

SEXUAL OFFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: _____

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- defines terms;
- 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 and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

77-41-102 (Superseded 07/01/24), as last amended by Laws of Utah 2023, Chapter 123

77-41-102 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 123,

128

ENACTS:

76-5-406.1, Utah Code Annotated 1953



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

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

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

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

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

(ii) "Sexual conduct" means:

(A) engaging in sexual intercourse with another individual;

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

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

(b) Terms defined in Section [76-1-101.5](#) apply to this section.

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

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) A violation of Subsection (2) is a class A misdemeanor if it is committed by an individual under 18 years old at the time of the offense.

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

(5) Affirmative consent to one sexual act or affirmative consent to a prior sexual act does not, without more, constitute affirmative consent to another sexual act.

(6) Affirmative consent initially given may be withdrawn through words or conduct at

any time before or during sexual activity.

(7) This section does not alter the requirement in Utah law that the prosecution will bear the burden of proof under this section on all elements of the offense, as defined in Subsection 76-1-501(2).

Section 2. Section **77-41-102 (Superseded 07/01/24)** is amended to read:

77-41-102 (Superseded 07/01/24). Definitions.

As used in this chapter:

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

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

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

(4) (a) "Convicted" means a plea or conviction of:

(i) guilty;

(ii) guilty with a mental condition; or

(iii) no contest.

(b) "Convicted" includes, unless otherwise specified, the period a plea is held in abeyance pursuant to a plea in abeyance agreement as defined in Section [77-2a-1](#).

(c) "Convicted" does not include:

(i) a withdrawn or dismissed plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section [80-6-701](#).

(5) "Department" means the Department of Corrections.

(6) "Division" means the Division of Juvenile Justice Services.

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

(8) "Indian Country" means:

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

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

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

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

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

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

(i) Subsection 76-5-301(2)(c) or (d), kidnapping;

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

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

(iv) Section 76-5-308, human trafficking for labor;

(v) Section 76-5-308.3, human smuggling;

(vi) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years old;

(vii) Section 76-5-308.5, human trafficking of a child for labor;

(viii) Section 76-5-310, aggravated human trafficking;

(ix) Section 76-5-310.1, aggravated human smuggling;

(x) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

(xi) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (10)(a)(i) through (x);

(b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (10)(a); and

(ii) who is:

(A) a Utah resident; or

(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of original conviction;

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

(C) who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, who is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) (i) (A) who is a nonresident regularly employed or working in this state; or

(B) who is a student in this state; and

(ii) (A) who was convicted of one or more offenses listed in this Subsection (10), or any substantially equivalent offense in another jurisdiction; or

(B) as a result of the conviction, who is required to register in the individual's state of residence;

(e) who is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in this Subsection (10); or

(f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (10)(a); and

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

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

(B) the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

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

(12) "Offender" means a kidnap offender as defined in Subsection (10) or a sex

offender as defined in Subsection (18).

(13) "Online identifier" or "Internet identifier":

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

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

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

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

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

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

(18) "Sex offender" means any individual:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult;

(iii) Section 76-5-308.1, human trafficking for sexual exploitation;

(iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

(v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

(vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

(vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);

(viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection 76-5-401.1(3);

(ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(x) Section 76-5-402, rape;

(xi) Section 76-5-402.1, rape of a child;

(xii) Section 76-5-402.2, object rape;
(xiii) Section 76-5-402.3, object rape of a child;
(xiv) a felony violation of Section 76-5-403, forcible sodomy;
(xv) Section 76-5-403.1, sodomy on a child;
(xvi) Section 76-5-404, forcible sexual abuse;
(xvii) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child;
(xviii) Section 76-5-405, aggravated sexual assault;
(xix) Section 76-5-406.1, sexual conduct without affirmative consent, if the individual was 18 years old or older at the time of the offense;
~~[(xix)]~~ (xx) Section 76-5-412, custodial sexual relations, when the individual in custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;
~~[(xx)]~~ (xxi) Section 76-5b-201, sexual exploitation of a minor;
~~[(xxi)]~~ (xxii) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
~~[(xxii)]~~ (xxiii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
~~[(xxiii)]~~ (xxiv) Section 76-7-102, incest;
~~[(xxiv)]~~ (xxv) Section 76-9-702, lewdness, if the individual has been convicted of the offense four or more times;
~~[(xxv)]~~ (xxvi) Section 76-9-702.1, sexual battery, if the individual has been convicted of the offense four or more times;
~~[(xxvi)]~~ (xxvii) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
~~[(xxvii)]~~ (xxviii) Section 76-9-702.5, lewdness involving a child;
~~[(xxviii)]~~ (xxix) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
~~[(xxix)]~~ (xxx) Section 76-10-1306, aggravated exploitation of prostitution; or
~~[(xxx)]~~ (xxxi) attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (18)(a);
(b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (18)(a); and

214 (ii) who is:
215 (A) a Utah resident; or
216 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
217 10 or more days, regardless of whether the offender intends to permanently reside in this state;
218 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of
219 original conviction;
220 (B) who is required to register as a sex offender by any state, federal, or military court;
221 or
222 (C) who would be required to register as a sex offender if residing in the jurisdiction of
223 the original conviction regardless of the date of the conviction or any previous registration
224 requirements; and
225 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,
226 regardless of whether or not the offender intends to permanently reside in this state;
227 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
228 (B) who is a student in this state; and
229 (ii) (A) who was convicted of one or more offenses listed in Subsection (18)(a), or any
230 substantially equivalent offense in any jurisdiction; or
231 (B) who is, as a result of the conviction, required to register in the individual's
232 jurisdiction of residence;
233 (e) who is found not guilty by reason of insanity in this state, or in any other
234 jurisdiction of one or more offenses listed in Subsection (18)(a); or
235 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
236 Subsection (18)(a); and
237 (ii) who has been committed to the division for secure care, as defined in Section
238 80-1-102, for that offense if:
239 (A) the individual remains in the division's custody until 30 days before the individual's
240 21st birthday;
241 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
242 under Section 80-6-605 and the individual remains in the division's custody until 30 days
243 before the individual's 25th birthday; or
244 (C) the individual is moved from the division's custody to the custody of the

department before expiration of the division's jurisdiction over the individual.

(19) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(20) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Section 3. Section **77-41-102 (Effective 07/01/24)** is amended to read:

77-41-102 (Effective 07/01/24). Definitions.

As used in this chapter:

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

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

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

(4) (a) "Convicted" means a plea or conviction of:

(i) guilty;

(ii) guilty with a mental illness; or

(iii) no contest.

(b) "Convicted" includes, unless otherwise specified, the period a plea is held in abeyance pursuant to a plea in abeyance agreement as defined in Section [77-2a-1](#).

(c) "Convicted" does not include:

(i) a withdrawn or dismissed plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section [80-6-701](#).

(5) "Department" means the Department of Public Safety.

(6) "Division" means the Division of Juvenile Justice Services.

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

(8) "Indian Country" means:

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

running through the reservation;

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

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

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

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

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

(i) Subsection 76-5-301(2)(c) or (d), kidnapping;

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

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

(iv) Section 76-5-308, human trafficking for labor;

(v) Section 76-5-308.3, human smuggling;

(vi) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years old;

(vii) Section 76-5-308.5, human trafficking of a child for labor;

(viii) Section 76-5-310, aggravated human trafficking;

(ix) Section 76-5-310.1, aggravated human smuggling;

(x) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

(xi) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (10)(a)(i) through (x);

(b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (10)(a); and

(ii) who is:

(A) a Utah resident; or

(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this

307 state;

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

309 original conviction;

310 (B) who is required to register as a kidnap offender by any state, federal, or military

311 court; or

312 (C) who would be required to register as a kidnap offender if residing in the

313 jurisdiction of the conviction regardless of the date of the conviction or any previous

314 registration requirements; and

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

316 regardless of whether or not the offender intends to permanently reside in this state;

317 (d) (i) (A) who is a nonresident regularly employed or working in this state; or

318 (B) who is a student in this state; and

319 (ii) (A) who was convicted of one or more offenses listed in this Subsection (10), or

320 any substantially equivalent offense in another jurisdiction; or

321 (B) as a result of the conviction, who is required to register in the individual's state of

322 residence;

323 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction

324 of one or more offenses listed in this Subsection (10); or

325 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in

326 Subsection (10)(a); and

327 (ii) who has been committed to the division for secure care, as defined in Section

328 80-1-102, for that offense if:

329 (A) the individual remains in the division's custody until 30 days before the individual's

330 21st birthday;

331 (B) the juvenile court extended the juvenile court's jurisdiction over the individual

332 under Section 80-6-605 and the individual remains in the division's custody until 30 days

333 before the individual's 25th birthday; or

334 (C) the individual is moved from the division's custody to the custody of the

335 department before expiration of the division's jurisdiction over the individual.

336 (11) "Natural parent" means a minor's biological or adoptive parent, and includes the

337 minor's noncustodial parent.

(12) "Offender" means a kidnap offender as defined in Subsection (10) or a sex offender as defined in Subsection (18).

(13) "Online identifier" or "Internet identifier":

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

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

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

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

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

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

(18) "Sex offender" means any individual:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult;

(iii) Section 76-5-308.1, human trafficking for sexual exploitation;

(iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

(v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

(vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

(vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);

(viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection 76-5-401.1(3);

(ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(x) Section 76-5-402, rape;

(xi) Section 76-5-402.1, rape of a child;
 (xii) Section 76-5-402.2, object rape;
 (xiii) Section 76-5-402.3, object rape of a child;
 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
 (xv) Section 76-5-403.1, sodomy on a child;
 (xvi) Section 76-5-404, forcible sexual abuse;
 (xvii) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child;
 (xviii) Section 76-5-405, aggravated sexual assault;
 (xix) Section 76-5-406.1, sexual conduct without affirmative consent, if the individual was 18 years old or older at the time of the offense;
~~[(xix)]~~ (xx) Section 76-5-412, custodial sexual relations, when the individual in custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;
~~[(xx)]~~ (xxi) Section 76-5b-201, sexual exploitation of a minor;
~~[(xxi)]~~ (xxii) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
~~[(xxii)]~~ (xxiii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
~~[(xxiii)]~~ (xxiv) Section 76-7-102, incest;
~~[(xxiv)]~~ (xxv) Section 76-9-702, lewdness, if the individual has been convicted of the offense four or more times;
~~[(xxv)]~~ (xxvi) Section 76-9-702.1, sexual battery, if the individual has been convicted of the offense four or more times;
~~[(xxvi)]~~ (xxvii) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
~~[(xxvii)]~~ (xxviii) Section 76-9-702.5, lewdness involving a child;
~~[(xxviii)]~~ (xxix) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
~~[(xxix)]~~ (xxx) Section 76-10-1306, aggravated exploitation of prostitution; or
~~[(xxx)]~~ (xxxi) attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (18)(a);
 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is

400 substantially equivalent to the offenses listed in Subsection (18)(a); and
401 (ii) who is:
402 (A) a Utah resident; or
403 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
404 10 or more days, regardless of whether the offender intends to permanently reside in this state;
405 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of
406 original conviction;
407 (B) who is required to register as a sex offender by any state, federal, or military court;
408 or
409 (C) who would be required to register as a sex offender if residing in the jurisdiction of
410 the original conviction regardless of the date of the conviction or any previous registration
411 requirements; and
412 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,
413 regardless of whether or not the offender intends to permanently reside in this state;
414 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
415 (B) who is a student in this state; and
416 (ii) (A) who was convicted of one or more offenses listed in Subsection (18)(a), or any
417 substantially equivalent offense in any jurisdiction; or
418 (B) who is, as a result of the conviction, required to register in the individual's
419 jurisdiction of residence;
420 (e) who is found not guilty by reason of insanity in this state, or in any other
421 jurisdiction of one or more offenses listed in Subsection (18)(a); or
422 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
423 Subsection (18)(a); and
424 (ii) who has been committed to the division for secure care, as defined in Section
425 80-1-102, for that offense if:
426 (A) the individual remains in the division's custody until 30 days before the individual's
427 21st birthday;
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429 under Section 80-6-605 and the individual remains in the division's custody until 30 days
430 before the individual's 25th birthday; or

431 (C) the individual is moved from the division's custody to the custody of the
432 department before expiration of the division's jurisdiction over the individual.

433 (19) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
434 Driving Under the Influence and Reckless Driving.

435 (20) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
436 any jurisdiction.

437 Section 4. **Effective date.**

438 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

439 (2) The actions affecting Section [77-41-102](#) (Effective 07/01/24) take effect on July 1,
440 2024.