 (xv) Section 76-5-403.1, sodomy on a child;
- 172 (xvi) Section 76-5-404, forcible sexual abuse;
- 173 (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a
- 174 child;
- 175 (xviii) Section 76-5-405, aggravated sexual assault;
- 176 (xix) Section 76-5-406.1, sexual conduct without affirmative consent:
- 177 (A) if the individual has previously been convicted within the 10 years preceding the
- 178 offense of the same offense or another offense described in Subsection (9) or in this Subsection
- 179 (17); or
- 180 (B) on a first conviction if the individual was 18 years old or older at the time of the
- 181 offense;
- 182 [~~xix~~] (xx) Section 76-5-412, custodial sexual relations, when the individual in

183 custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;

184 [~~(xx)~~] (xxi) Section 76-5b-201, sexual exploitation of a minor;

185 [~~(xxi)~~] (xxii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;

186 [~~(xxii)~~] (xxiii) Section 76-7-102, incest;

187 [~~(xxiii)~~] (xxiv) Section 76-9-702, lewdness, if the individual has been convicted of the

188 offense four or more times;

189 [~~(xxiv)~~] (xxv) Section 76-9-702.1, sexual battery, if the individual has been convicted

190 of the offense four or more times;

191 [~~(xxv)~~] (xxvi) any combination of convictions of Section 76-9-702, lewdness, and of

192 Section 76-9-702.1, sexual battery, that total four or more convictions;

193 [~~(xxvi)~~] (xxvii) Section 76-9-702.5, lewdness involving a child;

194 [~~(xxvii)~~] (xxviii) a felony or class A misdemeanor violation of Section 76-9-702.7,

195 voyeurism;

196 [~~(xxviii)~~] (xxix) Section 76-10-1306, aggravated exploitation of prostitution; or

197 [~~(xxix)~~] (xxx) attempting, soliciting, or conspiring to commit any felony offense listed

198 in this Subsection (17)(a);

199 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy

200 to commit a crime in another jurisdiction, including any state, federal, or military court that is

201 substantially equivalent to the offenses listed in Subsection (17)(a); and

202 (ii) who is:

203 (A) a Utah resident; or

204 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of

205 10 or more days, regardless of whether the offender intends to permanently reside in this state;

206 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of

207 original conviction;

208 (B) who is required to register as a sex offender by any state, federal, or military court;

209 or

210 (C) who would be required to register as a sex offender if residing in the jurisdiction of

211 the original conviction regardless of the date of the conviction or any previous registration

212 requirements; and

213 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,

214 regardless of whether or not the offender intends to permanently reside in this state;  
215 (d) (i) (A) who is a nonresident regularly employed or working in this state; or  
216 (B) who is a student in this state; and  
217 (ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any  
218 substantially equivalent offense in any jurisdiction; or  
219 (B) who is, as a result of the conviction, required to register in the individual's  
220 jurisdiction of residence;  
221 (e) who is found not guilty by reason of insanity in this state, or in any other  
222 jurisdiction of one or more offenses listed in Subsection (17)(a); or  
223 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in  
224 Subsection (17)(a); and  
225 (ii) who has been committed to the division for secure care, as defined in Section  
226 80-1-102, for that offense and:  
227 (A) the individual remains in the division's custody until 30 days before the individual's  
228 21st birthday; or  
229 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual  
230 under Section 80-6-605, the individual remains in the division's custody until 30 days before  
231 the individual's 25th birthday.  
232 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,  
233 Driving Under the Influence and Reckless Driving.  
234 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in  
235 any jurisdiction.