

CRIMINAL CODE TASK FORCE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies criminal offenses and penalties in the Utah Code.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "health professional" as the term relates to certain sexual offenses;
- ▶ modifies certain criminal offenses and penalties relating to:
 - dealing in material harmful to minors between a young adult and adolescent;
 - obstruction of alcoholic beverage control investigations;
 - registration as a sex offender;
 - rendering a dead body unavailable for postmortem investigation;
 - repeated violations of the Minimum Wage Act; and
 - theft;
- ▶ repeals the criminal offenses of adultery and sodomy;
- ▶ provides immunity from prosecution for the offenses of prostitution and sexual solicitation under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-18.5, as enacted by Laws of Utah 2009, Chapter 223

31A-22-726, as last amended by Laws of Utah 2015, Chapter 283

32B-4-505, as enacted by Laws of Utah 2010, Chapter 276

34-40-204, as last amended by Laws of Utah 1997, Chapter 375

- 33 **53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3
 34 **62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322
 35 **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397
 36 **76-5-403**, as last amended by Laws of Utah 2013, Chapter 81
 37 **76-5-404**, as last amended by Laws of Utah 2018, Chapter 192
 38 **76-5-406**, as last amended by Laws of Utah 2018, Chapter 176
 39 **76-5-407**, as last amended by Laws of Utah 2000, Chapter 128
 40 **76-6-412**, as last amended by Laws of Utah 2018, Chapter 265
 41 **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282
 42 **76-7-305 (Effective 01/01/19)**, as last amended by Laws of Utah 2018, Chapter 282
 43 **76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345
 44 **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433
 45 **76-10-1313**, as last amended by Laws of Utah 2018, Chapter 308
 46 **77-41-107**, as last amended by Laws of Utah 2015, Chapter 210

47 REPEALS:

- 48 **76-7-103**, as last amended by Laws of Utah 1991, Chapter 241

49

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

51 Section 1. Section **26-2-18.5** is amended to read:

52 **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

53 (1) As used in this section:

54 (a) "Medical examiner" [~~is as~~] means the same as that term is defined in Section

55 26-4-2.

56 (b) "Unavailable for postmortem investigation" [~~is as~~] means the same as that term is
 57 defined in Section 26-4-2.

58 (2) It is unlawful for a person to engage in any conduct that makes a dead body
 59 unavailable for postmortem investigation, unless, before engaging in that conduct, the person
 60 obtains a permit from the medical examiner to render the dead body unavailable for
 61 postmortem investigation, under Section 26-4-29[-], if the person intends to make the body
 62 unavailable for postmortem investigation.

63 (3) A person who violates Subsection (2) is guilty of a [~~class B misdemeanor~~] third

64 degree felony.

65 (4) If a person engages in conduct that constitutes both a violation of this section and a
66 violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 [~~supercede~~
67 supersede the provisions and penalties of this section.

68 Section 2. Section **31A-22-726** is amended to read:

69 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**
70 **insurance exchange.**

71 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

72 (a) that is necessary to avert:

73 (i) the death of the woman on whom the abortion is performed; or

74 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
75 of the woman on whom the abortion is performed;

76 (b) of a fetus that has a defect that is documented by a physician or physicians to be
77 uniformly diagnosable and uniformly lethal; or

78 (c) where the woman is pregnant as a result of:

79 (i) rape, as described in Section 76-5-402;

80 (ii) rape of a child, as described in Section 76-5-402.1; or

81 (iii) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102.

82 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
83 coverage is a type of permitted abortion coverage.

84 [~~(3) A person may not offer a health benefit plan that provides coverage for an abortion~~
85 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~
86 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

87 [~~(4)~~] (3) A person may not offer a health benefit plan that provides coverage for an
88 abortion in a health insurance exchange created under the federal Patient Protection and
89 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion
90 coverage.

91 Section 3. Section **32B-4-505** is amended to read:

92 **32B-4-505. Obstructing a search, official proceeding, or investigation.**

93 (1) A person who is in the premises or has charge over premises may not refuse or fail
94 to admit to the premises or obstruct the entry of any of the following who demands entry when

95 acting under this title:

96 (a) a commissioner;

97 (b) an authorized representative of the commission or department; or

98 (c) a law enforcement officer.

99 (2) A person who is in the premises or has charge of the premises may not interfere
100 with any of the following who is conducting an investigation under this title at the premises:

101 (a) a commissioner;

102 (b) an authorized representative of the commission or department; or

103 (c) a law enforcement officer.

104 (3) A person is guilty of a [~~second degree felony~~] class A misdemeanor if, believing
105 that an official proceeding or investigation is pending or about to be instituted under this title,
106 that person:

107 (a) alters, destroys, conceals, or removes a record with a purpose to impair [~~its~~] the
108 record's verity or availability in the proceeding or investigation; or

109 (b) makes, presents, or uses anything that the person knows to be false with a purpose
110 to deceive any of the following who may be engaged in a proceeding or investigation under this
111 title:

112 (i) a commissioner;

113 (ii) an authorized representative of the commission or department;

114 (iii) a law enforcement officer; or

115 (iv) other person.

116 Section 4. Section **34-40-204** is amended to read:

117 **34-40-204. Criminal penalty -- Enforcement.**

118 (1) [~~(a) Repeated violation of this chapter is a class B misdemeanor.~~]

119 [~~(b) "Repeated violations" does not include~~] As used in this section, "violation"

120 includes separate violations as to individual employees arising out of the same investigation or
121 enforcement action.

122 (2) (a) A violation of this chapter is an infraction.

123 (b) A second violation of this chapter is a class C misdemeanor.

124 (c) A third or subsequent violation of this chapter is a class B misdemeanor.

125 [~~(2) Upon the third violation by the same employer within a three-year period, the~~]

126 (3) Upon an employer's violation of this section, the commission may prosecute a
127 criminal action in the name of the state.

128 ~~[(3)]~~ (4) The county attorney, district attorney, or attorney general shall provide
129 assistance in prosecutions under this section at the request of the commission.

130 Section 5. Section **53G-6-707** is amended to read:

131 **53G-6-707. Interstate compact students -- Inclusion in attendance count --**
132 **Foreign exchange students -- Annual report -- Requirements for exchange student**
133 **agencies.**

134 (1) A school district or charter school may include the following students in the
135 district's or school's membership and attendance count for the purpose of apportionment of
136 state money:

137 (a) a student enrolled under an interstate compact, established between the State Board
138 of Education and the state education authority of another state, under which a student from one
139 compact state would be permitted to enroll in a public school in the other compact state on the
140 same basis as a resident student of the receiving state; or

141 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact
142 on Placement of Children.

143 (2) A school district or charter school may:

144 (a) enroll foreign exchange students that do not qualify for state money; and

145 (b) pay for the costs of those students with other funds available to the school district
146 or charter school.

147 (3) Due to the benefits to all students of having the opportunity to become familiar
148 with individuals from diverse backgrounds and cultures, school districts are encouraged to
149 enroll foreign exchange students, as provided in Subsection (2), particularly in schools with
150 declining or stable enrollments where the incremental cost of enrolling the foreign exchange
151 student may be minimal.

152 (4) The board shall make an annual report to the Legislature on the number of
153 exchange students and the number of interstate compact students sent to or received from
154 public schools outside the state.

155 (5) (a) A local school board or charter school governing board shall require each
156 approved exchange student agency to provide it with a sworn affidavit of compliance prior to

157 the beginning of each school year.

158 (b) The affidavit shall include the following assurances:

159 (i) that the agency has complied with all applicable policies of the board;

160 (ii) that a household study, including a background check of all adult residents, has
161 been made of each household where an exchange student is to reside, and that the study was of
162 sufficient scope to provide reasonable assurance that the exchange student will receive proper
163 care and supervision in a safe environment;

164 (iii) that host parents have received training appropriate to their positions, including
165 information about enhanced criminal penalties under Subsection 76-5-406~~(10)~~(2)(j) for
166 persons who are in a position of special trust;

167 (iv) that a representative of the exchange student agency shall visit each student's place
168 of residence at least once each month during the student's stay in Utah;

169 (v) that the agency will cooperate with school and other public authorities to ensure
170 that no exchange student becomes an unreasonable burden upon the public schools or other
171 public agencies;

172 (vi) that each exchange student will be given in the exchange student's native language
173 names and telephone numbers of agency representatives and others who could be called at any
174 time if a serious problem occurs; and

175 (vii) that alternate placements are readily available so that no student is required to
176 remain in a household if conditions appear to exist which unreasonably endanger the student's
177 welfare.

178 (6) (a) A local school board or charter school governing board shall provide each
179 approved exchange student agency with a list of names and telephone numbers of individuals
180 not associated with the agency who could be called by an exchange student in the event of a
181 serious problem.

182 (b) The agency shall make a copy of the list available to each of its exchange students
183 in the exchange student's native language.

184 (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school
185 shall enroll a foreign exchange student if the foreign exchange student:

186 (a) is sponsored by an agency approved by the State Board of Education;

187 (b) attends the same school during the same time period that another student from the

188 school is:

- 189 (i) sponsored by the same agency; and
190 (ii) enrolled in a school in a foreign country; and
191 (c) is enrolled in the school for one year or less.

192 Section 6. Section **62A-15-602** is amended to read:

193 **62A-15-602. Definitions.**

194 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
195 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
196 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part
197 12, Essential Treatment and Intervention Act:

198 (1) "Adult" means an individual 18 years of age or older.

199 (2) "Approved treatment facility or program" means a treatment provider that meets the
200 standards described in Subsection 62A-15-103(2)(a)(v).

201 (3) "Commitment to the custody of a local mental health authority" means that an adult
202 is committed to the custody of the local mental health authority that governs the mental health
203 catchment area where the adult resides or is found.

204 (4) "Community mental health center" means an entity that provides treatment and
205 services to a resident of a designated geographical area, that operates by or under contract with
206 a local mental health authority, and that complies with state standards for community mental
207 health centers.

208 (5) "Designated examiner" means:

209 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
210 specially qualified by training or experience in the diagnosis of mental or related illness; or

211 (b) a licensed mental health professional designated by the division as specially
212 qualified by training and who has at least five years' continual experience in the treatment of
213 mental illness.

214 (6) "Designee" means a physician who has responsibility for medical functions
215 including admission and discharge, an employee of a local mental health authority, or an
216 employee of a person that has contracted with a local mental health authority to provide mental
217 health services under Section 17-43-304.

218 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered

219 treatment at a local substance abuse authority or an approved treatment facility or program for
220 the treatment of an adult's substance use disorder.

221 (8) "Harmful sexual conduct" means the following conduct upon an individual without
222 the individual's consent, including the nonconsensual circumstances described in Subsections
223 76-5-406~~(1) through (12)~~ (2)(a) through (l):

224 (a) sexual intercourse;

225 (b) penetration, however slight, of the genital or anal opening of the individual;

226 (c) any sexual act involving the genitals or anus of the actor or the individual and the
227 mouth or anus of either individual, regardless of the gender of either participant; or

228 (d) any sexual act causing substantial emotional injury or bodily pain.

229 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

230 (10) "Local substance abuse authority" means the same as that term is defined in
231 Section 62A-15-102 and described in Section 17-43-201.

232 (11) "Mental health facility" means the Utah State Hospital or other facility that
233 provides mental health services under contract with the division, a local mental health
234 authority, a person that contracts with a local mental health authority, or a person that provides
235 acute inpatient psychiatric services to a patient.

236 (12) "Mental health officer" means an individual who is designated by a local mental
237 health authority as qualified by training and experience in the recognition and identification of
238 mental illness, to:

239 (a) apply for and provide certification for a temporary commitment; or

240 (b) assist in the arrangement of transportation to a designated mental health facility.

241 (13) "Mental illness" means:

242 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
243 behavioral, or related functioning; or

244 (b) the same as that term is defined in:

245 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
246 published by the American Psychiatric Association; or

247 (ii) the current edition of the International Statistical Classification of Diseases and
248 Related Health Problems.

249 (14) "Patient" means an individual who is:

250 (a) under commitment to the custody or to the treatment services of a local mental
251 health authority; or

252 (b) undergoing essential treatment and intervention.

253 (15) "Physician" means an individual who is:

254 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

255 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
256 Practice Act.

257 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of
258 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
259 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

260 (17) "Substantial danger" means that due to mental illness, an individual is at serious
261 risk of:

262 (a) suicide;

263 (b) serious bodily self-injury;

264 (c) serious bodily injury because the individual is incapable of providing the basic
265 necessities of life, including food, clothing, or shelter;

266 (d) causing or attempting to cause serious bodily injury to another individual; or

267 (e) engaging in harmful sexual conduct.

268 (18) "Treatment" means psychotherapy, medication, including the administration of
269 psychotropic medication, or other medical treatments that are generally accepted medical or
270 psychosocial interventions for the purpose of restoring the patient to an optimal level of
271 functioning in the least restrictive environment.

272 Section 7. Section **76-3-406** is amended to read:

273 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
274 **offense, or hospitalization may not be granted.**

275 (1) Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
276 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
277 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be
278 suspended, the court may not enter a judgment for a lower category of offense, and
279 hospitalization may not be ordered, the effect of which would in any way shorten the prison
280 sentence for [~~any person~~] an individual who commits a capital felony or a first degree felony

- 281 involving:
- 282 (a) Section 76-5-202, aggravated murder;
- 283 (b) Section 76-5-203, murder;
- 284 (c) Section 76-5-301.1, child kidnaping;
- 285 (d) Section 76-5-302, aggravated kidnaping;
- 286 (e) Section 76-5-402, rape, if the [person] individual is sentenced under Subsection
- 287 76-5-402(3)(b), (3)(c), or (4);
- 288 (f) Section 76-5-402.1, rape of a child;
- 289 (g) Section 76-5-402.2, object rape, if the [person] individual is sentenced under
- 290 Subsection 76-5-402.2(1)(b), (1)(c), or (2);
- 291 (h) Section 76-5-402.3, object rape of a child;
- 292 (i) Section 76-5-403, forcible sodomy, if the [person] individual is sentenced under
- 293 Subsection 76-5-403[(4)] (3)(b), [(4)] (3)(c), or [(5)] (4);
- 294 (j) Section 76-5-403.1, sodomy on a child;
- 295 (k) Section 76-5-404, forcible sexual abuse, if the [person] individual is sentenced
- 296 under Subsection 76-5-404(2)(b) or (3);
- 297 (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 298 (m) Section 76-5-405, aggravated sexual assault; or
- 299 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 300 (2) The provisions of this section do not apply if the sentencing court finds that the
- 301 defendant was under the age of 18 at the time of the offense and could have been adjudicated in
- 302 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the
- 303 offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

304 Section 8. Section **76-5-403** is amended to read:

305 **76-5-403. Forcible sodomy.**

- 306 (1) ~~[A person commits sodomy when the actor engages in any sexual act with a person~~
- 307 ~~who is 14 years of age or older involving the genitals of one person and mouth or anus of~~
- 308 ~~another person, regardless of the sex of either participant.] As used in this section, "sodomy"~~
- 309 means engaging in any sexual act with an individual who is 14 years of age or older involving
- 310 the genitals of one individual and the mouth or anus of another individual, regardless of the sex
- 311 of either participant.

312 (2) ~~[A person]~~ An individual commits forcible sodomy when the actor commits
313 sodomy upon another without the other's consent.

314 ~~[(3) Sodomy is a class B misdemeanor.]~~

315 ~~[(4) (3)]~~ (3) Forcible sodomy is a first degree felony, punishable by a term of
316 imprisonment of:

317 (a) except as provided in Subsection ~~[(4) (3)]~~(b) or (c), not less than five years and
318 which may be for life;

319 (b) except as provided in Subsection ~~[(4) (3)]~~(c) or ~~[(5) (4)]~~ (4), 15 years and which may
320 be for life, if the trier of fact finds that:

321 (i) during the course of the commission of the forcible sodomy the defendant caused
322 serious bodily injury to another; or

323 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
324 of age and was previously convicted of a grievous sexual offense; or

325 (c) life without parole, if the trier of fact finds that at the time of the commission of the
326 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

327 ~~[(5) (4)]~~ (4) If, when imposing a sentence under Subsection ~~[(4) (3)]~~(b), a court finds that a
328 lesser term than the term described in Subsection ~~[(4) (3)]~~(b) is in the interests of justice and
329 states the reasons for this finding on the record, the court may impose a term of imprisonment
330 of not less than:

331 (a) 10 years and which may be for life; or

332 (b) six years and which may be for life.

333 ~~[(6) (5)]~~ (5) The provisions of Subsection ~~[(5) (4)]~~ (4) do not apply when ~~[a person]~~ an
334 individual is sentenced under Subsection ~~[(4) (3)]~~(a) or (c).

335 ~~[(7) (6)]~~ (6) Imprisonment under Subsection ~~[(4) (3)]~~(b), ~~[(4) (3)]~~(c), or ~~[(5) (4)]~~ (4) is
336 mandatory in accordance with Section 76-3-406.

337 Section 9. Section **76-5-404** is amended to read:

338 **76-5-404. Forcible sexual abuse.**

339 (1) An individual commits forcible sexual abuse if the victim is 14 years of age or
340 older and, under circumstances not amounting to rape, object rape, forcible sodomy, or
341 attempted rape or forcible sodomy, the actor touches the anus, buttocks, pubic area, or any part
342 of the genitals of another, or touches the breast of a female, or otherwise takes indecent

343 liberties with another, with intent to cause substantial emotional or bodily pain to any
344 individual or with the intent to arouse or gratify the sexual desire of any individual, without the
345 consent of the other, regardless of the sex of any participant.

346 (2) Forcible sexual abuse is:

347 (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable
348 by a term of imprisonment of not less than one year nor more than 15 years; or

349 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a
350 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that
351 during the course of the commission of the forcible sexual abuse the defendant caused serious
352 bodily injury to another.

353 (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser
354 term than the term described in Subsection (2)(b) is in the interests of justice and states the
355 reasons for this finding on the record, the court may impose a term of imprisonment of not less
356 than:

357 (a) 10 years and which may be for life; or

358 (b) six years and which may be for life.

359 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with
360 Section 76-3-406.

361 Section 10. Section **76-5-406** is amended to read:

362 **76-5-406. Sexual offenses against the victim without consent of victim --**

363 **Circumstances.**

364 (1) As used in this section:

365 (a) "Health professional" means an individual who is licensed or who holds the
366 individual out to be licensed, or who otherwise provides professional physical or mental health
367 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,
368 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
369 social service worker, clinical social worker, certified social worker, marriage and family
370 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
371 specialist, or substance abuse counselor.

372 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized
373 member of the clergy.

374 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

375 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of
376 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a
377 child, [~~sodomy, attempted sodomy,~~] forcible sodomy, attempted forcible sodomy, sodomy on a
378 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
379 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
380 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
381 victim under any of the following circumstances:

382 ~~[(1)]~~ (a) the victim expresses lack of consent through words or conduct;

383 ~~[(2)]~~ (b) the actor overcomes the victim through the actual application of physical force
384 or violence;

385 ~~[(3)]~~ (c) the actor is able to overcome the victim through concealment or by the
386 element of surprise;

387 ~~[(4)-(a)-(i)]~~ (d) (i) the actor coerces the victim to submit by threatening to retaliate in
388 the immediate future against the victim or any other person, and the victim perceives at the
389 time that the actor has the ability to execute this threat; or

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

393 ~~[(b) as used in this Subsection (4), "to retaliate" includes threats of physical force,~~
394 ~~kidnapping, or extortion;]~~

395 ~~[(5)]~~ (e) the actor knows the victim is unconscious, unaware that the act is occurring, or
396 physically unable to resist;

397 ~~[(6)]~~ (f) the actor knows or reasonably should know that the victim has a mental
398 disease or defect, which renders the victim unable to:

399 ~~[(a)]~~ (i) appraise the nature of the act;

400 ~~[(b)]~~ (ii) resist the act;

401 ~~[(c)]~~ (iii) understand the possible consequences to the victim's health or safety; or

402 ~~[(d)]~~ (iv) appraise the nature of the relationship between the actor and the victim[-];

403 ~~[(7)]~~ (g) the actor knows that the victim submits or participates because the victim
404 erroneously believes that the actor is the victim's spouse;

405 ~~[(8)]~~ (h) the actor intentionally impaired the power of the victim to appraise or control
406 his or her conduct by administering any substance without the victim's knowledge;

407 ~~[(9)]~~ (i) the victim is younger than 14 years of age;

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

411 ~~[(11)]~~ (k) the victim is 14 years of age or older, but younger than 18 years of age, and
412 the actor is more than three years older than the victim and entices or coerces the victim to
413 submit or participate, under circumstances not amounting to the force or threat required under
414 Subsection ~~[(2) or (4)]~~ (2)(b) or (d); or

415 ~~[(12)]~~ (l) the actor is a health professional or religious counselor, ~~[as those terms are~~
416 ~~defined in this Subsection (12),]~~ the act is committed under the guise of providing professional
417 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
418 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
419 to the extent that resistance by the victim could not reasonably be expected to have been
420 manifested~~]; for purposes of this Subsection (12):]~~

421 ~~[(a) "health professional" means an individual who is licensed or who holds himself or~~
422 ~~herself out to be licensed, or who otherwise provides professional physical or mental health~~
423 ~~services, diagnosis, treatment, or counseling including, but not limited to, a physician,~~
424 ~~osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,~~
425 ~~social service worker, clinical social worker, certified social worker, marriage and family~~
426 ~~therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse~~
427 ~~specialist, or substance abuse counselor; and]~~

428 ~~[(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized~~
429 ~~member of the clergy].~~

430 Section 11. Section **76-5-407** is amended to read:

431 **76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to**
432 **constitute offense.**

433 (1) The provisions of this part do not apply to consensual conduct between ~~[persons]~~
434 individuals married to each other.

435 (2) In any prosecution for:

436 (a) the following offenses, any sexual penetration, however slight, is sufficient to
437 constitute the relevant element of the offense:

438 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving
439 sexual intercourse;

440 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section
441 76-5-401.2, involving sexual intercourse; or

442 (iii) rape, a violation of Section 76-5-402; or

443 (b) the following offenses, any touching, however slight, is sufficient to constitute the
444 relevant element of the offense:

445 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving
446 acts of sodomy;

447 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section
448 76-5-401.2, involving acts of sodomy;

449 [~~(iii) sodomy, a violation of Subsection 76-5-403(1);~~]

450 [~~(iv)~~] (iii) forcible sodomy, a violation of Subsection 76-5-403(2);

451 [~~(v)~~] (iv) rape of a child, a violation of Section 76-5-402.1; or

452 [~~(vi)~~] (v) object rape of a child, a violation of Section 76-5-402.3.

453 (3) In any prosecution for the following offenses, any touching, even if accomplished
454 through clothing, is sufficient to constitute the relevant element of the offense:

455 (a) sodomy on a child, a violation of Section 76-5-403.1; or

456 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section
457 76-5-404.1.

458 Section 12. Section **76-6-412** is amended to read:

459 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

460 (1) Theft of property and services as provided in this chapter is punishable:

461 (a) as a second degree felony if the:

462 (i) value of the property or services is or exceeds \$5,000;

463 (ii) property stolen is a firearm or an operable motor vehicle; or

464 (iii) property is stolen from the person of another;

465 (b) as a third degree felony if:

466 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

467 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice
468 before convicted of any of the following offenses, if each prior offense was committed within
469 10 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the
470 current conviction is based and at least one of those convictions is for a class A misdemeanor:

471 (A) any theft, any robbery, or any burglary with intent to commit theft;

472 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

473 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

474 ~~[(iii) in a case not amounting to a second degree felony, the property taken is a stallion,
475 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,
476 poultry, or a fur-bearing animal raised for commercial purposes; or]~~

477 ~~[(iv)]~~ (iii) (A) the value of property or services is or exceeds \$500 but is less than
478 \$1,500;

479 (B) the theft occurs on a property where the offender has committed any theft within
480 the past five years; and

481 (C) the offender has received written notice from the merchant prohibiting the offender
482 from entering the property pursuant to Subsection 78B-3-108(4);

483 ~~[(v)]~~ (iv) the actor has been previously convicted of a felony violation of any of the
484 offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was
485 committed within 10 years before the date of the current conviction or the date of the offense
486 upon which the current conviction is based;

487 (c) as a class A misdemeanor if:

488 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

489 (ii) (A) the value of property or services is less than \$500;

490 (B) the theft occurs on a property where the offender has committed any theft within
491 the past five years; and

492 (C) the offender has received written notice from the merchant prohibiting the offender
493 from entering the property pursuant to Subsection 78B-3-108(4); or

494 (iii) the actor has been twice before convicted of any of the offenses listed in
495 Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10
496 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the
497 current conviction is based; or

498 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and
499 the theft is not an offense under Subsection (1)(c).

500 (2) Any individual who violates Subsection 76-6-408(1) or Subsection 76-6-413(1), or
501 commits theft of [~~property described in Subsection 76-6-412(1)(b)(iii)] a stallion, mare, colt,
502 gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a
503 fur-bearing animal raised for commercial purposes, is civilly liable for three times the amount
504 of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney
505 fees.~~

506 Section 13. Section **76-7-302** is amended to read:

507 **76-7-302. Circumstances under which abortion authorized.**

508 (1) As used in this section, "viable" means that the unborn child has reached a stage of
509 fetal development when the unborn child is potentially able to live outside the womb, as
510 determined by the attending physician to a reasonable degree of medical certainty.

511 (2) An abortion may be performed in this state only by a physician.

512 (3) An abortion may be performed in this state only under the following circumstances:

513 (a) the unborn child is not viable; or

514 (b) the unborn child is viable, if:

515 (i) the abortion is necessary to avert:

516 (A) the death of the woman on whom the abortion is performed; or

517 (B) a serious risk of substantial and irreversible impairment of a major bodily function
518 of the woman on whom the abortion is performed;

519 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
520 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
521 lethal; or

522 (iii) (A) the woman is pregnant as a result of:

523 (I) rape, as described in Section 76-5-402;

524 (II) rape of a child, as described in Section 76-5-402.1; or

525 (III) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102; and

526 (B) before the abortion is performed, the physician who performs the abortion:

527 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
528 law enforcement; and

529 (II) complies with the requirements of Section 62A-4a-403.

530 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
531 necessary to perform the abortion in another location due to a medical emergency.

532 Section 14. Section **76-7-305 (Effective 01/01/19)** is amended to read:

533 **76-7-305 (Effective 01/01/19). Informed consent requirements for abortion --**
534 **72-hour wait mandatory -- Exceptions.**

535 (1) A person may not perform an abortion, unless, before performing the abortion, the
536 physician who will perform the abortion obtains a voluntary and informed written consent from
537 the woman on whom the abortion is performed, that is consistent with:

538 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
539 Current Opinions; and

540 (b) the provisions of this section.

541 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
542 informed only if, at least 72 hours before the abortion:

543 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
544 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
545 physician's assistant presents the information module to the pregnant woman;

546 (b) the pregnant woman views the entire information module and presents evidence to
547 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
548 information module;

549 (c) after receiving the evidence described in Subsection (2)(b), the individual described
550 in Subsection (2)(a):

551 (i) documents that the pregnant woman viewed the entire information module;

552 (ii) gives the pregnant woman, upon her request, a copy of the documentation
553 described in Subsection (2)(c)(i); and

554 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
555 who is to perform the abortion, upon request of that physician or the pregnant woman;

556 (d) after the pregnant woman views the entire information module, the physician who
557 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
558 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
559 physician's assistant, in a face-to-face consultation in any location in the state, orally informs

560 the woman of:

561 (i) the nature of the proposed abortion procedure;

562 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

563 fetus;

564 (iii) the risks and alternatives to the abortion procedure or treatment;

565 (iv) the options and consequences of aborting a medication-induced abortion, if the

566 proposed abortion procedure is a medication-induced abortion;

567 (v) the probable gestational age and a description of the development of the unborn

568 child at the time the abortion would be performed;

569 (vi) the medical risks associated with carrying her child to term; and

570 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant

571 woman, upon her request; and

572 (e) after the pregnant woman views the entire information module, a staff member of

573 the abortion clinic or hospital provides to the pregnant woman:

574 (i) on a document that the pregnant woman may take home:

575 (A) the address for the department's website described in Section 76-7-305.5; and

576 (B) a statement that the woman may request, from a staff member of the abortion clinic

577 or hospital where the woman viewed the information module, a printed copy of the material on

578 the department's website; and

579 (ii) a printed copy of the material on the department's website described in Section

580 76-7-305.5, if requested by the pregnant woman.

581 (3) Before performing an abortion, the physician who is to perform the abortion shall:

582 (a) in a face-to-face consultation, provide the information described in Subsection

583 (2)(d), unless the attending physician or referring physician is the individual who provided the

584 information required under Subsection (2)(d); and

585 (b) (i) obtain from the pregnant woman a written certification that the information

586 required to be provided under Subsection (2) and this Subsection (3) was provided in

587 accordance with the requirements of Subsection (2) and this Subsection (3); and

588 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

589 (4) When a serious medical emergency compels the performance of an abortion, the

590 physician shall inform the woman prior to the abortion, if possible, of the medical indications

591 supporting the physician's judgment that an abortion is necessary.

592 (5) If an ultrasound is performed on a woman before an abortion is performed, the
593 individual who performs the ultrasound, or another qualified individual, shall:

594 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
595 manner to permit her to:

596 (i) view the images, if she chooses to view the images; or

597 (ii) not view the images, if she chooses not to view the images;

598 (b) simultaneously display the ultrasound images in order to permit the woman to:

599 (i) view the images, if she chooses to view the images; or

600 (ii) not view the images, if she chooses not to view the images;

601 (c) inform the woman that, if she desires, the person performing the ultrasound, or

602 another qualified person shall provide a detailed description of the ultrasound images,

603 including:

604 (i) the dimensions of the unborn child;

605 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

606 (iii) the presence of external body parts or internal organs, if present and viewable; and

607 (d) provide the detailed description described in Subsection [~~(6)~~] (5)(c), if the woman

608 requests it.

609 (6) The information described in Subsections (2), (3), and (5) is not required to be

610 provided to a pregnant woman under this section if the abortion is performed for a reason

611 described in:

612 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician

613 concur, in writing, that the abortion is necessary to avert:

614 (i) the death of the woman on whom the abortion is performed; or

615 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

616 of the woman on whom the abortion is performed; or

617 (b) Subsection 76-7-302(3)(b)(ii).

618 (7) In addition to the criminal penalties described in this part, a physician who violates

619 the provisions of this section:

620 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

621 and

622 (b) shall be subject to:

623 (i) suspension or revocation of the physician's license for the practice of medicine and
624 surgery in accordance with Section 58-67-401 or 58-68-401; and

625 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

626 (8) A physician is not guilty of violating this section for failure to furnish any of the
627 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

628 (a) the physician can demonstrate by a preponderance of the evidence that the
629 physician reasonably believed that furnishing the information would have resulted in a severely
630 adverse effect on the physical or mental health of the pregnant woman;

631 (b) in the physician's professional judgment, the abortion was necessary to avert:

632 (i) the death of the woman on whom the abortion is performed; or

633 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
634 of the woman on whom the abortion is performed;

635 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
636 76-5-402 and 76-5-402.1;

637 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406[~~(10)~~]
638 (2)(j) and Section 76-7-102; or

639 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

640 (9) A physician who complies with the provisions of this section and Section
641 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
642 informed consent under Section 78B-3-406.

643 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
644 of Subsection (5)(b), at no expense to the pregnant woman.

645 (b) A local health department shall refer a pregnant woman who requests an ultrasound
646 described in Subsection (10)(a) to the department.

647 (11) A physician is not guilty of violating this section if:

648 (a) the information described in Subsection (2) is provided less than 72 hours before
649 the physician performs the abortion; and

650 (b) in the physician's professional judgment, the abortion was necessary in a case
651 where:

652 (i) a ruptured membrane, documented by the attending or referring physician, will

653 cause a serious infection; or

654 (ii) a serious infection, documented by the attending or referring physician, will cause a
655 ruptured membrane.

656 Section 15. Section **76-10-1206** is amended to read:

657 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for**
658 **Internet service providers and hosting companies.**

659 (1) A person is guilty of dealing in material harmful to minors when, knowing or
660 believing that [~~a person~~] an individual is a minor, or having negligently failed to determine the
661 proper age of a minor, the person intentionally:

662 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or [~~a~~
663 ~~person the actor~~] an individual whom the person believes to be a minor, any material harmful
664 to minors;

665 (b) produces, performs, or directs any performance, before a minor or [~~a person the~~
666 ~~actor~~] an individual whom the person believes to be a minor, that is harmful to minors; or

667 (c) participates in any performance, before a minor or [~~a person the actor~~] an individual
668 whom the person believes to be a minor, that is harmful to minors.

669 (2) (a) [~~Each~~] Except as provided in Subsection (2)(b), each separate offense under this
670 section committed by a person 18 years of age or older is a third degree felony punishable by:

671 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
672 exhibited up to the maximum allowed by law; and

673 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

674 (b) Each separate offense under this section committed by a person 18 years of age or
675 older against a minor 16 years of age or older, but younger than 18 years of age, is a class A
676 misdemeanor if the person is less than seven years older than the minor at the time of the
677 offense.

678 [~~(b)~~] (c) Each separate offense under this section committed by a person 16 or 17 years
679 of age is a class A misdemeanor.

680 [~~(c)~~] (d) Each separate offense under this section committed by a person younger than
681 16 years of age is a class B misdemeanor.

682 [~~(d)~~] (e) Subsection (2)(a) supersedes Section 77-18-1.

683 (3) (a) [~~H~~] Except for a defendant described in Subsection (2)(b), if a defendant 18

684 years of age or older has been previously convicted or adjudicated to be under the jurisdiction
685 of the juvenile court under this section, each separate subsequent offense is a second degree
686 felony punishable by:

687 (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article
688 exhibited up to the maximum allowed by law; and

689 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

690 (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years
691 of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile
692 court under this section, each separate subsequent offense is a third degree felony.

693 (c) Subsection (3)(a) supersedes Section 77-18-1.

694 (d) (i) This section does not apply to an Internet service provider, as defined in Section
695 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec.
696 2510, a telecommunications service, information service, or mobile service as defined in 47
697 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or
698 a cable operator as defined in 47 U.S.C. Sec. 522, if:

699 (A) the distribution of pornographic material by the Internet service provider occurs
700 only incidentally through the provider's function of:

701 (I) transmitting or routing data from one person to another person; or

702 (II) providing a connection between one person and another person;

703 (B) the provider does not intentionally aid or abet in the distribution of the
704 pornographic material; and

705 (C) the provider does not knowingly receive from or through a person who distributes
706 the pornographic material a fee greater than the fee generally charged by the provider, as a
707 specific condition for permitting the person to distribute the pornographic material.

708 (ii) This section does not apply to a hosting company, as defined in Section
709 76-10-1230, if:

710 (A) the distribution of pornographic material by the hosting company occurs only
711 incidentally through the hosting company's function of providing data storage space or data
712 caching to a person;

713 (B) the hosting company does not intentionally engage, aid, or abet in the distribution
714 of the pornographic material; and

715 (C) the hosting company does not knowingly receive from or through a person who
716 distributes the pornographic material a fee greater than the fee generally charged by the
717 provider, as a specific condition for permitting the person to distribute, store, or cache the
718 pornographic material.

719 (4) A service provider, as defined in Section 76-10-1230, is not negligent under this
720 section if it complies with Section 76-10-1231.

721 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
722 encourages, or intentionally aids another person younger than 18 years of age to engage in
723 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the
724 penalties under Subsection (2)(a).

725 Section 16. Section **76-10-1302** is amended to read:

726 **76-10-1302. Prostitution.**

727 (1) An individual is guilty of prostitution when the individual:

728 (a) engages, offers, or agrees to engage in any sexual activity with another individual
729 for a fee, or the functional equivalent of a fee;

730 (b) takes steps in arranging a meeting through any form of advertising, agreeing to
731 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
732 or the functional equivalent of a fee; or

733 (c) loiters in or within view of any public place for the purpose of being hired to
734 engage in sexual activity.

735 (2) (a) Except as provided in Subsection (2)(b) [~~or~~] and Section 76-10-1309,
736 prostitution is a class B misdemeanor.

737 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
738 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
739 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of
740 a class A misdemeanor.

741 (3) (a) As used in this Subsection (3):

742 (i) "Child" means the same as that term is defined in Section 76-10-1301.

743 (ii) "Child engaged in prostitution" means a child who engages in conduct described in
744 Subsection (1).

745 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to

746 commit or engage in any sexual activity with another person for a fee or the functional
747 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

748 (iv) "Division" means the Division of Child and Family Services created in Section
749 62A-4a-103.

750 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

751 (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law
752 enforcement officer shall:

753 (i) conduct an investigation;

754 (ii) refer the child to the division;

755 (iii) if an arrest is made, bring the child to a receiving center, if available; and

756 (iv) contact the child's parent or guardian, if practicable.

757 (c) When law enforcement has referred the child to the division under Subsection
758 (3)(b)(ii):

759 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child
760 and Family Services; and

761 (ii) the child may not be subjected to delinquency proceedings under Title 62A,
762 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

763 (4) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
764 the individual engages in a violation of Subsection (1) at or near the time the individual
765 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
766 following offenses, and the individual reports the offense or attempt to law enforcement in
767 good faith:

768 (a) assault, Section 76-5-102;

769 (b) aggravated assault, Section 76-5-103;

770 (c) mayhem, Section 76-5-105;

771 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
772 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;

773 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
774 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
775 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and
776 Smuggling;

- 777 (f) rape, Section 76-5-402;
 778 (g) rape of a child, Section 76-5-402.1;
 779 (h) object rape, Section 76-5-402.2;
 780 (i) object rape of a child, Section 76-5-402.3;
 781 (j) forcible sodomy, Section 76-5-403;
 782 (k) sodomy on a child, Section 76-5-403.1;
 783 (l) forcible sexual abuse, Section 76-5-404;
 784 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
 785 (n) aggravated sexual assault, Section 76-5-405;
 786 (o) sexual exploitation of a minor, Section 76-5b-201;
 787 (p) sexual exploitation of a vulnerable adult, Section 76-5b-202;
 788 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,

789 **Burglary and Criminal Trespass:**

- 790 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or
 791 (s) theft by extortion under Subsection 76-6-406(2)(a) or (b).

792 Section 17. Section **76-10-1313** is amended to read:

793 **76-10-1313. Sexual solicitation -- Penalty.**

794 (1) An individual is guilty of sexual solicitation when the individual:

795 (a) offers or agrees to commit any sexual activity with another individual for a fee, or
 796 the functional equivalent of a fee;

797 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
 798 individual to commit any sexual activity; or

799 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
 800 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
 801 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
 802 of the following acts:

803 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
 804 female breast below the top of the areola;

805 (ii) masturbation;

806 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
 807 female breast; or

808 (iv) any act of lewdness.

809 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
810 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
811 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

812 (3) ~~[(a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).]~~

813 ~~[(b) An]~~ Except as provided in Section 76-10-1309 and Subsections (4) and (5), an
814 individual who is convicted ~~[a second time]~~ of sexual solicitation under this section or under a
815 local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A
816 misdemeanor~~[, except as provided in Section 76-10-1309].~~

817 (4) An individual who is convicted a third time under this section or a local ordinance
818 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

819 (5) If an individual commits an act of sexual solicitation and the individual solicited is
820 a child, the offense is a third degree felony if the solicitation does not amount to human
821 trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human
822 trafficking or aggravated human smuggling, a violation of Section 76-5-310.

823 (6) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
824 the individual engages in a violation of Subsection (1) at or near the time the individual
825 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
826 described in Subsection 76-10-1302(4), and the individual reports the offense or attempt to law
827 enforcement in good faith.

828 Section 18. Section ~~77-41-107~~ is amended to read:

829 **77-41-107. Penalties.**

830 (1) An offender who knowingly fails to register under this chapter or provides false or
831 incomplete information is guilty of:

832 (a) a third degree felony and shall be sentenced to serve a term of incarceration for not
833 less than ~~[90]~~ 30 days and also at least one year of probation if:

834 (i) the offender is required to register for a felony conviction or adjudicated delinquent
835 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
836 77-41-102(9)(a) or (17)(a); or

837 (ii) the offender is required to register for the offender's lifetime under Subsection
838 77-41-105(3)(c); or

839 (b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
840 not fewer than [90] 30 days and also at least one year of probation if the offender is required to
841 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
842 misdemeanor if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or
843 (17)(a).

844 (2) (a) Neither the court nor the Board of Pardons and Parole may release [~~a person~~] an
845 individual who violates this chapter from serving the term required under Subsection (1).

846 (b) This Subsection (2) supersedes any other provision of the law contrary to this
847 chapter.

848 (3) The offender shall register for an additional year for every year in which the
849 offender does not comply with the registration requirements of this chapter.

850 Section 19. **Repealer.**

851 This bill repeals:

852 Section **76-7-103, Adultery.**