

EXPLOITATION OF A MINOR AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Steve Waldrip

LONG TITLE

General Description:

This bill addresses the offense of sexual exploitation of a minor.

Highlighted Provisions:

This bill:

- ▶ modifies the circumstances under which an affirmative defense is available to the offense of sexual exploitation of a minor; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5b-201, as last amended by Laws of Utah 2019, Chapter 382

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

Section 1. Section **76-5b-201** is amended to read:

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

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

(ii) intentionally distributes or views child pornography; or

(b) if the person is a minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (1)(a).

(2) (a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a second degree felony.

(b) A violation of Subsection (1) for knowingly producing child pornography is a first degree felony if the person produces original child pornography depicting a first degree felony that involves:

(i) the person or another person engaging in conduct with the minor that is a violation of:

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

(B) Section 76-5-402.3, object rape of a child;

(C) Section 76-5-403.1, sodomy on a child; or

(D) Section 76-5-404.1, aggravated sexual abuse of a child; or

(ii) the minor being physically abused, as defined in Section 78A-6-105.

(3) It is a separate offense under this section:

(a) for each minor depicted in the child pornography; and

(b) for each time the same minor is depicted in different child pornography.

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

(b) For a charge of violating this section for knowingly possessing or intentionally viewing child pornography, it is an affirmative defense that:

(i) the defendant:

(A) did not solicit the child pornography from the minor depicted in the child pornography;

(B) is not more than two years older than the minor depicted in the child pornography; and

(C) upon request of a law enforcement agent or the minor depicted in the child pornography, removes from an electronic device or destroys the child pornography and all copies of the child pornography in the defendant's possession; and

(ii) the child pornography does not depict an offense under Title 76, Chapter 5, Part 4, Sexual Offenses.

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

(6) This section may not be construed to impose criminal or civil liability on:

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

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

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

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

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

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Human Services who is required to view child pornography within the scope of the employee's employment; or

(g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of Human Services, including the divisions and offices within the Department of Human Services.