

TITLE 76, CHAPTER 5 REORGANIZATION AND SUBSTANTIAL RECODIFICATION CHANGES

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2022 General Session: Provisions in Title 76, Chapters 5 and 5b were recodified to create uniform subsection structure in offense statutes and to address a few substantive issues per the direction of the [Criminal Code Evaluation Task Force](#). Subsections were reorganized to match the following order as much as possible:

- Subsection (1) Definitions
- Subsection (2) Elements of offense
- Subsection (3) Penalties
- Subsection (4) Limitations/Defenses
- Subsection (5) etc. Limitations/Defenses cont. or additional information

Substantive amendments to create clarity are noted below. Statutes that did not need to be amended based on the standards for this recodification are not included in this chart.

Reference	Change/No Change	Comments
Part 1		
76-5-101: Prisoner defined	Changed to general definition section for Part 1	Part of new structure
76-5-102.6: propelling object or substance at a correctional or peace officer	Added “semen” to list of bodily fluids under Subsection (3)(b)(ii)(A)(I)	Omission appeared to be oversight based on language in statute
76-5-102.6: propelling object or substance at a correctional or peace officer	added employees and volunteers to those included under Subsection (3)(b)(ii)(A)(IV)	Omission appeared to be oversight based on language in statute
76-5-102.9: Propelling a bodily substance or material	Added “semen” to list of bodily fluids in Subsection (1)(a)(i)(A)	Omission appeared to be oversight based on language in statute
76-5-102.9: Propelling a bodily substance or material	Changed “of” to “or” in Subsection (1)(a)(i)(b)	Fixing what was apparently a typo

76-5-106.5: Stalking	Changed references from “person” to “individual”	Language of statute appears to only apply to individuals
76-5-109: Child abuse	Statute broken up into three different sections	Child abuse, aggravated child abuse, and child abandonment.
76-5-109.1: Commission of domestic violence in the presence of a child.	renumbered	New number is 76-5-114
76-5-109.2: Aggravated child abuse (new statute)	Previously was part of 76-5-109 and now is stand-alone statute. Removed affirmative defense concerning reasonable discipline or management of child.	Discussed and voted on at Task Force meeting 9/21/21-- testimony presented indicated that case law provides that reasonable discipline cannot result in serious injury to child
76-5-109.3: Child Abandonment (new statute)	Previously was part of 76-5-109 and now is stand-alone statute. Removed affirmative defenses concerning 1) treatment options for a medical condition of a child and 2) use of physical restraint or force on a child	Discussed and voted on at Task Force meeting 9/21/21-- defenses do not appear to apply to offense of child abandonment
76-5-111: Abuse of a vulnerable adult	Statute broken up into four different stand-alone sections	Abuse of a vulnerable adult, aggravated abuse of a vulnerable adult, personal dignity exploitation of a vulnerable adult, and financial exploitation of a vulnerable adult.
76-5-111.2: Aggravated abuse of a vulnerable adult (new statute)	Previously was part of Section 76-5-111 and now is stand-alone statute	
76-5-111.3: Personal dignity exploitation of a vulnerable adult (new statute)	Previously was part of Section 76-5-111 and now is stand-alone statute. Removed the following: “An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.”	Discussed and voted on at Task Force meeting 9/21/21-- language does not appear to apply to this offense
76-5-111.4: Financial exploitation of a vulnerable adult (new statute)	Previously was part of Section 76-5-111 and now is stand-alone statute. Removed the following: “An adult is not considered abused, neglected, or a	Discussed and voted on at Task Force meeting 9/21/21-- language does not appear to apply to this offense

	vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.”	
76-5-112.5: Endangerment of a child or vulnerable adult	Minor stylistic change	Subsection (6) added due to removal of language at beginning of Subsection (2) that stated: "Unless a greater penalty is otherwise provided by law"
76-5-113. Surreptitious administration of certain substances	Minor stylistic change	Subsection (5)(b) added due to removal of language at beginning of Subsection (2): "In addition to any other offense the actor's conduct may constitute..."
Part 2		
76-5-201: Criminal homicide	<p>Rewrote statute to define “criminal homicide” and clarify that it is an umbrella term for enumerated offenses.</p> <p>Added a cross-reference to existing language on consensual altercations that governs Part 2.</p>	
76-5-202: Aggravated murder	<p>For defined terms that previously only cross-referenced chapters where the term was defined, changed the cross- references to the specific section where definition occurred.</p> <p>Special mitigation language added.</p> <p>Affirmative defense language modified.</p>	<p>See special mitigation comments for Sec. 76-5-205.5.</p> <p>Revised affirmative defense language that previously said if an affirmative defense was found, the defendant was guilty of a lesser offense. For example, a defendant guilty of aggravated murder was instead guilty of murder. Recodified language states that if the trier of fact finds that the original offense is proved beyond a reasonable doubt, and also finds that evidence in support of an affirmative defense is not disproved beyond a reasonable doubt, the court shall:</p> <ul style="list-style-type: none"> • If the trier of fact finds the defendant guilty of aggravated murder, shall enter a judgment of conviction for murder; or

		<ul style="list-style-type: none"> If the trier of fact finds the defendant guilty of attempted aggravated murder, shall enter a judgment of conviction for attempted murder.
76-5-203: Murder – Penalties – Affirmative defense and special mitigation – Separate offense	Special mitigation language added. Affirmative defense language modified.	See special mitigation comments for Sec. 76-5-205.5. Revised affirmative defense language that previously said if an affirmative defense was found, the defendant was guilty of a lesser offense. For example, a defendant guilty of aggravated murder was instead guilty of murder. Recodified language states that if the trier of fact finds that the original offense is proved beyond a reasonable doubt, and also finds that evidence in support of an affirmative defense is not disproved beyond a reasonable doubt, the court shall: <ul style="list-style-type: none"> If the trier of fact finds the defendant guilty of murder, shall enter a judgment of conviction for manslaughter; or If the trier of fact finds the defendant guilty of attempted murder, shall enter a judgment of conviction for attempted manslaughter.
76-5-205.5: Special mitigation for mental illness or provocation reducing the level of criminal homicide offense	Amended	Before recodification, Subsection (5) listed the offenses to which special mitigation could be applied. In those cases, Subsection (5) said that when the trier of fact found the defendant guilty of the original offense, but special mitigation applied, the defendant was guilty of a lesser crime. For example, a defendant guilty of aggravated murder was instead guilty of murder if special mitigation was applied. The original offenses listed were aggravated murder, attempted aggravated murder, murder, and attempted murder. In the recodification, and after discussion with prosecutors and defense attorneys, the language of Subsection (5) was moved into each of the respective original offense statutes (76-5-202

		<p>and 76-5-203) and modified. The recodified language required, if the offense was proved beyond a reasonable doubt and special mitigation established by a preponderance of evidence:</p> <ul style="list-style-type: none"> • Recodified Sec. 76-5-202--the court to enter a judgement of murder if the trier of fact found the defendant guilty of aggravated murder, or the court to enter a judgment of attempted murder if the trier of fact found the defendant guilty of attempted aggravated murder; and • Recodified Sec. 76-5-203--the court to enter a judgement of manslaughter if the trier of fact found the defendant guilty of murder, or the court to enter a judgment of attempted manslaughter if the trier of fact found the defendant guilty of attempted murder. <p>Subsection (8), which said that special mitigation did not reduce a level of an offense by more than one degree, was repealed.</p> <p>Language was also added to clarify that the jury must, consistent with Utah Constitution, Art. I, Sec. 10, unanimously find that the elements of the offense are proven beyond a reasonable doubt.</p>
76-5-210: Targeting a law enforcement officer defined	Repealed	Defined term moved to 76-5-202 where the term appears.
Part 3		
76-5-301: Kidnapping	Substituted “dependent adult” for “mentally incompetent person”	There is no definition of “mentally incompetent person” in the code, but “dependent adult” fits the meaning of the statute
76-5-303.5: Notification of conviction of custodial interference	Created definition of “convicted”	The definition in Section 53-3-102 is very broad with categories that do not apply to this section.
76-5-306: Lesser included offenses	Repealed	Statute not needed
76-5-308: Human trafficking – Human smuggling	Created three statutes from this one	Created Human trafficking for labor

76-5-308.1: Human trafficking for sexual exploitation (new statute)	New statute created from 76-5-308	Language formerly found in Subsection 76-5-308(2)(b) moved to create its own statute
76-5-308.3: Human smuggling – Penalty (new statute)	New statute created from 76-5-308	Language formerly found in Subsection 76-5-308(3)
76-5-309: Benefitting from human trafficking and human smuggling -- Penalties	This statute originally bundled all the penalties for human trafficking and human smuggling, then added that anyone that benefits from those offenses was guilty of the same offense	Put the penalties in the statutes with the offenses and left this one as just “benefitting” from those offenses with its own penalty scheme; changed the boldface to “benefitting” because that’s how it is referenced in other statutes
76-5-310: Aggravated human trafficking	Create two statutes from this one	This statute originally also contained aggravated human smuggling
76-5-310.1: Aggravated human smuggling	New statute created from 76-5-310	
Part 4		
76-5-401: Unlawful sexual activity with a minor	Limitations amended to include an attempt of a limiting offenses	This statute previously did not include “attempt” for limiting offenses. Attempt was added to align with other offenses with similar limitations. The change was approved at 9/21/2021 Task Force meeting.
76-5-401.3: Unlawful adolescent sexual activity	Limitations amended to include an attempt of a limiting offenses	This statute previously did not include “attempt” for limiting offenses. Attempt was added to align with other offenses with similar limitations. The change was approved at 9/21/2021 Task Force meeting.
76-5-404: Forcible sexual assault	Limitations amended to include an attempted object rape	This statute previously included attempt for other limiting offenses but omitted attempted object rape. The change was approved at 9/21/2021 Task Force meeting.
76-5-404.1: Sexual abuse of a child	Broke statute up into two sections	Sexual abuse of a child, Aggravated sexual abuse of a child separated
76-5-404.3: Aggravated sexual abuse of a child (new statute)	New statute from division of 76-5-404.1	Language previously in 76-5-404.1 specific to aggravated sexual abuse of a child moved here. References to “victim” in previous 76-5-404.1(4) changed to “child.”
76-5-407: Applicability of part -- “Penetration” or	Provisions of Subsections (2) and (3) moved to respective offense statutes	Language qualifying commission of “sexual penetration,” “touching,” and “any touching, even if accomplished through

“touching” sufficient to constitute offense.		clothing” was moved to respective offense statute previously enumerated in Subsections (2) and (3).
76-5-412: Custodial sexual relations – Custodial sexual misconduct	Broke statute up into two sections	Custodial sexual relations, Custodial sexual misconduct separated.
76-5-412.2: Custodial sexual misconduct (new statute)	New statute from division of 76-5-412	Language previously in 76-5-412 specific to custodial sexual misconduct moved here. Note: before recodification, 76-5-407(3) stated that “any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of... (f) <u>custodial sexual relations</u> , a violation of Section 76-5-412.” Although this cross-references 76-5-412, which before recodification included custodial sexual relations <i>and</i> custodial sexual misconduct, 76-5-407(3) did not reference misconduct. Therefore, in the recodification, the language in 76-5-407(3) was moved to 76-5-412, custodial sexual relations, but was not repeated/moved to 76-5-412.2, custodial sexual misconduct.
76-5-413: Custodial sexual relations or misconduct with youth receiving state services	Broke statute up into two sections	Custodial sexual relations with youth receiving state services and Custodial sexual misconduct with youth receiving state services separated into two statutes.
76-5-413.2: Custodial sexual misconduct with a youth receiving state services (new statute)	New statute from division of 76-5-413	Language in 76-5-413 specific to custodial sexual misconduct with youth receiving state services moved here.
76-5-416: Indecent liberties—Definition	Repealed	Definition moved to 76-5-401.1. Other statutes using “indecent liberties” cross-referenced to 76-5-401.1.
Part 5	HIV Testing – Sexual Offenders and Victims	This part was moved to Title 53; created 53-10-801 through 53-10-804
Part 6	Sexual Assault Kit Processing Act	This part was moved to Title 53; created 53-10-901 through 53-10-910
Part 7	Genital Mutilation	Technical changes
Chapter 5b	Sexual Exploitation Act	

76-5b-203: Distribution of an intimate image—Penalty	Amended reference to Section 76-1-401	Fixed apparent mistaken reference to “single” criminal episode based on citation to Section 76-1-401, which defines “Single criminal episode”
76-5b-205: Unlawful distribution of a counterfeit intimate image—Penalty	Amended reference to Section 76-1-401	Fixed apparent mistaken reference to “single” criminal episode based on citation to Section 76-1-401, which defines “Single criminal episode”