

1 **CONSENT DEFINITION FOR SEXUAL OFFENSE**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Angela Romero**

5 Senate Sponsor: Todd Weiler

6	Cosponsors:	Susan Duckworth	Justin J. Miller
7	Patrice M. Arent	Rebecca P. Edwards	Carol Spackman Moss
8	Joel K. Briscoe	Sandra Hollins	Marie H. Poulson
9	Rebecca Chavez-Houck	Brad King	Mark A. Wheatley
10	Sophia M. DiCaro	Brian S. King	

11

12 **LONG TITLE**

13 **General Description:**

14 This bill modifies the definition of consent in the Criminal Code regarding sexual
15 offenses.

16 **Highlighted Provisions:**

17 This bill:

18 ▶ amends the definition of "without consent of the victim" regarding sexual offenses
19 in the following provisions:

- 20 • when the defendant knows the victim is unconscious or unaware, the provision
21 requiring proof that the victim has not consented is removed; and
- 22 • when the defendant knows that the victim is incapable of understanding or
23 resisting the offense, the cause of the incapacity includes any other reason, in
24 addition to the current reasons of mental disease or defect.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **76-5-406**, as last amended by Laws of Utah 2014, Chapters 135 and 141

32

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

34 Section 1. Section **76-5-406** is amended to read:

35 **76-5-406. Sexual offenses against the victim without consent of victim --**

36 **Circumstances.**

37 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
38 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
39 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
40 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
41 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
42 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
43 victim under any of the following circumstances:

44 (1) the victim expresses lack of consent through words or conduct;

45 (2) the actor overcomes the victim through the actual application of physical force or
46 violence;

47 (3) the actor is able to overcome the victim through concealment or by the element of
48 surprise;

49 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
50 immediate future against the victim or any other person, and the victim perceives at the time
51 that the actor has the ability to execute this threat; or

52 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
53 against the victim or any other person, and the victim believes at the time that the actor has the
54 ability to execute this threat;

55 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
56 kidnapping, or extortion;

57 (5) ~~[the victim has not consented and]~~ the actor knows the victim is unconscious,
58 unaware that the act is occurring, or physically unable to resist;

59 (6) the actor knows that as a result of mental disease or defect, or for any other reason
60 the victim is at the time of the act incapable either of appraising the nature of the act or of
61 resisting it;

62 (7) the actor knows that the victim submits or participates because the victim
63 erroneously believes that the actor is the victim's spouse;

64 (8) the actor intentionally impaired the power of the victim to appraise or control his or
65 her conduct by administering any substance without the victim's knowledge;

66 (9) the victim is younger than 14 years of age;

67 (10) the victim is younger than 18 years of age and at the time of the offense the actor
68 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
69 special trust in relation to the victim as defined in Section [76-5-404.1](#);

70 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
71 actor is more than three years older than the victim and entices or coerces the victim to submit
72 or participate, under circumstances not amounting to the force or threat required under
73 Subsection (2) or (4); or

74 (12) the actor is a health professional or religious counselor, as those terms are defined
75 in this Subsection (12), the act is committed under the guise of providing professional
76 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
77 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
78 to the extent that resistance by the victim could not reasonably be expected to have been
79 manifested; for purposes of this Subsection (12):

80 (a) "health professional" means an individual who is licensed or who holds himself or
81 herself out to be licensed, or who otherwise provides professional physical or mental health
82 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
83 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
84 social service worker, clinical social worker, certified social worker, marriage and family

85 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
86 specialist, or substance abuse counselor; and
87 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
88 member of the clergy.