

**UNLAWFUL DETENTION AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding the offense of unlawful detention.

**Highlighted Provisions:**

This bill:

▶ creates the offense of unlawful detention of a minor when a person 18 years of age or older causes a minor who is 14 or 15 years of age to stay with the person without the consent of the minor's parent or guardian, and in a situation that is not the offense of kidnapping.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-21-501**, as last amended by Laws of Utah 2011, Chapter 320

**76-5-302**, as last amended by Laws of Utah 2007, Chapter 339

**76-5-304**, as last amended by Laws of Utah 2001, Chapter 301

**76-5-306**, as enacted by Laws of Utah 2001, Chapter 301

**77-36-1**, as last amended by Laws of Utah 2011, Chapters 113 and 320

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

29 Section 1. Section **31A-21-501** is amended to read:

30 **31A-21-501. Definitions.**

31 For purposes of this part:

32 (1) "Applicant" means:

33 (a) in the case of an individual life or accident and health policy, the person who seeks  
34 to contract for insurance benefits; or

35 (b) in the case of a group life or accident and health policy, the proposed certificate  
36 holder.

37 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an  
38 individual who is 16 years of age or older who:

39 (a) is or was a spouse of the other party;

40 (b) is or was living as if a spouse of the other party;

41 (c) is related by blood or marriage to the other party;

42 (d) has one or more children in common with the other party; or

43 (e) resides or has resided in the same residence as the other party.

44 (3) "Child abuse" means the commission or attempt to commit against a child a  
45 criminal offense described in:

46 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

47 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

48 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or

49 (d) Section 76-9-702.5, Lewdness Involving a Child.

50 (4) "Domestic violence" means any criminal offense involving violence or physical

51 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to

52 commit a criminal offense involving violence or physical harm, when committed by one

53 cohabitant against another and includes commission or attempt to commit, any of the following

54 offenses by one cohabitant against another:

55 (a) aggravated assault, as described in Section 76-5-103;

56 (b) assault, as described in Section 76-5-102;

57 (c) criminal homicide, as described in Section 76-5-201;

58 (d) harassment, as described in Section 76-5-106;

- 59 (e) electronic communication harassment, as described in Section 76-9-201;
- 60 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections  
61 76-5-301, 76-5-301.1, and 76-5-302;
- 62 (g) mayhem, as described in Section 76-5-105;
- 63 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Section 76-5b-201;
- 64 (i) stalking, as described in Section 76-5-106.5;
- 65 (j) unlawful detention or unlawful detention of a minor, as described in Section  
66 76-5-304;
- 67 (k) violation of a protective order or ex parte protective order, as described in Section  
68 76-5-108;
- 69 (l) any offense against property described in Title 76, Chapter 6, Part 1, [~~2, or 3~~]  
70 Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 71 (m) possession of a deadly weapon with intent to assault, as described in Section  
72 76-10-507; or
- 73 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
74 person, building, or vehicle, as described in Section 76-10-508.
- 75 (5) "Subject of domestic abuse" means an individual who is, has been, may currently  
76 be, or may have been subject to domestic violence or child abuse.
- 77 Section 2. Section **76-5-302** is amended to read:
- 78 **76-5-302. Aggravated kidnaping.**
- 79 (1) An actor commits aggravated kidnaping if the actor, in the course of committing  
80 unlawful detention, unlawful detention of a minor, or kidnaping:
- 81 (a) possesses, uses, or threatens to use a dangerous weapon as defined in Section  
82 76-1-601; or
- 83 (b) acts with intent:
- 84 (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a  
85 third person to engage in particular conduct or to forbear from engaging in particular conduct;
- 86 (ii) to facilitate the commission, attempted commission, or flight after commission or  
87 attempted commission of a felony;
- 88 (iii) to hinder or delay the discovery of or reporting of a felony;
- 89 (iv) to inflict bodily injury on or to terrorize the victim or another;

90 (v) to interfere with the performance of any governmental or political function; or  
91 (vi) to commit a sexual offense as described in [~~Title 76, Chapter 5,~~] Part 4, Sexual  
92 Offenses.

93 (2) As used in this section, "in the course of committing unlawful detention, unlawful  
94 detention of a minor, or kidnapping" means in the course of committing, attempting to commit,  
95 or in the immediate flight after the attempt or commission of a violation of:

96 (a) Section 76-5-301, kidnapping; or

97 (b) Section 76-5-304, unlawful detention or unlawful detention of a minor.

98 (3) Aggravated kidnapping is a first degree felony punishable by a term of  
99 imprisonment of:

100 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and  
101 which may be for life;

102 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact  
103 finds that during the course of the commission of the aggravated kidnapping the defendant  
104 caused serious bodily injury to another; or

105 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
106 aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

107 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a  
108 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and  
109 states the reasons for this finding on the record, the court may impose a term of imprisonment  
110 of not less than:

111 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

112 (b) for purposes of Subsection (3)(a) or (b):

113 (i) 10 years and which may be for life; or

114 (ii) six years and which may be for life.

115 (5) The provisions of Subsection (4) do not apply when a person is sentenced under  
116 Subsection (3)(c).

117 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

118 Section 3. Section **76-5-304** is amended to read:

119 **76-5-304. Unlawful detention and unlawful detention of a minor.**

120 (1) An actor commits unlawful detention if the actor intentionally or knowingly,

121 without authority of law, and against the will of the victim, detains or restrains the victim under  
122 circumstances not constituting a violation of:

- 123 (a) kidnapping, Section 76-5-301;
- 124 (b) child kidnapping, Section 76-5-301.1; or
- 125 (c) aggravated kidnapping, Section 76-5-302.

126 (2) An actor commits unlawful detention of a minor if the actor intentionally or  
127 knowingly, without authority of law, and against the will of the victim, exerts influence over  
128 the victim that causes the victim to remain with the actor for a substantial period of time, and:

129 (a) the act is under circumstances not constituting a violation of:

- 130 (i) kidnapping, Section 76-5-301;
- 131 (ii) child kidnapping, Section 76-5-301.1; or
- 132 (iii) aggravated kidnapping, Section 76-5-302; and

133 (b) the actor is 18 years of age or older.

134 ~~[(2)]~~ (3) As used in this section, acting "against the will of the victim" includes acting  
135 without the consent of the legal guardian or custodian of a victim who is:

- 136 (a) a mentally incompetent person[-]; or
- 137 (b) a minor who is 14 or 15 years of age.

138 ~~[(3)]~~ (4) Unlawful detention is a class B misdemeanor.

139 Section 4. Section **76-5-306** is amended to read:

140 **76-5-306. Lesser included offenses.**

141 In this part, the following offenses are lesser included offenses of Section 76-5-302,  
142 aggravated kidnapping:

- 143 (1) Section 76-5-301, kidnapping; and
- 144 (2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

145 Section 5. Section **77-36-1** is amended to read:

146 **77-36-1. Definitions.**

147 As used in this chapter:

- 148 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.
- 149 (2) "Department" means the Department of Public Safety.
- 150 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
151 3, Divorce.

152 (4) "Domestic violence" means any criminal offense involving violence or physical  
153 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to  
154 commit a criminal offense involving violence or physical harm, when committed by one  
155 cohabitant against another. "Domestic violence" also means commission or attempt to commit,  
156 any of the following offenses by one cohabitant against another:

- 157 (a) aggravated assault, as described in Section 76-5-103;
- 158 (b) assault, as described in Section 76-5-102;
- 159 (c) criminal homicide, as described in Section 76-5-201;
- 160 (d) harassment, as described in Section 76-5-106;
- 161 (e) electronic communication harassment, as described in Section 76-9-201;
- 162 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
163 76-5-301, 76-5-301.1, and 76-5-302;
- 164 (g) mayhem, as described in Section 76-5-105;
- 165 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
166 Section 76-5b-201, Sexual Exploitation of a Minor;
- 167 (i) stalking, as described in Section 76-5-106.5;
- 168 (j) unlawful detention or unlawful detention of a minor, as described in Section  
169 76-5-304;
- 170 (k) violation of a protective order or ex parte protective order, as described in Section  
171 76-5-108;
- 172 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property  
173 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 174 (m) possession of a deadly weapon with intent to assault, as described in Section  
175 76-10-507;
- 176 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
177 person, building, or vehicle, as described in Section 76-10-508;
- 178 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
179 conduct is the result of a plea agreement in which the defendant was originally charged with  
180 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction  
181 of disorderly conduct as a domestic violence offense, in the manner described in this  
182 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18

183 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.  
184 Section 921 et seq.; or

185 (p) child abuse as described in Section 76-5-109.1.

186 (5) "Jail release agreement" means a written agreement:

187 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
188 may have with an alleged victim or other specified individuals; and

189 (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5  
190 (2).

191 (6) "Jail release court order" means a written court order:

192 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
193 may have with an alleged victim or other specified individuals; and

194 (b) specifying other conditions of release from jail as required in Subsection  
195 77-36-2.5(2).

196 (7) "Marital status" means married and living together, divorced, separated, or not  
197 married.

198 (8) "Married and living together" means a man and a woman whose marriage was  
199 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

200 (9) "Not married" means any living arrangement other than married and living together,  
201 divorced, or separated.

202 (10) "Pretrial protective order" means a written order:

203 (a) specifying and limiting the contact a person who has been charged with a domestic  
204 violence offense may have with an alleged victim or other specified individuals; and

205 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(3)(c),  
206 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

207 (11) "Sentencing protective order" means a written order of the court as part of  
208 sentencing in a domestic violence case that limits the contact a person who has been convicted  
209 of a domestic violence offense may have with a victim or other specified individuals pursuant  
210 to Sections 77-36-5 and 77-36-5.1.

211 (12) "Separated" means a man and a woman who have had their marriage solemnized  
212 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

213 (13) "Victim" means a cohabitant who has been subjected to domestic violence.

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**Legislative Review Note**  
**as of 2-13-12 7:09 AM**

**Office of Legislative Research and General Counsel**