

CRIMINAL CODE RECODIFICATION CROSS REFERENCES

2022 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill contains the cross-references for HB --, Criminal Code Recodification.

Highlighted Provisions:

This bill:

- ▶ contains the cross-references for the Criminal Code Recodification; and
- ▶ contains sections renumbered and moved from the Criminal Code.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

- 4-32-116**, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 20A-2-101.5**, as last amended by Laws of Utah 2013, Chapter 263
- 26-6-27**, as last amended by Laws of Utah 2021, Chapter 345
- 26-7-14**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
- 26-10-9**, as last amended by Laws of Utah 2021, Chapter 262
- 26A-1-114**, as last amended by Laws of Utah 2021, Chapter 437
- 30-3-34.5**, as enacted by Laws of Utah 2014, Chapter 239
- 30-5a-103**, as last amended by Laws of Utah 2021, Chapter 262
- 31A-21-501**, as last amended by Laws of Utah 2012, Chapters 39 and 303
- 34A-2-110**, as last amended by Laws of Utah 2019, Chapter 193
- 53-10-104.5**, as enacted by Laws of Utah 2013, Chapter 185
- 53-10-403**, as last amended by Laws of Utah 2021, Chapter 213
- 53-13-110.5**, as enacted by Laws of Utah 2021, Chapter 230
- 53B-28-304**, as enacted by Laws of Utah 2019, Chapter 307

- 32 **53G-11-405**, as last amended by Laws of Utah 2019, Chapter 293
- 33 **57-14-102**, as last amended by Laws of Utah 2019, Chapter 345
- 34 **58-37-8**, as last amended by Laws of Utah 2021, Chapter 236
- 35 **62A-2-120**, as last amended by Laws of Utah 2021, Chapters 117, 262, and 400
- 36 **62A-3-301**, as last amended by Laws of Utah 2019, Chapter 281
- 37 **62A-4a-105**, as last amended by Laws of Utah 2021, Chapters 38 and 262
- 38 **62A-4a-412**, as last amended by Laws of Utah 2021, Chapters 29, 231, 262, and 419
- 39 **63G-12-102**, as last amended by Laws of Utah 2015, Chapter 258
- 40 **63M-7-502**, as last amended by Laws of Utah 2021, Chapter 260
- 41 **63M-7-513**, as last amended by Laws of Utah 2021, Chapter 260
- 42 **63N-10-102**, as last amended by Laws of Utah 2019, Chapter 349
- 43 **75-2-803**, as last amended by Laws of Utah 2006, Chapter 270
- 44 **75-2-807**, as enacted by Laws of Utah 2021, Chapter 225 and further amended by
- 45 Revisor Instructions, Laws of Utah 2021, Chapter 225
- 46 **75-9-105**, as last amended by Laws of Utah 2020, Chapter 354
- 47 **77-23a-8**, as last amended by Laws of Utah 2019, Chapter 211
- 48 **77-27-7**, as last amended by Laws of Utah 2018, Chapter 334
- 49 **77-27-9**, as last amended by Laws of Utah 2021, Chapters 18, 21 and last amended by
- 50 Coordination Clause, Laws of Utah 2021, Chapter 21
- 51 **77-27-10**, as last amended by Laws of Utah 2021, Chapter 173
- 52 **77-36-1**, as last amended by Laws of Utah 2021, Chapters 134 and 159
- 53 **77-36-2.2**, as last amended by Laws of Utah 2013, Chapter 143
- 54 **77-37-3**, as last amended by Laws of Utah 2021, Chapters 260, 262 and last amended
- 55 by Coordination Clause, Laws of Utah 2021, Chapter 262
- 56 **77-37-5**, as last amended by Laws of Utah 2021, Chapter 260
- 57 **77-38-3**, as last amended by Laws of Utah 2021, Chapter 260
- 58 **77-38-15**, as last amended by Laws of Utah 2021, Chapter 260
- 59 **77-40-102**, as last amended by Laws of Utah 2021, Chapters 206 and 260
- 60 **77-41-102**, as last amended by Laws of Utah 2021, Chapter 2 and further amended by
- 61 Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2
- 62 **77-41-106**, as last amended by Laws of Utah 2020, Chapter 108

- 63 **77-43-102**, as enacted by Laws of Utah 2017, Chapter 282
- 64 **78A-6-209**, as last amended by Laws of Utah 2021, Chapter 261
- 65 **78B-2-308**, as last amended by Laws of Utah 2018, Chapter 192
- 66 **78B-6-117**, as last amended by Laws of Utah 2021, Chapter 262
- 67 **78B-7-102**, as last amended by Laws of Utah 2021, Chapter 262
- 68 **78B-7-502**, as last amended by Laws of Utah 2020, Chapters 108 and 142
- 69 **78B-7-801**, as last amended by Laws of Utah 2021, Chapter 159 and last amended by
- 70 Coordination Clause, Laws of Utah 2021, Chapter 159
- 71 **78B-7-903**, as enacted by Laws of Utah 2020, Chapter 142
- 72 **78B-9-402**, as last amended by Laws of Utah 2021, Chapters 36, 36, 46, and 46
- 73 **80-1-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2
- 74 **80-6-304**, as renumbered and amended by Laws of Utah 2021, Chapter 261
- 75 **80-6-703**, as enacted by Laws of Utah 2021, Chapter 261
- 76 **80-6-705**, as enacted by Laws of Utah 2021, Chapter 261
- 77 **80-6-712**, as enacted by Laws of Utah 2021, Chapter 261
- 78 **80-6-804**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

79 RENUMBERS AND AMENDS:

- 80 **53-10-801**, (Renumbered from 76-5-501, as last amended by Laws of Utah 2015,
- 81 Chapter 39)
- 82 **53-10-802**, (Renumbered from 76-5-502, as last amended by Laws of Utah 2021,
- 83 Chapter 58)
- 84 **53-10-803**, (Renumbered from 76-5-503, as last amended by Laws of Utah 2011,
- 85 Chapter 131)
- 86 **53-10-804**, (Renumbered from 76-5-504, as last amended by Laws of Utah 2011,
- 87 Chapter 177)
- 88 **53-10-901**, (Renumbered from 76-5-601, as enacted by Laws of Utah 2017, Chapter
- 89 249)
- 90 **53-10-902**, (Renumbered from 76-5-602, as last amended by Laws of Utah 2018,
- 91 Chapter 57)
- 92 **53-10-903**, (Renumbered from 76-5-603, as last amended by Laws of Utah 2018,

93 Chapter 57)
94 **53-10-904**, (Renumbered from 76-5-604, as last amended by Laws of Utah 2018,
95 Chapter 57)
96 **53-10-905**, (Renumbered from 76-5-605, as enacted by Laws of Utah 2017, Chapter
97 249)
98 **53-10-906**, (Renumbered from 76-5-606, as enacted by Laws of Utah 2017, Chapter
99 249)
100 **53-10-907**, (Renumbered from 76-5-607, as enacted by Laws of Utah 2017, Chapter
101 249)
102 **53-10-908**, (Renumbered from 76-5-608, as last amended by Laws of Utah 2020,
103 Chapter 108)
104 **53-10-909**, (Renumbered from 76-5-609, as enacted by Laws of Utah 2017, Chapter
105 249)
106 **53-10-910**, (Renumbered from 76-5-610, as enacted by Laws of Utah 2017, Chapter
107 249)

108

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

110 Section 1. Section **4-32-116** is amended to read:

111 **4-32-116. Attempt to bribe state officer or employee -- Acceptance of bribe --**
112 **Interference with official duties -- Penalties.**

113 (1) (a) A person who gives, pays, or offers, directly or indirectly, any money or other
114 thing of value, to any officer or employee of this state who is authorized to perform any duties
115 under this chapter, with the intent to influence the officer or employee in the discharge of the
116 officer's or employee's duty, is guilty of a felony of the third degree, and upon conviction, shall
117 be punished by a fine of not more than \$5,000 or imprisonment of not more than five years, or
118 both.

119 (b) An officer or employee of this state authorized to perform duties under this chapter
120 who accepts money, a gift, or other thing of value from any person given with intent to
121 influence the officer's or employee's official action, is guilty of a felony of the third degree and
122 shall, upon conviction, be discharged from office, and fined in an amount of not more than
123 \$5,000, or imprisoned for not more than five years, or both.

124 (2) (a) A person who assaults, obstructs, impedes, intimidates, or interferes with any
125 person engaged in the performance of official duties under this chapter, with or without a
126 dangerous or deadly weapon, is guilty of a felony of the third degree and upon conviction shall
127 be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years,
128 or both.

129 (b) A person who, in the commission of any violation of Subsection (2) of this section,
130 uses a dangerous weapon as defined in Section [~~76-1-601~~] 76-1-101.5, is guilty of a felony of
131 the second degree and upon conviction shall be punished by a fine of not more than \$10,000, or
132 by imprisonment for a period of not more than 10 years, or both.

133 (c) A person who kills another person engaged in the performance of official duties
134 under this chapter shall be punished as provided in Section 76-5-202.

135 Section 2. Section **20A-2-101.5** is amended to read:

136 **20A-2-101.5. Convicted felons -- Restoration of right to vote and right to hold**
137 **office.**

138 (1) As used in this section, "convicted felon" means a person convicted of a felony in
139 any state or federal court of the United States.

140 (2) Each convicted felon's right to register to vote and to vote in an election is restored
141 when:

142 (a) the felon is sentenced to probation;

143 (b) the felon is granted parole; or

144 (c) the felon has successfully completed the term of incarceration to which the felon
145 was sentenced.

146 (3) Except as provided by Subsection (4), a convicted felon's right to hold elective
147 office is restored when:

148 (a) all of the felon's felony convictions have been expunged; or

149 (b) (i) 10 years have passed since the date of the felon's most recent felony conviction;

150 (ii) the felon has paid all court-ordered restitution and fines; and

151 (iii) for each felony conviction that has not been expunged, the felon has:

152 (A) completed probation in relation to the felony;

153 (B) been granted parole in relation to the felony; or

154 (C) successfully completed the term of incarceration associated with the felony.

155 (4) An individual who has been convicted of a grievous sexual offense, as defined in
156 Section ~~[76-1-601]~~ 76-1-101.5, against a child, may not hold the office of State Board of
157 Education member or local school board member.

158 Section 3. Section **26-6-27** is amended to read:

159 **26-6-27. Information regarding communicable or reportable diseases**
160 **confidentiality -- Exceptions.**

161 (1) Information collected pursuant to this chapter in the possession of the department
162 or local health departments relating to an individual who has or is suspected of having a disease
163 designated by the department as a communicable or reportable disease under this chapter shall
164 be held by the department and local health departments as strictly confidential. The department
165 and local health departments may not release or make public that information upon subpoena,
166 search warrant, discovery proceedings, or otherwise, except as provided by this section.

167 (2) The information described in Subsection (1) may be released by the department or
168 local health departments only in accordance with the requirements of this chapter and as
169 follows:

170 (a) specific medical or epidemiological information may be released with the written
171 consent of the individual identified in that information or, if that individual is deceased, his
172 next-of-kin;

173 (b) specific medical or epidemiological information may be released to medical
174 personnel or peace officers in a medical emergency, as determined by the department in
175 accordance with guidelines it has established, only to the extent necessary to protect the health
176 or life of the individual identified in the information, or of the attending medical personnel or
177 law enforcement or public safety officers;

178 (c) specific medical or epidemiological information may be released to authorized
179 personnel within the department, local health departments, public health authorities, official
180 health agencies in other states, the United States Public Health Service, the Centers for Disease
181 Control and Prevention [~~(CDC)~~], or when necessary to continue patient services or to
182 undertake public health efforts to interrupt the transmission of disease;

183 (d) if the individual identified in the information is under the age of 18, the information
184 may be released to the Division of Child and Family Services within the Department of Human
185 Services in accordance with Section 62A-4a-403. If that information is required in a court

186 proceeding involving child abuse or sexual abuse under Title 76, Chapter 5, Offenses Against
187 the [Person] Individual, the information shall be disclosed in camera and sealed by the court
188 upon conclusion of the proceedings;

189 (e) specific medical or epidemiological information may be released to authorized
190 personnel in the department or in local health departments, and to the courts, to carry out the
191 provisions of this title, and rules adopted by the department in accordance with this title;

192 (f) specific medical or epidemiological information may be released to blood banks,
193 organ and tissue banks, and similar institutions for the purpose of identifying individuals with
194 communicable diseases. The department may, by rule, designate the diseases about which
195 information may be disclosed under this subsection, and may choose to release the name of an
196 infected individual to those organizations without disclosing the specific disease;

197 (g) specific medical or epidemiological information may be released in such a way that
198 no individual is identifiable;

199 (h) specific medical or epidemiological information may be released to a "health care
200 provider" as defined in Section 78B-3-403, health care personnel, and public health personnel
201 who have a legitimate need to have access to the information in order to assist the patient, or to
202 protect the health of others closely associated with the patient;

203 (i) specific medical or epidemiological information regarding a health care provider, as
204 defined in Section 78B-3-403, may be released to the department, the appropriate local health
205 department, and the Division of Occupational and Professional Licensing within the
206 Department of Commerce, if the identified health care provider is endangering the safety or life
207 of any individual by his continued practice of health care;

208 (j) specific medical or epidemiological information may be released in accordance with
209 Section 26-6-31 if an individual is not identifiable; and

210 (k) specific medical or epidemiological information may be released to a state agency
211 as defined in Section 63A-17-901, to perform the analysis described in Subsection 26-6-32(4)
212 if the state agency agrees to act in accordance with the requirements in this chapter.

213 (3) The provisions of Subsection (2)(h) do not create a duty to warn third parties, but is
214 intended only to aid health care providers in their treatment and containment of infectious
215 disease.

216 Section 4. Section **26-7-14** is amended to read:

217 **26-7-14. Study on violent incidents and fatalities involving substance abuse --**

218 **Report.**

219 (1) As used in this section:

220 (a) "Drug overdose event" means an acute condition, including a decreased level of
221 consciousness or respiratory depression resulting from the consumption or use of a controlled
222 substance, or another substance with which a controlled substance or alcohol was combined,
223 that results in an individual requiring medical assistance.

224 (b) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
225 substances.

226 (c) "Violent incident" means:

227 (i) aggravated assault as described in Section 76-5-103;

228 (ii) child abuse as described in [~~Section 76-5-109~~] Sections 76-5-109, 76-5-109.2,
229 76-5-109.3, and 76-5-114;

230 (iii) an offense described in Title 76, Chapter 5, Part 2, Criminal Homicide;

231 (iv) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

232 (v) a burglary offense described in Sections 76-6-202 through 76-6-204.5;

233 (vi) an offense described in Title 76, Chapter 6, Part 3, Robbery;

234 (vii) a domestic violence offense, as defined in Section 77-36-1; and

235 (viii) any other violent offense, as determined by the department.

236 (2) In 2021 and continuing every other year, the department shall provide a report
237 before October 1 to the Health and Human Services Interim Committee regarding the number
238 of:

239 (a) violent incidents and fatalities that occurred in the state during the preceding
240 calendar year that, at the time of occurrence, involved substance abuse;

241 (b) drug overdose events in the state during the preceding calendar year; and

242 (c) recommendations for legislation, if any, to prevent the occurrence of the events
243 described in Subsections (2)(a) and (b).

244 (3) Before October 1, 2020, the department shall:

245 (a) determine what information is necessary to complete the report described in
246 Subsection (2) and from which local, state, and federal agencies the information may be
247 obtained;

248 (b) determine the cost of any research or data collection that is necessary to complete
249 the report described in Subsection (2);

250 (c) make recommendations for legislation, if any, that is necessary to facilitate the
251 research or data collection described in Subsection (3)(b), including recommendations for
252 legislation to assist with information sharing between local, state, federal, and private entities
253 and the department; and

254 (d) report the findings described in Subsections (3)(a) through (c) to the Health and
255 Human Services Interim Committee.

256 (4) The department may contract with another state agency, private entity, or research
257 institution to assist the department with the report described in Subsection (2).

258 Section 5. Section **26-10-9** is amended to read:

259 **26-10-9. Immunizations -- Consent of minor to treatment.**

260 (1) This section:

261 (a) is not intended to interfere with the integrity of the family or to minimize the rights
262 of parents or children; and

263 (b) applies to a minor, who at the time care is sought is:

264 (i) married or has been married;

265 (ii) emancipated as provided for in Section 80-7-105;

266 (iii) a parent with custody of a minor child; or

267 (iv) pregnant.

268 (2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:

269 (i) vaccinations against epidemic infections and communicable diseases as defined in
270 Section 26-6-2; and

271 (ii) examinations and vaccinations required to attend school as provided in Title 53G,
272 Public Education System -- Local Administration.

273 (b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the
274 vaccinations described in Subsections (2)(a)(i) and (ii), and the vaccine for human
275 papillomavirus only if:

276 (i) the minor represents to the health care provider that the minor is an abandoned
277 minor as defined in Section ~~[76-5-109]~~ 76-5-109.3; and

278 (ii) the health care provider makes a notation in the minor's chart that the minor

279 represented to the health care provider that the minor is an abandoned minor under Section
280 [~~76-5-109~~] 76-5-109.3.

281 (c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a
282 minor.

283 (3) The consent of the minor pursuant to this section:

284 (a) is not subject to later disaffirmance because of the minority of the person receiving
285 the medical services;

286 (b) is not voidable because of minority at the time the medical services were provided;

287 (c) has the same legal effect upon the minor and the same legal obligations with regard
288 to the giving of consent as consent given by a person of full age and capacity; and

289 (d) does not require the consent of any other person or persons to authorize the medical
290 services described in Subsections (2)(a) and (b).

291 (4) A health care provider who provides medical services to a minor in accordance
292 with the provisions of this section is not subject to civil or criminal liability for providing the
293 services described in Subsections (2)(a) and (b) without obtaining the consent of another
294 person prior to rendering the medical services.

295 (5) This section does not remove the requirement for parental consent or notice when
296 required by Section 76-7-304 or 76-7-304.5.

297 (6) The parents, parent, or legal guardian of a minor who receives medical services
298 pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless
299 the parents, parent, or legal guardian consented to the medical services.

300 Section 6. Section **26A-1-114** is amended to read:

301 **26A-1-114. Powers and duties of departments.**

302 (1) Subject to Subsections (7) and (8), a local health department may:

303 (a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances,
304 department rules, and local health department standards and regulations relating to public
305 health and sanitation, including the plumbing code administered by the Division of
306 Occupational and Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction
307 Code Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification
308 Act, in all incorporated and unincorporated areas served by the local health department;

309 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical

310 control over property and over individuals as the local health department finds necessary for
311 the protection of the public health;

312 (c) establish and maintain medical, environmental, occupational, and other laboratory
313 services considered necessary or proper for the protection of the public health;

314 (d) establish and operate reasonable health programs or measures not in conflict with
315 state law which:

316 (i) are necessary or desirable for the promotion or protection of the public health and
317 the control of disease; or

318 (ii) may be necessary to ameliorate the major risk factors associated with the major
319 causes of injury, sickness, death, and disability in the state;

320 (e) close theaters, schools, and other public places and prohibit gatherings of people
321 when necessary to protect the public health;

322 (f) abate nuisances or eliminate sources of filth and infectious and communicable
323 diseases affecting the public health and bill the owner or other person in charge of the premises
324 upon which this nuisance occurs for the cost of abatement;

325 (g) make necessary sanitary and health investigations and inspections on its own
326 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
327 as to any matters affecting the public health;

328 (h) pursuant to county ordinance or interlocal agreement:

329 (i) establish and collect appropriate fees for the performance of services and operation
330 of authorized or required programs and duties;

331 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
332 property, services, or materials for public health purposes; and

333 (iii) make agreements not in conflict with state law which are conditional to receiving a
334 donation or grant;

335 (i) prepare, publish, and disseminate information necessary to inform and advise the
336 public concerning:

337 (i) the health and wellness of the population, specific hazards, and risk factors that may
338 adversely affect the health and wellness of the population; and

339 (ii) specific activities individuals and institutions can engage in to promote and protect
340 the health and wellness of the population;

- 341 (j) investigate the causes of morbidity and mortality;
- 342 (k) issue notices and orders necessary to carry out this part;
- 343 (l) conduct studies to identify injury problems, establish injury control systems,
344 develop standards for the correction and prevention of future occurrences, and provide public
345 information and instruction to special high risk groups;
- 346 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
347 within the jurisdiction of the boards;
- 348 (n) cooperate with the state health department, the Department of Corrections, the
349 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
350 Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders,
351 convicted sexual offenders, and any victims of a sexual offense;
- 352 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and
- 353 (p) provide public health assistance in response to a national, state, or local emergency,
354 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
355 of the United States or other federal official requesting public health-related activities.
- 356 (2) The local health department shall:
- 357 (a) establish programs or measures to promote and protect the health and general
358 wellness of the people within the boundaries of the local health department;
- 359 (b) investigate infectious and other diseases of public health importance and implement
360 measures to control the causes of epidemic and communicable diseases and other conditions
361 significantly affecting the public health which may include involuntary testing of alleged sexual
362 offenders for the HIV infection pursuant to Section ~~[76-5-502]~~ 53-10-802 and voluntary testing
363 of victims of sexual offenses for HIV infection pursuant to Section ~~[76-5-503]~~ 53-10-803;
- 364 (c) cooperate with the department in matters pertaining to the public health and in the
365 administration of state health laws; and
- 366 (d) coordinate implementation of environmental programs to maximize efficient use of
367 resources by developing with the Department of Environmental Quality a Comprehensive
368 Environmental Service Delivery Plan which:
- 369 (i) recognizes that the Department of Environmental Quality and local health
370 departments are the foundation for providing environmental health programs in the state;
- 371 (ii) delineates the responsibilities of the department and each local health department

372 for the efficient delivery of environmental programs using federal, state, and local authorities,
373 responsibilities, and resources;

374 (iii) provides for the delegation of authority and pass through of funding to local health
375 departments for environmental programs, to the extent allowed by applicable law, identified in
376 the plan, and requested by the local health department; and

377 (iv) is reviewed and updated annually.

378 (3) The local health department has the following duties regarding public and private
379 schools within its boundaries:

380 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
381 persons attending public and private schools;

382 (b) exclude from school attendance any person, including teachers, who is suffering
383 from any communicable or infectious disease, whether acute or chronic, if the person is likely
384 to convey the disease to those in attendance; and

385 (c) (i) make regular inspections of the health-related condition of all school buildings
386 and premises;

387 (ii) report the inspections on forms furnished by the department to those responsible for
388 the condition and provide instructions for correction of any conditions that impair or endanger
389 the health or life of those attending the schools; and

390 (iii) provide a copy of the report to the department at the time the report is made.

391 (4) If those responsible for the health-related condition of the school buildings and
392 premises do not carry out any instructions for corrections provided in a report in Subsection
393 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
394 persons responsible.

395 (5) The local health department may exercise incidental authority as necessary to carry
396 out the provisions and purposes of this part.

397 (6) Nothing in this part may be construed to authorize a local health department to
398 enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon
399 monoxide detector in a residential dwelling against anyone other than the occupant of the
400 dwelling.

401 (7) (a) Except as provided in Subsection (7)(c), a local health department may not
402 declare a public health emergency or issue an order of constraint until the local health

403 department has provided notice of the proposed action to the chief executive officer of the
404 relevant county no later than 24 hours before the local health department issues the order or
405 declaration.

406 (b) The local health department:

407 (i) shall provide the notice required by Subsection (7)(a) using the best available
408 method under the circumstances as determined by the local health department;

409 (ii) may provide the notice required by Subsection (7)(a) in electronic format; and

410 (iii) shall provide the notice in written form, if practicable.

411 (c) (i) Notwithstanding Subsection (7)(a), a local health department may declare a
412 public health emergency or issue an order of constraint without approval of the chief executive
413 officer of the relevant county if the passage of time necessary to obtain approval of the chief
414 executive officer of the relevant county as required in Subsection (7)(a) would substantially
415 increase the likelihood of loss of life due to an imminent threat.

416 (ii) If a local health department declares a public health emergency or issues an order
417 of constraint as described in Subsection (7)(c)(i), the local health department shall notify the
418 chief executive officer of the relevant county before issuing the order of constraint.

419 (iii) The chief executive officer of the relevant county may terminate a declaration of a
420 public health emergency or an order of constraint issued as described in Subsection (7)(c)(i)
421 within 72 hours of declaration of the public health emergency or issuance of the order of
422 constraint.

423 (d) The relevant county governing body may at any time terminate a public health
424 emergency or an order of constraint issued by the local health department by majority vote of
425 the county governing body in response to a declared public health emergency.

426 (8) (a) Except as provided in Subsection (8)(b), a public health emergency declared by
427 a local health department expires at the earliest of:

428 (i) the local health department or the chief executive officer of the relevant county
429 finding that the threat or danger has passed or the public health emergency reduced to the
430 extent that emergency conditions no longer exist;

431 (ii) 30 days after the date on which the local health department declared the public
432 health emergency; or

433 (iii) the day on which the public health emergency is terminated by majority vote of the

434 county governing body.

435 (b) (i) The relevant county legislative body, by majority vote, may extend a public
436 health emergency for a time period designated by the county legislative body.

437 (ii) If the county legislative body extends a public health emergency as described in
438 Subsection (8)(b)(i), the public health emergency expires on the date designated by the county
439 legislative body.

440 (c) Except as provided in Subsection (8)(d), if a public health emergency declared by a
441 local health department expires as described in Subsection (8)(a), the local health department
442 may not declare a public health emergency for the same illness or occurrence that precipitated
443 the previous public health emergency declaration.

444 (d) (i) Notwithstanding Subsection (8)(c), subject to Subsection (8)(f), if the local
445 health department finds that exigent circumstances exist, after providing notice to the county
446 legislative body, the department may declare a new public health emergency for the same
447 illness or occurrence that precipitated a previous public health emergency declaration.

448 (ii) A public health emergency declared as described in Subsection (8)(d)(i) expires in
449 accordance with Subsection (8)(a) or (b).

450 (e) For a public health emergency declared by a local health department under this
451 chapter or under Title 26, Chapter 23b, Detection of Public Health Emergencies Act, the
452 Legislature may terminate by joint resolution a public health emergency that was declared
453 based on exigent circumstances or that has been in effect for more than 30 days.

454 (f) If the Legislature or county legislative body terminates a public health emergency
455 declared due to exigent circumstances as described in Subsection (8)(d)(i), the local health
456 department may not declare a new public health emergency for the same illness, occurrence, or
457 exigent circumstances.

458 (9) (a) During a public health emergency declared under this chapter or under Title 26,
459 Chapter 23b, Detection of Public Health Emergencies Act:

460 (i) except as provided in Subsection (9)(b), a local health department may not issue an
461 order of constraint without approval of the chief executive officer of the relevant county;

462 (ii) the Legislature may at any time terminate by joint resolution an order of constraint
463 issued by a local health department in response to a declared public health emergency that has
464 been in effect for more than 30 days; and

465 (iii) a county governing body may at any time terminate by majority vote of the
466 governing body an order of constraint issued by a local health department in response to a
467 declared public health emergency.

468 (b) (i) Notwithstanding Subsection (9)(a)(i), a local health department may issue an
469 order of constraint without approval of the chief executive officer of the relevant county if the
470 passage of time necessary to obtain approval of the chief executive officer of the relevant
471 county as required in Subsection (9)(a)(i) would substantially increase the likelihood of loss of
472 life due to an imminent threat.

473 (ii) If a local health department issues an order of constraint as described in Subsection
474 (9)(b), the local health department shall notify the chief executive officer of the relevant county
475 before issuing the order of constraint.

476 (iii) The chief executive officer of the relevant county may terminate an order of
477 constraint issued as described in Subsection (9)(b) within 72 hours of issuance of the order of
478 constraint.

479 (c) (i) For a local health department that serves more than one county, the approval
480 described in Subsection (9)(a)(i) is required for the chief executive officer for which the order
481 of constraint is applicable.

482 (ii) For a local health department that serves more than one county, a county governing
483 body may only terminate an order of constraint as described in Subsection (9)(a)(iii) for the
484 county served by the county governing body.

485 (10) (a) During a public health emergency declared as described in this title:

486 (i) the department or a local health department may not impose an order of constraint
487 on a religious gathering that is more restrictive than an order of constraint that applies to any
488 other relevantly similar gathering; and

489 (ii) an individual, while acting or purporting to act within the course and scope of the
490 individual's official department or local health department capacity, may not:

491 (A) prevent a religious gathering that is held in a manner consistent with any order of
492 constraint issued pursuant to this title; or

493 (B) impose a penalty for a previous religious gathering that was held in a manner
494 consistent with any order of constraint issued pursuant to this title.

495 (b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to

496 prevent the violation of this Subsection (10).

497 (c) During a public health emergency declared as described in this title, the department
498 or a local health department shall not issue a public health order or impose or implement a
499 regulation that substantially burdens an individual's exercise of religion unless the department
500 or local health department demonstrates that the application of the burden to the individual:

501 (i) is in furtherance of a compelling government interest; and

502 (ii) is the least restrictive means of furthering that compelling government interest.

503 (d) Notwithstanding Subsections (8)(a) and (c), the department or a local health
504 department shall allow reasonable accommodations for an individual to perform or participate
505 in a religious practice or rite.

506 Section 7. Section **30-3-34.5** is amended to read:

507 **30-3-34.5. Supervised parent-time.**

508 (1) Considering the fundamental liberty interests of parents and children, it is the
509 policy of this state that divorcing parents have unrestricted and unsupervised access to their
510 children. When necessary to protect a child and no less restrictive means is reasonably
511 available however, a court may order supervised parent-time if the court finds evidence that the
512 child would be subject to physical or emotional harm or child abuse, as described in [~~Section~~
513 ~~76-5-109~~] Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114, from the noncustodial
514 parent if left unsupervised with the noncustodial parent.

515 (2) A court that orders supervised parent-time shall give preference to persons
516 suggested by the parties to supervise, including relatives. If the court finds that the persons
517 suggested by the parties are willing to supervise, and are capable of protecting the children
518 from physical or emotional harm, or child abuse, the court shall authorize the persons to
519 supervise parent-time.

520 (3) If the court is unable to authorize any persons to supervise parent-time pursuant to
521 Subsection (2), the court may require that the noncustodial parent seek the services of a
522 professional individual or agency to exercise their supervised parent-time.

523 (4) At the time supervised parent-time is imposed, the court shall consider:

524 (a) whether the cost of professional or agency services is likely to prevent the
525 noncustodial parent from exercising parent-time; and

526 (b) whether the requirement for supervised parent-time should expire after a set period

527 of time.

528 (5) The court shall, in its order for supervised parent-time, provide specific goals and
529 expectations for the noncustodial parent to accomplish before unsupervised parent-time may be
530 granted. The court shall schedule one or more follow-up hearings to revisit the issue of
531 supervised parent-time.

532 (6) A noncustodial parent may, at any time, petition the court to modify the order for
533 supervised parent-time if the noncustodial parent can demonstrate that the specific goals and
534 expectations set by the court in Subsection (5) have been accomplished.

535 Section 8. Section **30-5a-103** is amended to read:

536 **30-5a-103. Custody and visitation for individuals other than a parent.**

537 (1) (a) In accordance with Section 62A-4a-201, it is the public policy of this state that a
538 parent retain the fundamental right and duty to exercise primary control over the care,
539 supervision, upbringing, and education of the parent's children.

540 (b) There is a rebuttable presumption that a parent's decisions are in the child's best
541 interests.

542 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
543 visitation rights to an individual other than a parent who, by clear and convincing evidence,
544 establishes that:

545 (a) the individual has intentionally assumed the role and obligations of a parent;

546 (b) the individual and the child have formed a substantial emotional bond and created a
547 parent-child type relationship;

548 (c) the individual substantially contributed emotionally or financially to the child's well
549 being;

550 (d) the assumption of the parental role is not the result of a financially compensated
551 surrogate care arrangement;

552 (e) the continuation of the relationship between the individual and the child is in the
553 child's best interest;

554 (f) the loss or cessation of the relationship between the individual and the child would
555 substantially harm the child; and

556 (g) the parent:

557 (i) is absent; or

558 (ii) is found by a court to have abused or neglected the child.

559 (3) A proceeding under this chapter may be commenced by filing a verified petition, or
560 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district
561 court in the county where the child:

562 (a) currently resides; or

563 (b) lived with a parent or an individual other than a parent who acted as a parent within
564 six months before the commencement of the action.

565 (4) A proceeding under this chapter may be filed in a pending divorce, parentage
566 action, or other proceeding, including a proceeding in the juvenile court involving custody of or
567 visitation with a child.

568 (5) The petition shall include detailed facts supporting the petitioner's right to file the
569 petition including the criteria set forth in Subsection (2) and residency information as set forth
570 in Section 78B-13-209.

571 (6) A proceeding under this chapter may not be filed against a parent who is actively
572 serving outside the state in any branch of the military.

573 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with
574 the rules of civil procedure on all of the following:

575 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

576 (b) any individual who has court-ordered custody or visitation rights;

577 (c) the child's guardian;

578 (d) the guardian ad litem, if one has been appointed;

579 (e) an individual or agency that has physical custody of the child or that claims to have
580 custody or visitation rights; and

581 (f) any other individual or agency that has previously appeared in any action regarding
582 custody of or visitation with the child.

583 (8) The court may order a custody evaluation to be conducted in any action brought
584 under this chapter.

585 (9) The court may enter temporary orders in an action brought under this chapter
586 pending the entry of final orders.

587 (10) Except as provided in Subsection (11), a court may not grant custody of a child
588 under this section to an individual who is not the parent of the child and who, before a custody

589 order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony
590 involving conduct that constitutes any of the following:

591 (a) child abuse, as described in [~~Section 76-5-109~~] Sections 76-5-109, 76-5-109.2,
592 76-5-109.3, and 76-5-114;

593 (b) child abuse homicide, as described in Section 76-5-208;

594 (c) child kidnapping, as described in Section 76-5-301.1;

595 (d) human trafficking of a child, as described in Section 76-5-308.5;

596 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

597 (f) rape of a child, as described in Section 76-5-402.1;

598 (g) object rape of a child, as described in Section 76-5-402.3;

599 (h) sodomy on a child, as described in Section 76-5-403.1;

600 (i) sexual abuse of a child [~~or aggravated sexual abuse of a child~~], as described in
601 Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;

602 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or

603 (k) an offense in another state that, if committed in this state, would constitute an
604 offense described in this Subsection (10).

605 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
606 listed in Subsection (10) that prevents a court from granting custody except as provided in this
607 Subsection (11).

608 (b) An individual described in Subsection (10) may only be considered for custody of a
609 child if the following criteria are met by clear and convincing evidence:

610 (i) the individual is a relative, as defined in Section 80-3-102, of the child;

611 (ii) at least 10 years have elapsed from the day on which the individual is successfully
612 released from prison, jail, parole, or probation related to a disqualifying offense;

613 (iii) during the 10 years before the day on which the individual files a petition with the
614 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
615 an offense greater than an infraction or traffic violation that would likely impact the health,
616 safety, or well-being of the child;

617 (iv) the individual can provide evidence of successful treatment or rehabilitation
618 directly related to the disqualifying offense;

619 (v) the court determines that the risk related to the disqualifying offense is unlikely to

620 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
621 time in the future when considering all of the following:

622 (A) the child's age;

623 (B) the child's gender;

624 (C) the child's development;

625 (D) the nature and seriousness of the disqualifying offense;

626 (E) the preferences of a child 12 years old or older;

627 (F) any available assessments, including custody evaluations, parenting assessments,
628 psychological or mental health assessments, and bonding assessments; and

629 (G) any other relevant information;

630 (vi) the individual can provide evidence of the following:

631 (A) the relationship with the child is of long duration;

632 (B) that an emotional bond exists with the child; and

633 (C) that custody by the individual who has committed the disqualifying offense ensures
634 the best interests of the child are met;

635 (vii) (A) there is no other responsible relative known to the court who has or likely
636 could develop an emotional bond with the child and does not have a disqualifying offense; or

637 (B) if there is a responsible relative known to the court that does not have a
638 disqualifying offense, Subsection (11)(d) applies; and

639 (viii) that the continuation of the relationship between the individual with the
640 disqualifying offense and the child could not be sufficiently maintained through any type of
641 visitation if custody were given to the relative with no disqualifying offense described in
642 Subsection (11)(d).

643 (c) The individual with the disqualifying offense bears the burden of proof regarding
644 why placement with that individual is in the best interest of the child over another responsible
645 relative or equally situated individual who does not have a disqualifying offense.

646 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known
647 to the court who does not have a disqualifying offense:

648 (i) preference for custody is given to a relative who does not have a disqualifying
649 offense; and

650 (ii) before the court may place custody with the individual who has the disqualifying

651 offense over another responsible, willing, and able relative:

652 (A) an impartial custody evaluation shall be completed; and

653 (B) a guardian ad litem shall be assigned.

654 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a
655 final decision on custody has not been made and to a case filed on or after March 25, 2017.

656 Section 9. Section **31A-21-501** is amended to read:

657 **31A-21-501. Definitions.**

658 For purposes of this part:

659 (1) "Applicant" means:

660 (a) in the case of an individual life or accident and health policy, the person who seeks
661 to contract for insurance benefits; or

662 (b) in the case of a group life or accident and health policy, the proposed certificate
663 holder.

664 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
665 individual who is 16 years [~~of age~~] old or older who:

666 (a) is or was a spouse of the other party;

667 (b) is or was living as if a spouse of the other party;

668 (c) is related by blood or marriage to the other party;

669 (d) has one or more children in common with the other party; or

670 (e) resides or has resided in the same residence as the other party.

671 (3) "Child abuse" means the commission or attempt to commit against a child a
672 criminal offense described in:

673 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

674 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

675 (c) Section 76-9-702, Lewdness;

676 (d) Section 76-9-702.1, Sexual battery; or

677 (e) Section 76-9-702.5, Lewdness involving a child.

678 (4) "Domestic violence" means any criminal offense involving violence or physical

679 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to

680 commit a criminal offense involving violence or physical harm, when committed by one

681 cohabitant against another and includes commission or attempt to commit, any of the following

682 offenses by one cohabitant against another:

683 (a) aggravated assault, as described in Section 76-5-103;

684 (b) assault, as described in Section 76-5-102;

685 (c) criminal homicide, as described in Section 76-5-201;

686 (d) harassment, as described in Section 76-5-106;

687 (e) electronic communication harassment, as described in Section 76-9-201;

688 (f) ~~[kidnaping, child kidnaping]~~ kidnapping, child kidnapping, or aggravated

689 ~~[kidnaping]~~ kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

690 (g) mayhem, as described in Section 76-5-105;

691 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and

692 Section 76-5b-201;

693 (i) stalking, as described in Section 76-5-106.5;

694 (j) unlawful detention or unlawful detention of a minor, as described in Section

695 76-5-304;

696 (k) violation of a protective order or ex parte protective order, as described in Section

697 76-5-108;

698 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property

699 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

700 (m) possession of a deadly weapon with intent to assault, as described in Section

701 76-10-507; or

702 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any

703 person, building, or vehicle, as described in Section 76-10-508.

704 (5) "Subject of domestic abuse" means an individual who is, has been, may currently

705 be, or may have been subject to domestic violence or child abuse.

706 Section 10. Section **34A-2-110** is amended to read:

707 **34A-2-110. Workers' compensation insurance fraud -- Elements -- Penalties --**

708 **Notice.**

709 (1) As used in this section:

710 (a) "Corporation" ~~[has the same meaning as]~~ means the same as that term is defined in

711 Section 76-2-201.

712 (b) "Intentionally" ~~[has the same meaning as]~~ means the same as that term is defined in

713 Section 76-2-103.

714 (c) "Knowingly" [~~has the same meaning as~~] means the same as that term is defined in

715 Section 76-2-103.

716 (d) "Person" [~~has the same meaning as~~] means the same as that term is defined in

717 Section [~~76-1-601~~] 76-1-101.5.

718 (e) "Recklessly" [~~has the same meaning as~~] means the same as that term is defined in

719 Section 76-2-103.

720 (f) "Thing of value" means one or more of the following obtained under this chapter or

721 Chapter 3, Utah Occupational Disease Act:

722 (i) workers' compensation insurance coverage;

723 (ii) disability compensation;

724 (iii) a medical benefit;

725 (iv) a good;

726 (v) a professional service;

727 (vi) a fee for a professional service; or

728 (vii) anything of value.

729 (2) (a) A person is guilty of workers' compensation insurance fraud if that person
730 intentionally, knowingly, or recklessly:

731 (i) devises a scheme or artifice to do the following by means of a false or fraudulent
732 pretense, representation, promise, or material omission:

733 (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease
734 Act;

735 (B) avoid paying the premium that an insurer charges, for an employee on the basis of
736 the underwriting criteria applicable to that employee, to obtain a thing of value under this
737 chapter or Chapter 3, Utah Occupational Disease Act; or

738 (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah
739 Occupational Disease Act; and

740 (ii) communicates or causes a communication with another in furtherance of the
741 scheme or artifice.

742 (b) A violation of this Subsection (2) includes a scheme or artifice to:

743 (i) make or cause to be made a false written or oral statement with the intent to obtain

744 insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act,
745 at a rate that does not reflect the risk, industry, employer, or class code actually covered by the
746 insurance coverage;

747 (ii) form a business, reorganize a business, or change ownership in a business with the
748 intent to:

749 (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah
750 Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class
751 code actually covered by the insurance coverage;

752 (B) misclassify an employee as described in Subsection (2)(b)(iii); or

753 (C) deprive an employee of workers' compensation coverage as required by Subsection
754 34A-2-103(8);

755 (iii) misclassify an employee as one of the following so as to avoid the obligation to
756 obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational
757 Disease Act:

758 (A) an independent contractor;

759 (B) a sole proprietor;

760 (C) an owner;

761 (D) a partner;

762 (E) an officer; or

763 (F) a member in a limited liability company;

764 (iv) use a workers' compensation coverage waiver issued under Part 10, Workers'
765 Compensation Coverage Waivers Act, to deprive an employee of workers' compensation
766 coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or

767 (v) collect or make a claim for temporary disability compensation as provided in
768 Section 34A-2-410 while working for gain.

769 (3) (a) Workers' compensation insurance fraud under Subsection (2) is punishable in
770 the manner prescribed in Subsection (3)(c).

771 (b) A corporation or association is guilty of the offense of workers' compensation
772 insurance fraud under the same conditions as those set forth in Section 76-2-204.

773 (c) (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an
774 offense under Subsection (2) shall be measured by the following on the basis of which creates

775 the greatest penalty:

776 (A) the total value of all property, money, or other things obtained or sought to be
777 obtained by the scheme or artifice described in Subsection (2); or

778 (B) the number of individuals not covered under this chapter or Chapter 3, Utah
779 Occupational Disease Act, because of the scheme or artifice described in Subsection (2).

780 (ii) A person is guilty of:

781 (A) a class A misdemeanor:

782 (I) if the value of the property, money, or other thing of value described in Subsection
783 (3)(c)(i)(A) is less than \$1,000; or

784 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
785 individuals described in Subsection (3)(c)(i)(B) is less than five;

786 (B) a third degree felony:

787 (I) if the value of the property, money, or other thing of value described in Subsection
788 (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

789 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
790 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than
791 50; and

792 (C) a second degree felony:

793 (I) if the value of the property, money, or other thing of value described in Subsection
794 (3)(c)(i)(A) is equal to or greater than \$5,000; or

795 (II) for each individual described in Subsection (3)(c)(i)(B), if the number of
796 individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.

797 (4) The following are not a necessary element of an offense described in Subsection
798 (2):

799 (a) reliance on the part of a person;

800 (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to
801 permanently deprive a person of property, money, or anything of value; or

802 (c) an insurer or self-insured employer giving written notice in accordance with
803 Subsection (5) that workers' compensation insurance fraud is a crime.

804 (5) (a) An insurer or self-insured employer who, in connection with this chapter or
805 Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in

806 Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other
807 content on the form the statement: "Any person who knowingly presents false or fraudulent
808 underwriting information, files or causes to be filed a false or fraudulent claim for disability
809 compensation or medical benefits, or submits a false or fraudulent report or billing for health
810 care fees or other professional services is guilty of a crime and may be subject to fines and
811 confinement in state prison."

812 (b) Subsection (5)(a) applies to a form upon which a person:

813 (i) applies for insurance coverage;

814 (ii) applies for a workers' compensation coverage waiver issued under Part 10,
815 Workers' Compensation Coverage Waivers Act;

816 (iii) reports payroll;

817 (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss;

818 or

819 (v) makes a report or gives notice to an insurer or self-insured employer.

820 (c) An insurer or self-insured employer who issues a check, warrant, or other financial
821 instrument in payment of compensation issued under this chapter or Chapter 3, Utah
822 Occupational Disease Act, shall cause to be printed or displayed in comparative prominence
823 above the area for endorsement a statement substantially similar to the following: "Workers'
824 compensation insurance fraud is a crime punishable by Utah law."

825 (d) This Subsection (5) applies only to the legal obligations of an insurer or a
826 self-insured employer.

827 (e) A person who violates Subsection (2) is guilty of workers' compensation insurance
828 fraud, and the failure of an insurer or a self-insured employer to fully comply with this
829 Subsection (5) is not:

830 (i) a defense to violating Subsection (2); or

831 (ii) grounds for suppressing evidence.

832 (6) In the absence of malice, a person, employer, insurer, or governmental entity that
833 reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim
834 is not subject to civil liability for libel, slander, or another relevant cause of action.

835 (7) (a) In an action involving workers' compensation, this section supersedes Title 31A,
836 Chapter 31, Insurance Fraud Act.

837 (b) Nothing in this section prohibits the Insurance Department from investigating
838 violations of this section or from pursuing civil or criminal penalties for violations of this
839 section in accordance with Section 31A-31-109 and this title.

840 Section 11. Section **53-10-104.5** is amended to read:

841 **53-10-104.5. Wireless service -- Call location in emergencies.**

842 (1) As used in this section:

843 (a) "Call location information" means the best available location information, including
844 information obtained by use of historical cellular site information or a mobile locator tool.

845 (b) "Law enforcement agency" or "agency" has the same definition as in Section
846 53-1-102.

847 (c) "Mobile telecommunications service" has the same definition as in Section 54-8b-2.

848 (d) "Telecommunication device" has the same definition as in Section 76-6-409.5.

849 (2) A mobile telecommunications service shall provide call location information
850 regarding a telecommunication device user whom a law enforcement agency has reason to
851 believe is in need of services under Subsection (2)(a) or (b), upon the request of a law
852 enforcement agency or a public safety communications center if the agency or center
853 determines the location information is necessary in order to respond to:

854 (a) a call for emergency response services; or

855 (b) an emergency situation that involves the imminent risk of death or serious bodily
856 injury as defined in Section ~~[76-1-601]~~ 76-1-101.5.

857 (3) The mobile telecommunications service may establish procedures for its voluntary
858 response to a request for location under Subsection (2).

859 (4) A mobile telecommunications service that, acting in good faith, provides
860 information as requested under Subsection (2) may not be held civilly liable for providing the
861 information.

862 (5) (a) The division shall obtain contact information from all mobile
863 telecommunication service providers that provide services in this state to facilitate
864 communicating location requests under Subsection (2).

865 (b) The division shall provide the contact information to all public safety
866 communications centers in the state and shall provide updates to the contact information.

867 Section 12. Section **53-10-403** is amended to read:

868 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

869 (1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to
870 any person who:

871 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
872 (2)(a) or (b) on or after July 1, 2002;

873 (b) has pled guilty to or has been convicted by any other state or by the United States
874 government of an offense which if committed in this state would be punishable as one or more
875 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

876 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
877 offense under Subsection (2)(c);

878 (d) has been booked:

879 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
880 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

881 (ii) on or after January 1, 2015, for any felony offense; or

882 (e) is a minor under Subsection (3).

883 (2) Offenses referred to in Subsection (1) are:

884 (a) any felony or class A misdemeanor under the Utah Code;

885 (b) any offense under Subsection (2)(a):

886 (i) for which the court enters a judgment for conviction to a lower degree of offense
887 under Section 76-3-402; or

888 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
889 defined in Section 77-2a-1; or

890 (c) (i) any violent felony as defined in Section 53-10-403.5;

891 (ii) sale or use of body parts, Section 26-28-116;

892 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

893 (iv) driving with any amount of a controlled substance in a person's body and causing
894 serious bodily injury or death, Subsection 58-37-8(2)(g);

895 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

896 (vi) a felony violation of propelling a substance or object at a correctional officer, a
897 peace officer, or an employee or a volunteer, including health care providers, Section

898 76-5-102.6;

- 899 (vii) aggravated human trafficking, Section 76-5-310, and aggravated human
900 smuggling, Section [~~76-5-310~~] 76-5-310.1;
- 901 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
902 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 903 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
904 (xi) sale of a child, Section 76-7-203;
- 905 (xii) aggravated escape, Subsection 76-8-309(2);
906 (xiii) a felony violation of assault on an elected official, Section 76-8-315;
- 907 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of
908 Pardons and Parole, Section 76-8-316;
- 909 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
910 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 911 (xvii) a felony violation of sexual battery, Section 76-9-702.1;
912 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 913 (xix) a felony violation of abuse or desecration of a dead human body, Section
914 76-9-704;
- 915 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
916 76-10-402;
- 917 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
918 Section 76-10-403;
- 919 (xxii) possession of a concealed firearm in the commission of a violent felony,
920 Subsection 76-10-504(4);
- 921 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,
922 Subsection 76-10-1504(3);
- 923 (xxiv) commercial obstruction, Subsection 76-10-2402(2);
924 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section
925 77-41-107;
- 926 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1(4); or
927 (xxvii) violation of condition for release after arrest under Section 78B-7-802.
- 928 (3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated
929 by the juvenile court due to the commission of any offense described in Subsection (2), and

930 who:

931 (a) committed an offense under Subsection (2) within the jurisdiction of the juvenile
932 court on or after July 1, 2002; or

933 (b) is in the legal custody of the Division of Juvenile Justice Services on or after July 1,
934 2002, for an offense under Subsection (2).

935 Section 13. Section **53-10-801**, which is renumbered from Section 76-5-501 is
936 renumbered and amended to read:

937 ~~[76-5-501]~~. **53-10-801. Definitions.**

938 For purposes of this part:

939 (1) "Alleged sexual offender" means ~~[a person]~~ an individual or a minor regarding
940 whom an indictment, petition, or an information has been filed or an arrest has been made
941 alleging the commission of a sexual offense or an attempted sexual offense under Title 76,
942 Chapter 5, Part 4, Sexual Offenses, and regarding which:

943 (a) a judge has signed an accompanying arrest warrant, pickup order, or any other order
944 based upon probable cause regarding the alleged offense; and

945 (b) the judge has found probable cause to believe that the alleged victim has been
946 exposed to conduct or activities that may result in an HIV infection as a result of the alleged
947 offense.

948 (2) "Department of Health" means the state Department of Health as defined in Section
949 26-1-2.

950 (3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV)
951 infection determined by current medical standards and detected by any of the following:

952 (a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as
953 Western blot or other method approved by the Utah State Health Laboratory. Western blot
954 interpretation will be based on criteria currently recommended by the Association of State and
955 Territorial Public Health Laboratory Directors;

956 (b) presence of HIV antigen;

957 (c) isolation of HIV; or

958 (d) demonstration of HIV proviral DNA.

959 (4) "HIV positive individual" means ~~[a person]~~ an individual who is HIV positive as
960 determined by the State Health Laboratory.

961 (5) "Local department of health" means the department as defined in Subsection
962 26A-1-102(5).

963 (6) "Minor" means ~~[a person]~~ an individual younger than 18 years ~~[of age]~~ old.

964 (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).

965 (8) "Sexual offense" means a violation of ~~[state law prohibiting a sexual]~~ any offense
966 under Title 76, Chapter 5, Part 4, Sexual Offenses.

967 (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in
968 accordance with standards recommended by the Department of Health.

969 Section 14. Section **53-10-802**, which is renumbered from Section 76-5-502 is
970 renumbered and amended to read:

971 ~~[76-5-502]~~. **53-10-802. Request for testing -- Mandatory testing -- Liability for**
972 **costs.**

973 (1) (a) An alleged victim of ~~[the]~~ a sexual offense, the parent or guardian of an alleged
974 victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined
975 in Section 62A-3-301 may request that the alleged sexual offender against whom the
976 indictment, information, or petition is filed or regarding whom the arrest has been made be
977 tested to determine whether the alleged offender is an HIV positive individual.

978 (b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender
979 be tested, the alleged offender shall submit to being tested not later than 48 hours after an
980 information or indictment is filed or an order requiring a test is signed.

981 (c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be
982 tested more than 48 hours after an information or indictment is filed, the offender shall submit
983 to being tested not later than 24 hours after the request is made.

984 (d) As soon as practicable, the results of the test conducted pursuant to this section
985 shall be provided to:

986 (i) the alleged victim who requested the test;

987 (ii) the parent or guardian of the alleged victim, if the alleged victim is a minor;

988 (iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as
989 defined in Section 62A-3-301;

990 (iv) the alleged offender; and

991 (v) the parent or legal guardian of the alleged offender, if the offender is a minor.

992 (e) If follow-up testing is medically indicated, the results of follow-up testing of the
993 alleged offender shall be sent as soon as practicable to:

994 (i) the alleged victim;

995 (ii) the parent or guardian of the alleged victim if the alleged victim is [~~younger than 18~~
996 ~~years of age~~] a minor;

997 (iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as
998 defined in Section 62A-3-301;

999 (iv) the alleged offender; and

1000 (v) the parent or legal guardian of the alleged offender, if the alleged offender is a
1001 minor.

1002 (2) If the mandatory test has not been conducted, and the alleged offender or alleged
1003 minor offender is already confined in a county jail, state prison, or a secure youth corrections
1004 facility, the alleged offender shall be tested while in confinement.

1005 (3) (a) The secure youth corrections facility or county jail shall cause the blood
1006 specimen of the alleged offender under Subsection (1) confined in that facility to be taken and
1007 shall forward the specimen to:

1008 (i) the Department of Health; or

1009 (ii) an alternate testing facility, as determined by the secure youth corrections facility or
1010 county jail, if testing under Subsection (3)(a)(i) is unavailable.

1011 (b) The entity that receives the specimen under Subsection (3)(a) shall provide the
1012 result to the prosecutor as soon as practicable for release to the parties as described in
1013 Subsection (1)(d) or (e).

1014 (4) The Department of Corrections shall cause the blood specimen of the alleged
1015 offender defined in Subsection (1) confined in any state prison to be taken and shall forward
1016 the specimen to the Department of Health as provided in Section 64-13-36.

1017 (5) The alleged offender who is tested is responsible upon conviction for the costs of
1018 testing, unless the alleged offender is indigent. The costs will then be paid by the Department
1019 of Health from the General Fund.

1020 Section 15. Section ~~53-10-803~~, which is renumbered from Section 76-5-503 is
1021 renumbered and amended to read:

1022 ~~[76-5-503]~~. **53-10-803. Voluntary testing -- Victim to request -- Costs paid by**

1023 **Utah Office for Victims of Crime.**

1024 (1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5,
1025 Part 4, Sexual Offenses, may request a test for the HIV infection.

1026 (2) (a) The local health department shall obtain the blood specimen from the victim
1027 and forward the specimen to the Department of Health.

1028 (b) The Department of Health shall analyze the specimen of the victim.

1029 (3) The testing shall consist of a base-line test of the victim at the time immediately or
1030 as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result
1031 is not positive, follow-up testing shall occur at three months and six months after the alleged
1032 occurrence of the sexual offense.

1033 (4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if
1034 the victim provides a substantiated claim of the sexual offense, does not test HIV positive at
1035 the base-line testing phase, and complies with eligibility criteria established by the Utah Office
1036 for Victims of Crime.

1037 Section 16. Section **53-10-804**, which is renumbered from Section 76-5-504 is
1038 renumbered and amended to read:

1039 ~~[76-5-504].~~ **53-10-804. Victim notification and counseling.**

1040 (1) (a) The Department of Health shall provide the victim who requests testing of the
1041 alleged sexual offender's human immunodeficiency virus status counseling regarding HIV
1042 disease and referral for appropriate health care and support services.

1043 (b) If the local health department in whose jurisdiction the victim resides and the
1044 Department of Health agree, the Department of Health shall forward a report of the alleged
1045 sexual offender's human immunodeficiency virus status to the local health department and the
1046 local health department shall provide the victim who requests the test with the test results,
1047 counseling regarding HIV disease, and referral for appropriate health care and support services.

1048 (2) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a
1049 local health department acting pursuant to an agreement made under Subsection (1) may
1050 disclose to the victim the results of the alleged sexual offender's human immunodeficiency
1051 virus status as provided in this section.

1052 Section 17. Section **53-10-901**, which is renumbered from Section 76-5-601 is
1053 renumbered and amended to read:

1054 ~~[76-5-601]~~. **53-10-901**. Title.

1055 This part is known as the "Sexual Assault Kit Processing Act."

1056 Section 18. Section **53-10-902**, which is renumbered from Section 76-5-602 is
1057 renumbered and amended to read:

1058 ~~[76-5-602]~~. **53-10-902**. Definitions.

1059 For purposes of this part:

1060 (1) "Collecting facility" means a hospital, health care facility, or other facility that
1061 performs sexual assault examinations.

1062 (2) "Department" means the Department of Public Safety.

1063 (3) "Restricted kit" means a sexual assault kit:

1064 (a) that is collected by a collecting facility; and

1065 (b) for which a victim who is 18 years ~~[of age]~~ old or older at the time of the sexual
1066 assault kit evidence collection declines:

1067 (i) to have his or her sexual assault kit processed; and

1068 (ii) to have the sexual assault examination form shared with any entity outside of the
1069 collection facility.

1070 (4) "Sexual assault kit" means a package of items that is used by medical personnel to
1071 gather and preserve biological and physical evidence following an allegation of sexual assault.

1072 (5) "Trauma-informed, victim-centered" means policies, procedures, programs, and
1073 practices that:

1074 (a) have demonstrated an ability to minimize retraumatization associated with the
1075 criminal justice process by recognizing the presence of trauma symptoms and acknowledging
1076 the role that trauma has played in the life of a victim of sexual assault or sexual abuse; and

1077 (b) encourage law enforcement officers to interact with victims of sexual assault or
1078 sexual abuse with compassion and sensitivity in a nonjudgmental manner.

1079 Section 19. Section **53-10-903**, which is renumbered from Section 76-5-603 is
1080 renumbered and amended to read:

1081 ~~[76-5-603]~~. **53-10-903**. All sexual assault kits to be submitted.

1082 (1) Except as provided in Subsection ~~[76-5-604]~~ 53-10-904(5), beginning July 1, 2018,
1083 all sexual assault kits received by law enforcement agencies shall be submitted to the Utah
1084 Bureau of Forensic Services in accordance with the provisions of this part.

1085 (2) The Utah Bureau of Forensic Services shall test all sexual assault kits that the
1086 bureau receives with the goal of developing autosomal DNA profiles that are eligible for entry
1087 into the Combined DNA Index System.

1088 (3) (a) The testing of all sexual assault kits shall be completed within a specified
1089 amount of time, as determined by administrative rule consistent with the provisions of this part.

1090 (b) The ability of the Utah Bureau of Forensic Services to meet the established time
1091 frames may be dependent upon the following factors:

1092 (i) the number of sexual assault kits that the Utah Bureau of Forensic Services
1093 receives;

1094 (ii) the technology available and improved testing methods;

1095 (iii) fully trained and dedicated staff to meet the full workload needs of the Utah
1096 Bureau of Forensic Services; and

1097 (iv) the number of lab requests received relating to other crime categories.

1098 Section 20. Section **53-10-904**, which is renumbered from Section 76-5-604 is
1099 renumbered and amended to read:

1100 ~~[76-5-604]~~. **53-10-904. Sexual assault kit processing -- Restricted kits.**

1101 (1) Unless the health care provider designates a sexual assault kit as a restricted kit, the
1102 collecting facility shall enter the required victim information into the statewide sexual assault
1103 kit tracking system, defined in Section 76-5-607, within 24 hours of performing a sexual
1104 assault examination.

1105 (2) A restricted kit may only be designated as a restricted kit:

1106 (a) by a health care provider; and

1107 (b) at the time of collection.

1108 (3) Each sexual assault kit collected by medical personnel shall be taken into custody
1109 by a law enforcement agency as soon as possible and within one business day of notice from
1110 the collecting facility.

1111 (4) The law enforcement agency that receives a sexual assault kit shall enter the
1112 required information into the statewide sexual assault kit tracking system, provided in Section
1113 ~~[76-5-607]~~ **53-10-907**, within five business days of receiving a sexual assault kit from a
1114 collecting facility.

1115 (5) Each sexual assault kit received by a law enforcement agency from a collecting

1116 facility that relates to an incident that occurred outside of the jurisdiction of the law
1117 enforcement agency shall be transferred to the law enforcement agency with jurisdiction over
1118 the incident within 10 days of learning that another law enforcement agency has jurisdiction.

1119 (6) (a) Except for restricted kits, each sexual assault kit shall be submitted to the Utah
1120 Bureau of Forensic Services as soon as possible, but no later than 30 days after receipt by a law
1121 enforcement agency.

1122 (b) Restricted kits may not be submitted to the Utah Bureau of Forensic Services.

1123 (c) Restricted kits shall be maintained by the law enforcement agency with jurisdiction,
1124 in accordance with the provisions of this part.

1125 (d) A restricted kit may be changed to an unrestricted kit if the victim informs the
1126 designated law enforcement agency that he or she wants to have the sexual assault kit
1127 processed and agrees to release of the sexual assault examination form with the sexual assault
1128 kit. Once a victim indicates that he or she wants the sexual assault kit processed:

1129 (i) the kit may no longer be classified as restricted; and

1130 (ii) the kit shall be transmitted to the Utah Bureau of Forensic Services as soon as
1131 possible, but no later than 30 days after the victim chooses to unrestrict his or her kit with law
1132 enforcement.

1133 (7) If available, a suspect standard or a consensual partner elimination standard shall be
1134 submitted to the Utah Bureau of Forensic Services:

1135 (a) with the sexual assault kit, if available, at the time the sexual assault kit is
1136 submitted; or

1137 (b) as soon as possible, but no later than 30 days from the date the kit was obtained by
1138 the law enforcement agency, if not obtained until after the sexual assault kit is submitted.

1139 (8) Failure to meet a deadline established in this part or as part of any rules established
1140 by the department is not a basis for dismissal of a criminal action or a bar to the admissibility
1141 of the evidence in a criminal action.

1142 Section 21. Section **53-10-905**, which is renumbered from Section 76-5-605 is
1143 renumbered and amended to read:

1144 ~~[76-5-605]~~. **53-10-905. Sexual assault kit retention and disposal.**

1145 Any item of evidence gathered by collecting facility personnel, law enforcement,
1146 prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid evidence

1147 testing and analysis in order to confirm the guilt or innocence of a criminal defendant may not
1148 be disposed of before trial of a criminal defendant unless:

1149 (1) 50 years have passed from the date of evidence collection for sexual assault kits
1150 relating to an uncharged or unresolved crime; or

1151 (2) 20 years have passed from the date of evidence collection for restricted kits, and:

1152 (a) the prosecution has determined that the defendant will not be tried for the criminal
1153 offense;

1154 (b) the prosecution has filed a motion with the court to destroy the evidence; and

1155 (c) an attempt has been made to notify the victim as required in Subsections
1156 77-37-3(3)(b)(i) and (ii).

1157 Section 22. Section **53-10-906**, which is renumbered from Section 76-5-606 is
1158 renumbered and amended to read:

1159 ~~[76-5-606]~~. **53-10-906. Victim notification of rights -- Notification of law**
1160 **enforcement.**

1161 (1) Collecting facility personnel who conduct sexual assault examinations shall inform
1162 each victim of a sexual assault of:

1163 (a) available services for treatment of sexually transmitted infections, pregnancy, and
1164 other medical and psychiatric conditions;

1165 (b) available crisis intervention or other mental health services provided;

1166 (c) the option to receive prophylactic medication to prevent sexually transmitted
1167 infections and pregnancy;

1168 (d) the right to determine:

1169 (i) whether to provide a personal statement about the sexual assault to law
1170 enforcement; and

1171 (ii) if law enforcement should have access to any paperwork from the forensic
1172 examination; and

1173 (e) the victim's rights as provided in Section 77-37-3.

1174 (2) The collecting facility shall notify law enforcement as soon as practicable if the
1175 victim of a sexual assault decides to interview and discuss the assault with law enforcement.

1176 (3) If a victim of a sexual assault declines to provide a personal statement about the
1177 sexual assault to law enforcement, the collecting facility shall provide a written notice to the

1178 victim that contains the following information:

1179 (a) where the sexual assault kit will be stored;

1180 (b) notice that the victim may choose to contact law enforcement any time after
1181 declining to provide a personal statement;

1182 (c) the name, phone number, and email address of the law enforcement agency having
1183 jurisdiction; and

1184 (d) the name and phone number of a local rape crisis center.

1185 Section 23. Section **53-10-907**, which is renumbered from Section 76-5-607 is
1186 renumbered and amended to read:

1187 ~~[76-5-607].~~ **53-10-907. Statewide sexual assault kit tracking system.**

1188 (1) The department shall develop and implement a statewide tracking system [by July
1189 1, 2018,] that contains the following information for all sexual assault kits collected by law
1190 enforcement:

1191 (a) the submission status of sexual assault kits by law enforcement to the Utah Bureau
1192 of Forensic Services;

1193 (b) notification by the Utah Bureau of Forensic Services to law enforcement of DNA
1194 analysis findings; and

1195 (c) the storage location of sexual assault kits.

1196 (2) The tracking system shall include a secure electronic access that allows the
1197 submitting agency, collecting facility, department, and a victim, or his or her designee, to
1198 access or receive information, provided that the disclosure does not impede or compromise an
1199 active investigation, about the:

1200 (a) lab submission status;

1201 (b) DNA analysis findings provided to law enforcement; and

1202 (c) storage location of a sexual assault kit that was gathered from that victim.

1203 Section 24. Section **53-10-908**, which is renumbered from Section 76-5-608 is
1204 renumbered and amended to read:

1205 ~~[76-5-608].~~ **53-10-908. Law enforcement -- Training -- Sexual assault, sexual**
1206 **abuse, and human trafficking.**

1207 (1) The department and the Utah Prosecution Council shall develop training in
1208 trauma-informed responses and investigations of sexual assault and sexual abuse, which

1209 include, but are not limited to, the following:

1210 (a) recognizing the symptoms of trauma;

1211 (b) understanding the impact of trauma on a victim;

1212 (c) responding to the needs and concerns of a victim of sexual assault or sexual abuse;

1213 (d) delivering services to victims of sexual assault or sexual abuse in a compassionate,
1214 sensitive, and nonjudgmental manner;

1215 (e) understanding cultural perceptions and common myths of sexual assault and sexual
1216 abuse; and

1217 (f) techniques of writing reports in accordance with Subsection (5).

1218 (2) (a) The department and the Utah Prosecution Council shall offer the training in
1219 Subsection (1) to all certified law enforcement officers in the state.

1220 (b) The training for all law enforcement officers may be offered through an online
1221 course, developed by the department and the Utah Prosecution Council.

1222 (3) The training listed in Subsection (1) shall be offered by the Peace Officer Standards
1223 and Training division to all persons seeking certification as a peace officer.

1224 (4) (a) The department and the Utah Prosecution Council shall develop and offer an
1225 advanced training course for officers who investigate cases of sexual assault or sexual abuse.

1226 (b) The advanced training course shall include:

1227 (i) all criteria listed in Subsection (1); and

1228 (ii) interviewing techniques in accordance with the curriculum standards in Subsection
1229 (5).

1230 (5) The department shall consult with the Utah Prosecution Council to develop the
1231 specific training requirements of this section, including curriculum standards for report writing
1232 and response to sexual assault and sexual abuse, including trauma-informed and
1233 victim-centered interview techniques, which have been demonstrated to minimize
1234 retraumatizing victims.

1235 (6) The Office of the Attorney General shall develop and offer training for law
1236 enforcement officers in investigating human trafficking offenses.

1237 (7) The training described in Subsection (6) shall be offered to all law enforcement
1238 officers in the state by July 1, 2020.

1239 (8) The training described in Subsection (6) shall be offered by the Peace Officer

1240 Standards and Training division to all persons seeking certification as a peace officer, in
1241 conjunction with the training described in Subsection (1), beginning July 1, 2021.

1242 (9) The Office of the Attorney General, the department, and the Utah Prosecution
1243 Council shall consult with one another to provide the training described in Subsection (6)
1244 jointly with the training described in Subsection (1) as reasonably practicable.

1245 Section 25. Section **53-10-909**, which is renumbered from Section 76-5-609 is
1246 renumbered and amended to read:

1247 ~~[76-5-609]~~. **53-10-909**. **Rulemaking authority.**

1248 After consultation with the Utah Bureau of Forensic Services and in accordance with
1249 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules,
1250 consistent with this part, regarding:

1251 (1) the procedures for the submission and testing of all sexual assault kits collected by
1252 law enforcement and prosecutorial agencies in the state;

1253 (2) the information and evidence that is required to be submitted as part of each sexual
1254 assault kit submission; and

1255 (3) goals for the completion of analysis and classification of all sexual assault kit
1256 submissions.

1257 Section 26. Section **53-10-910**, which is renumbered from Section 76-5-610 is
1258 renumbered and amended to read:

1259 ~~[76-5-610]~~. **53-10-910**. **Reporting requirement.**

1260 The Department of Public Safety and the Utah Bureau of Forensic Services shall report
1261 by July 31 of each year to the Law Enforcement and Criminal Justice Interim Committee and
1262 the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

1263 (1) the timelines set for testing all sexual assault kits submitted to the Utah Bureau of
1264 Forensic Services as provided in Subsection ~~[76-5-603]~~ 53-10-903(2);

1265 (2) the goals established in Section ~~[76-5-609]~~ 53-10-909;

1266 (3) the status of meeting those goals;

1267 (4) the number of sexual assault kits that are sent to the Utah Bureau of Forensic
1268 Services for testing;

1269 (5) the number of restricted kits held by law enforcement;

1270 (6) the number of sexual assault kits that are not processed in accordance with the

1271 timelines established in this part; and

1272 (7) future appropriations requests that will ensure that all DNA cases can be processed
1273 according to the timelines established by this part.

1274 Section 27. Section **53-13-110.5** is amended to read:

1275 **53-13-110.5. Retention of records of interviews of minors.**

1276 If a peace officer, or the officer's employing agency, records an interview of a minor
1277 during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, [or]
1278 76-5-404.1, or 76-5-404.3, the agency shall retain a copy of the recording for 18 years after the
1279 day on which the last recording of the interview is made, unless the prosecuting attorney
1280 requests in writing that the recording be retained for an additional period of time.

1281 Section 28. Section **53B-28-304** is amended to read:

1282 **53B-28-304. Criminal retaliation against a victim or a witness.**

1283 (1) As used in this section:

1284 (a) "Bodily injury" means the same as that term is defined in Section [~~76-1-601~~]
1285 76-1-101.5.

1286 (b) "Damage" means physical damage to an individual's property.

1287 (2) An individual is guilty of a third degree felony if the individual inflicts bodily
1288 injury or damage:

1289 (a) upon a victim of or a witness to an act of sexual violence alleged in a covered
1290 allegation; and

1291 (b) in retaliation for the victim's or the witness's:

1292 (i) report of the covered allegation; or

1293 (ii) involvement in an investigation initiated by the institution in response to the
1294 covered allegation.

1295 (3) An individual is guilty of a third degree felony if the individual:

1296 (a) communicates an intention to inflict bodily injury:

1297 (i) upon a victim of or a witness to an act of sexual violence alleged in a covered
1298 allegation; and

1299 (ii) in retaliation for the victim's or the witness's:

1300 (A) report of the covered allegation; or

1301 (B) involvement in an investigation initiated by the institution in response to the

1302 covered allegation; and

1303 (b) (i) intends the communication described in Subsection (3)(a) as a threat against the
1304 victim or the witness; or

1305 (ii) knows that the communication described in Subsection (3)(a) will be viewed as a
1306 threat against the victim or the witness.

1307 Section 29. Section **53G-11-405** is amended to read:

1308 **53G-11-405. Due process for individuals--Review of criminal history information.**

1309 (1) (a) In accordance with Section 53-10-108, an authorized entity shall provide an
1310 individual an opportunity to review and respond to any criminal history information received
1311 under this part.

1312 (b) If an authorized entity decides to disqualify an individual as a result of criminal
1313 history information received under this part, an individual may request a review of:

1314 (i) information received; and

1315 (ii) the reasons for the disqualification.

1316 (c) An authorized entity shall provide an individual described in Subsection (1)(b) with
1317 written notice of:

1318 (i) the reasons for the disqualification; and

1319 (ii) the individual's right to request a review of the disqualification.

1320 (2) (a) An LEA or qualifying private school shall make decisions regarding criminal
1321 history information for the individuals subject to the background check requirements under
1322 Section 53G-11-402 in accordance with:

1323 (i) Subsection (3);

1324 (ii) administrative procedures established by the LEA or qualifying private school; and

1325 (iii) rules established by the state board.

1326 (b) The state board shall make decisions regarding criminal history information for
1327 licensed educators in accordance with:

1328 (i) Subsection (3);

1329 (ii) Title 53E, Chapter 6, Education Professional Licensure; and

1330 (iii) rules established by the state board.

1331 (3) When making decisions regarding initial employment, initial licensing, or initial
1332 appointment for the individuals subject to background checks under this part, an authorized

1333 entity shall consider:

1334 (a) any convictions, including pleas in abeyance;

1335 (b) any matters involving a felony; and

1336 (c) any matters involving an alleged:

1337 (i) sexual offense;

1338 (ii) class A misdemeanor drug offense;

1339 (iii) offense against the person under Title 76, Chapter 5, Offenses Against the [Person]

1340 Individual;

1341 (iv) class A misdemeanor property offense that is alleged to have occurred within the
1342 previous three years; and

1343 (v) any other type of criminal offense, if more than one occurrence of the same type of
1344 offense is alleged to have occurred within the previous eight years.

1345 Section 30. Section **57-14-102** is amended to read:

1346 **57-14-102. Definitions.**

1347 As used in this chapter:

1348 (1) "Charge" means the admission price or fee asked in return for permission to enter
1349 or go upon the land.

1350 (2) "Child" means an individual who is 16 years [~~of age~~] old or younger.

1351 (3) (a) "Land" means any land within the state boundaries.

1352 (b) "Land" includes roads, railway corridors, water, water courses, private ways and
1353 buildings, structures, and machinery or equipment when attached to the realty.

1354 (4) "Owner" means the possessor of any interest in the land, whether public or private
1355 land, including a tenant, a lessor, a lessee, an occupant, or person in control of the land.

1356 (5) "Person" includes any person, regardless of age, maturity, or experience, who enters
1357 upon or uses land for recreational purposes.

1358 (6) "Recreational purpose" includes, but is not limited to, any of the following or any
1359 combination thereof:

1360 (a) hunting;

1361 (b) fishing;

1362 (c) swimming;

1363 (d) skiing;

- 1364 (e) snowshoeing;
- 1365 (f) camping;
- 1366 (g) picnicking;
- 1367 (h) hiking;
- 1368 (i) studying nature;
- 1369 (j) waterskiing;
- 1370 (k) engaging in water sports;
- 1371 (l) engaging in equestrian activities;
- 1372 (m) using boats;
- 1373 (n) mountain biking;
- 1374 (o) riding narrow gauge rail cars on a narrow gauge track that does not exceed 24 inch
- 1375 gauge;
- 1376 (p) using off-highway vehicles or recreational vehicles;
- 1377 (q) viewing or enjoying historical, archaeological, scenic, or scientific sites;
- 1378 (r) aircraft operations; and
- 1379 (s) equestrian activity, skateboarding, skydiving, paragliding, hang gliding, roller
- 1380 skating, ice skating, walking, running, jogging, bike riding, or in-line skating.
- 1381 (7) "Serious physical injury" means any physical injury or set of physical injuries that:
- 1382 (a) seriously impairs a person's health;
- 1383 (b) was caused by use of a dangerous weapon as defined in Section ~~[76-1-601]~~
- 1384 76-1-101.5;
- 1385 (c) involves physical torture or causes serious emotional harm to a person; or
- 1386 (d) creates a reasonable risk of death.
- 1387 (8) "Trespasser" means a person who enters on the land of another without:
- 1388 (a) express or implied permission; or
- 1389 (b) invitation.
- 1390 Section 31. Section **58-37-8** is amended to read:
- 1391 **58-37-8. Prohibited acts -- Penalties.**
- 1392 (1) Prohibited acts A -- Penalties and reporting:
- 1393 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
- 1394 intentionally:

- 1395 (i) produce, manufacture, or dispense, or to possess with intent to produce,
1396 manufacture, or dispense, a controlled or counterfeit substance;
- 1397 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
1398 arrange to distribute a controlled or counterfeit substance;
- 1399 (iii) possess a controlled or counterfeit substance with intent to distribute; or
1400 (iv) engage in a continuing criminal enterprise where:
- 1401 (A) the person participates, directs, or engages in conduct that results in a violation of
1402 Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act,
1403 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance
1404 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and
- 1405 (B) the violation is a part of a continuing series of two or more violations of Chapter
1406 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b,
1407 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,
1408 or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert
1409 with five or more persons with respect to whom the person occupies a position of organizer,
1410 supervisor, or any other position of management.
- 1411 (b) A person convicted of violating Subsection (1)(a) with respect to:
- 1412 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
1413 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
1414 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
1415 subsequent conviction is guilty of a first degree felony;
- 1416 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
1417 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and
1418 upon a second or subsequent conviction is guilty of a second degree felony; or
- 1419 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
1420 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
1421 felony.
- 1422 (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may
1423 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of
1424 fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the
1425 person or in the person's immediate possession during the commission or in furtherance of the

1426 offense, the court shall additionally sentence the person convicted for a term of one year to run
1427 consecutively and not concurrently; and the court may additionally sentence the person
1428 convicted for an indeterminate term not to exceed five years to run consecutively and not
1429 concurrently.

1430 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
1431 felony punishable by imprisonment for an indeterminate term of not less than:

1432 (A) seven years and which may be for life; or

1433 (B) 15 years and which may be for life if the trier of fact determined that the defendant
1434 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
1435 was under 18 years old.

1436 (ii) Imposition or execution of the sentence may not be suspended, and the person is
1437 not eligible for probation.

1438 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
1439 offense, was under 18 years old.

1440 (e) The Administrative Office of the Courts shall report to the Division of
1441 Occupational and Professional Licensing the name, case number, date of conviction, and if
1442 known, the date of birth of each person convicted of violating Subsection (1)(a).

1443 (2) Prohibited acts B -- Penalties and reporting:

1444 (a) It is unlawful:

1445 (i) for a person knowingly and intentionally to possess or use a controlled substance
1446 analog or a controlled substance, unless it was obtained under a valid prescription or order,
1447 directly from a practitioner while acting in the course of the person's professional practice, or as
1448 otherwise authorized by this chapter;

1449 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
1450 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
1451 by persons unlawfully possessing, using, or distributing controlled substances in any of those
1452 locations; or

1453 (iii) for a person knowingly and intentionally to possess an altered or forged
1454 prescription or written order for a controlled substance.

1455 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

1456 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

1457 or

1458 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
1459 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
1460 conviction if each prior offense was committed within seven years before the date of the
1461 offense upon which the current conviction is based is guilty of a third degree felony.

1462 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
1463 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
1464 penalty than provided in this Subsection (2).

1465 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
1466 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
1467 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

1468 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
1469 offense was committed within seven years before the date of the offense upon which the
1470 current conviction is based.

1471 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
1472 if each prior offense was committed within seven years before the date of the offense upon
1473 which the current conviction is based.

1474 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
1475 boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a
1476 public jail or other place of confinement shall be sentenced to a penalty one degree greater than
1477 provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as
1478 listed in:

1479 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
1480 indeterminate term as provided by law, and:

1481 (A) the court shall additionally sentence the person convicted to a term of one year to
1482 run consecutively and not concurrently; and

1483 (B) the court may additionally sentence the person convicted for an indeterminate term
1484 not to exceed five years to run consecutively and not concurrently; and

1485 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
1486 indeterminate term as provided by law, and the court shall additionally sentence the person
1487 convicted to a term of six months to run consecutively and not concurrently.

- 1488 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 1489 (i) on a first conviction, guilty of a class B misdemeanor;
- 1490 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 1491 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 1492 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 1493 amounting to a violation of Section 76-5-207:
- 1494 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 1495 body any measurable amount of a controlled substance, except for
- 1496 11-nor-9-carboxy-tetrahydrocannabinol; and
- 1497 (ii) (A) if the controlled substance is not marijuana, operates a motor vehicle as defined
- 1498 in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section
- 1499 ~~[76-1-601]~~ 76-1-101.5 or the death of another; or
- 1500 (B) if the controlled substance is marijuana, operates a motor vehicle as defined in
- 1501 Section 76-5-207 in a criminally negligent manner, causing serious bodily injury as defined in
- 1502 Section ~~[76-1-601]~~ 76-1-101.5 or the death of another.
- 1503 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 1504 (i) a controlled substance classified under Schedule I, other than those described in
- 1505 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 1506 degree felony;
- 1507 (ii) except as provided in Subsection (2)(g)(ii)(B), marijuana, tetrahydrocannabinols, or
- 1508 equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in
- 1509 Section 58-37-4.2 is guilty of a third degree felony; or
- 1510 (iii) a controlled substance classified under Schedules III, IV, or V is guilty of a class A
- 1511 misdemeanor.
- 1512 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 1513 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
- 1514 whether or not the injuries arise from the same episode of driving.
- 1515 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 1516 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 1517 of birth of each person convicted of violating Subsection (2)(a).
- 1518 (3) Prohibited acts C -- Penalties:

1519 (a) It is unlawful for a person knowingly and intentionally:

1520 (i) to use in the course of the manufacture or distribution of a controlled substance a
1521 license number which is fictitious, revoked, suspended, or issued to another person or, for the
1522 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
1523 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
1524 person;

1525 (ii) to acquire or obtain possession of, to procure or attempt to procure the
1526 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
1527 attempting to acquire or obtain possession of, or to procure the administration of a controlled
1528 substance by misrepresentation or failure by the person to disclose receiving a controlled
1529 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
1530 prescription or written order for a controlled substance, or the use of a false name or address;

1531 (iii) to make a false or forged prescription or written order for a controlled substance,
1532 or to utter the same, or to alter a prescription or written order issued or written under the terms
1533 of this chapter; or

1534 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to
1535 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
1536 device of another or any likeness of any of the foregoing upon any drug or container or labeling
1537 so as to render a drug a counterfeit controlled substance.

1538 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
1539 misdemeanor.

1540 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
1541 degree felony.

1542 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

1543 (4) Prohibited acts D -- Penalties:

1544 (a) Notwithstanding other provisions of this section, a person not authorized under this
1545 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
1546 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier
1547 of fact finds the act is committed:

1548 (i) in a public or private elementary or secondary school or on the grounds of any of
1549 those schools during the hours of 6 a.m. through 10 p.m.;

- 1550 (ii) in a public or private vocational school or postsecondary institution or on the
1551 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;
- 1552 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
1553 facility's hours of operation;
- 1554 (iv) in a public park, amusement park, arcade, or recreation center when the public or
1555 amusement park, arcade, or recreation center is open to the public;
- 1556 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 1557 (vi) in or on the grounds of a library when the library is open to the public;
- 1558 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
1559 in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);
- 1560 (viii) in the presence of a person younger than 18 years [~~of age~~] old, regardless of
1561 where the act occurs; or
- 1562 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
1563 distribution of a substance in violation of this section to an inmate or on the grounds of a
1564 correctional facility as defined in Section 76-8-311.3.
- 1565 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
1566 and shall be imprisoned for a term of not less than five years if the penalty that would
1567 otherwise have been established but for this Subsection (4) would have been a first degree
1568 felony.
- 1569 (ii) Imposition or execution of the sentence may not be suspended, and the person is
1570 not eligible for probation.
- 1571 (c) If the classification that would otherwise have been established would have been
1572 less than a first degree felony but for this Subsection (4), a person convicted under this
1573 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
1574 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).
- 1575 (d) (i) If the violation is of Subsection (4)(a)(ix):
- 1576 (A) the person may be sentenced to imprisonment for an indeterminate term as
1577 provided by law, and the court shall additionally sentence the person convicted for a term of
1578 one year to run consecutively and not concurrently; and
- 1579 (B) the court may additionally sentence the person convicted for an indeterminate term
1580 not to exceed five years to run consecutively and not concurrently; and

1581 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
1582 the mental state required for the commission of an offense, directly or indirectly solicits,
1583 requests, commands, coerces, encourages, or intentionally aids another person to commit a
1584 violation of Subsection (4)(a)(ix).

1585 (e) It is not a defense to a prosecution under this Subsection (4) that:

1586 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of
1587 the offense or was unaware of the individual's true age; or

1588 (ii) the actor mistakenly believed that the location where the act occurred was not as
1589 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
1590 described in Subsection (4)(a).

1591 (5) A violation of this chapter for which no penalty is specified is a class B
1592 misdemeanor.

1593 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
1594 guilty or no contest to a violation or attempted violation of this section or a plea which is held
1595 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
1596 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
1597 abeyance agreement.

1598 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
1599 conviction that is:

1600 (i) from a separate criminal episode than the current charge; and

1601 (ii) from a conviction that is separate from any other conviction used to enhance the
1602 current charge.

1603 (7) A person may be charged and sentenced for a violation of this section,
1604 notwithstanding a charge and sentence for a violation of any other section of this chapter.

1605 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
1606 of, a civil or administrative penalty or sanction authorized by law.

1607 (b) When a violation of this chapter violates a federal law or the law of another state,
1608 conviction or acquittal under federal law or the law of another state for the same act is a bar to
1609 prosecution in this state.

1610 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
1611 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled

1612 substance or substances, is prima facie evidence that the person or persons did so with
1613 knowledge of the character of the substance or substances.

1614 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
1615 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
1616 administering controlled substances or from causing the substances to be administered by an
1617 assistant or orderly under the veterinarian's direction and supervision.

1618 (11) Civil or criminal liability may not be imposed under this section on:

1619 (a) a person registered under this chapter who manufactures, distributes, or possesses
1620 an imitation controlled substance for use as a placebo or investigational new drug by a
1621 registered practitioner in the ordinary course of professional practice or research; or

1622 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
1623 employment.

1624 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
1625 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
1626 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
1627 as defined in Section 58-37-2.

1628 (b) In a prosecution alleging violation of this section regarding peyote as defined in
1629 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
1630 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
1631 traditional Indian religion.

1632 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
1633 defense under this Subsection (12) as soon as practicable, but not later than 10 days before
1634 trial.

1635 (ii) The notice shall include the specific claims of the affirmative defense.

1636 (iii) The court may waive the notice requirement in the interest of justice for good
1637 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

1638 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
1639 a preponderance of the evidence. If the defense is established, it is a complete defense to the
1640 charges.

1641 (13) (a) It is an affirmative defense that the person produced, possessed, or
1642 administered a controlled substance listed in Section 58-37-4.2 if the person was:

- 1643 (i) engaged in medical research; and
- 1644 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- 1645 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed
- 1646 a controlled substance listed in Section 58-37-4.2.
- 1647 (14) It is an affirmative defense that the person possessed, in the person's body, a
- 1648 controlled substance listed in Section 58-37-4.2 if:
- 1649 (a) the person was the subject of medical research conducted by a holder of a valid
- 1650 license to possess controlled substances under Section 58-37-6; and
- 1651 (b) the substance was administered to the person by the medical researcher.
- 1652 (15) The application of any increase in penalty under this section to a violation of
- 1653 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
- 1654 Subsection (15) takes precedence over any conflicting provision of this section.
- 1655 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
- 1656 listed in Subsection (16)(b) that the person or bystander:
- 1657 (i) reasonably believes that the person or another person is experiencing an overdose
- 1658 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
- 1659 controlled substance or other substance;
- 1660 (ii) reports, or assists a person who reports, in good faith the overdose event to a
- 1661 medical provider, an emergency medical service provider as defined in Section 26-8a-102, a
- 1662 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
- 1663 person is the subject of a report made under this Subsection (16);
- 1664 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
- 1665 actual location of the overdose event that facilitates responding to the person experiencing the
- 1666 overdose event;
- 1667 (iv) remains at the location of the person experiencing the overdose event until a
- 1668 responding law enforcement officer or emergency medical service provider arrives, or remains
- 1669 at the medical care facility where the person experiencing an overdose event is located until a
- 1670 responding law enforcement officer arrives;
- 1671 (v) cooperates with the responding medical provider, emergency medical service
- 1672 provider, and law enforcement officer, including providing information regarding the person
- 1673 experiencing the overdose event and any substances the person may have injected, inhaled, or

1674 otherwise introduced into the person's body; and

1675 (vi) is alleged to have committed the offense in the same course of events from which
1676 the reported overdose arose.

1677 (b) The offenses referred to in Subsection (16)(a) are:

1678 (i) the possession or use of less than 16 ounces of marijuana;

1679 (ii) the possession or use of a scheduled or listed controlled substance other than
1680 marijuana; and

1681 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
1682 Imitation Controlled Substances Act.

1683 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
1684 include seeking medical assistance under this section during the course of a law enforcement
1685 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

1686 (17) If any provision of this chapter, or the application of any provision to any person
1687 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
1688 invalid provision or application.

1689 (18) A legislative body of a political subdivision may not enact an ordinance that is
1690 less restrictive than any provision of this chapter.

1691 (19) If a minor who is under 18 years old is found by a court to have violated this
1692 section, the court may order the minor to complete:

1693 (a) a screening as defined in Section 41-6a-501;

1694 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
1695 assessment to be appropriate; and

1696 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
1697 treatment as indicated by an assessment.

1698 Section 32. Section **62A-2-120** is amended to read:

1699 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

1700 (1) As used in this section:

1701 (a) (i) "Applicant" means:

1702 (A) the same as that term is defined in Section 62A-2-101;

1703 (B) an individual who is associated with a licensee and has or will likely have direct
1704 access to a child or a vulnerable adult;

1705 (C) an individual who provides respite care to a foster parent or an adoptive parent on
1706 more than one occasion;

1707 (D) a department contractor;

1708 (E) a guardian submitting an application on behalf of an individual, other than the child
1709 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
1710 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
1711 who is receiving services; or

1712 (F) a guardian submitting an application on behalf of an individual, other than the child
1713 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is
1714 a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

1715 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
1716 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

1717 (b) "Application" means a background screening application to the office.

1718 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
1719 Public Safety, created in Section 53-10-201.

1720 (d) "Incidental care" means occasional care, not in excess of five hours per week and
1721 never overnight, for a foster child.

1722 (e) "Personal identifying information" means:

1723 (i) current name, former names, nicknames, and aliases;

1724 (ii) date of birth;

1725 (iii) physical address and email address;

1726 (iv) telephone number;

1727 (v) driver license or other government-issued identification;

1728 (vi) social security number;

1729 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
1730 by the office; and

1731 (viii) other information specified by the office by rule made in accordance with Title
1732 63G, Chapter 3, Utah Administrative Rulemaking Act.

1733 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
1734 submit the following to the office:

1735 (i) personal identifying information;

- 1736 (ii) a fee established by the office under Section 63J-1-504; and
1737 (iii) a disclosure form, specified by the office, for consent for:
1738 (A) an initial background check upon submission of the information described under
1739 this Subsection (2)(a);
1740 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
1741 licensee for 90 days;
1742 (C) a background check when the office determines that reasonable cause exists; and
1743 (D) retention of personal identifying information, including fingerprints, for
1744 monitoring and notification as described in Subsections (3)(d) and (4).
1745 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
1746 resided outside of the United States and its territories during the five years immediately
1747 preceding the day on which the information described in Subsection (2)(a) is submitted to the
1748 office, the office may require the applicant to submit documentation establishing whether the
1749 applicant was convicted of a crime during the time that the applicant resided outside of the
1750 United States or its territories.
- 1751 (3) The office:
1752 (a) shall perform the following duties as part of a background check of an applicant:
1753 (i) check state and regional criminal background databases for the applicant's criminal
1754 history by:
1755 (A) submitting personal identifying information to the bureau for a search; or
1756 (B) using the applicant's personal identifying information to search state and regional
1757 criminal background databases as authorized under Section 53-10-108;
1758 (ii) submit the applicant's personal identifying information and fingerprints to the
1759 bureau for a criminal history search of applicable national criminal background databases;
1760 (iii) search the Department of Human Services, Division of Child and Family Services'
1761 Licensing Information System described in Section 62A-4a-1006;
1762 (iv) search the Department of Human Services, Division of Aging and Adult Services'
1763 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
1764 (v) search the juvenile court records for substantiated findings of severe child abuse or
1765 neglect described in Section 80-3-404; and
1766 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided

1767 under Section 78A-6-209;

1768 (b) shall conduct a background check of an applicant for an initial background check
1769 upon submission of the information described under Subsection (2)(a);

1770 (c) may conduct all or portions of a background check of an applicant, as provided by
1771 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
1772 Rulemaking Act:

1773 (i) for an annual renewal; or

1774 (ii) when the office determines that reasonable cause exists;

1775 (d) may submit an applicant's personal identifying information, including fingerprints,
1776 to the bureau for checking, retaining, and monitoring of state and national criminal background
1777 databases and for notifying the office of new criminal activity associated with the applicant;

1778 (e) shall track the status of an approved applicant under this section to ensure that an
1779 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
1780 the applicant applies for:

1781 (i) more than one license;

1782 (ii) direct access to a child or a vulnerable adult in more than one human services
1783 program; or

1784 (iii) direct access to a child or a vulnerable adult under a contract with the department;

1785 (f) shall track the status of each license and each individual with direct access to a child
1786 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
1787 expires or the individual's direct access to a child or a vulnerable adult ceases;

1788 (g) shall adopt measures to strictly limit access to personal identifying information
1789 solely to the individuals responsible for processing and entering the applications for
1790 background checks and to protect the security of the personal identifying information the office
1791 reviews under this Subsection (3);

1792 (h) as necessary to comply with the federal requirement to check a state's child abuse
1793 and neglect registry regarding any individual working in a congregate care program, shall:

1794 (i) search the Department of Human Services, Division of Child and Family Services'
1795 Licensing Information System described in Section 62A-4a-1006; and

1796 (ii) require the child abuse and neglect registry be checked in each state where an
1797 applicant resided at any time during the five years immediately preceding the day on which the

1798 applicant submits the information described in Subsection (2)(a) to the office; and

1799 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
1800 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
1801 checks.

1802 (4) (a) With the personal identifying information the office submits to the bureau under
1803 Subsection (3), the bureau shall check against state and regional criminal background databases
1804 for the applicant's criminal history.

1805 (b) With the personal identifying information and fingerprints the office submits to the
1806 bureau under Subsection (3), the bureau shall check against national criminal background
1807 databases for the applicant's criminal history.

1808 (c) Upon direction from the office, and with the personal identifying information and
1809 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

1810 (i) maintain a separate file of the fingerprints for search by future submissions to the
1811 local and regional criminal records databases, including latent prints; and

1812 (ii) monitor state and regional criminal background databases and identify criminal
1813 activity associated with the applicant.

1814 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
1815 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
1816 Investigation Next Generation Identification System for the purpose of:

1817 (i) being searched by future submissions to the national criminal records databases,
1818 including the Federal Bureau of Investigation Next Generation Identification System and latent
1819 prints; and

1820 (ii) monitoring national criminal background databases and identifying criminal
1821 activity associated with the applicant.

1822 (e) The Bureau shall notify and release to the office all information of criminal activity
1823 associated with the applicant.

1824 (f) Upon notice from the office that a license has expired or an individual's direct
1825 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

1826 (i) discard and destroy any retained fingerprints; and

1827 (ii) notify the Federal Bureau of Investigation when the license has expired or an
1828 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau

1829 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
1830 Investigation Next Generation Identification System.

1831 (5) (a) After conducting the background check described in Subsections (3) and (4), the
1832 office shall deny an application to an applicant who, within three years before the day on which
1833 the applicant submits information to the office under Subsection (2) for a background check,
1834 has been convicted of any of the following, regardless of whether the offense is a felony, a
1835 misdemeanor, or an infraction:

1836 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
1837 animals, or bestiality;

1838 (ii) a violation of any pornography law, including sexual exploitation of a minor;

1839 (iii) prostitution;

1840 (iv) an offense included in:

1841 (A) Title 76, Chapter 5, Offenses Against the ~~Person~~ Individual;

1842 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

1843 (C) Title 76, Chapter 7, Offenses Against the Family;

1844 (v) aggravated arson, as described in Section 76-6-103;

1845 (vi) aggravated burglary, as described in Section 76-6-203;

1846 (vii) aggravated robbery, as described in Section 76-6-302;

1847 (viii) identity fraud crime, as described in Section 76-6-1102; or

1848 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
1849 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
1850 through (viii).

1851 (b) If the office denies an application to an applicant based on a conviction described in
1852 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
1853 Subsection (6).

1854 (c) If the applicant will be working in a program serving only adults whose only
1855 impairment is a mental health diagnosis, including that of a serious mental health disorder,
1856 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
1857 do not apply, and the office shall conduct a comprehensive review as described in Subsection
1858 (6).

1859 (6) (a) The office shall conduct a comprehensive review of an applicant's background

1860 check if the applicant:

1861 (i) has an open court case or a conviction for any felony offense, not described in
1862 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on
1863 which the applicant submits the application;

1864 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
1865 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
1866 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
1867 on which the applicant submits information to the office under Subsection (2) for a background
1868 check;

1869 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
1870 than three years before the day on which the applicant submitted information under Subsection
1871 (2)(a);

1872 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
1873 described in Subsection (5)(a);

1874 (v) has a listing in the Department of Human Services, Division of Child and Family
1875 Services' Licensing Information System described in Section 62A-4a-1006;

1876 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
1877 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
1878 62A-3-311.1;

1879 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
1880 or neglect described in Section 80-3-404;

1881 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
1882 an adult, would be a felony or misdemeanor, if the applicant is:

1883 (A) under 28 years old; or

1884 (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is
1885 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
1886 offense described in Subsection (5)(a);

1887 (ix) has a pending charge for an offense described in Subsection (5)(a); or

1888 (x) is an applicant described in Subsection (5)(c).

1889 (b) The comprehensive review described in Subsection (6)(a) shall include an
1890 examination of:

- 1891 (i) the date of the offense or incident;
- 1892 (ii) the nature and seriousness of the offense or incident;
- 1893 (iii) the circumstances under which the offense or incident occurred;
- 1894 (iv) the age of the perpetrator when the offense or incident occurred;
- 1895 (v) whether the offense or incident was an isolated or repeated incident;
- 1896 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
1897 adult, including:
- 1898 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 1899 (B) sexual abuse;
- 1900 (C) sexual exploitation; or
- 1901 (D) negligent treatment;
- 1902 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
1903 treatment received, or additional academic or vocational schooling completed;
- 1904 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
1905 which the applicant is applying; and
- 1906 (ix) any other pertinent information presented to or publicly available to the committee
1907 members.
- 1908 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
1909 office shall deny an application to an applicant if the office finds that approval would likely
1910 create a risk of harm to a child or a vulnerable adult.
- 1911 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
1912 office may not deny an application to an applicant solely because the applicant was convicted
1913 of an offense that occurred 10 or more years before the day on which the applicant submitted
1914 the information required under Subsection (2)(a) if:
- 1915 (i) the applicant has not committed another misdemeanor or felony offense after the
1916 day on which the conviction occurred; and
- 1917 (ii) the applicant has never been convicted of an offense described in Subsection
1918 (14)(c).
- 1919 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1920 office may make rules, consistent with this chapter, to establish procedures for the
1921 comprehensive review described in this Subsection (6).

1922 (7) Subject to Subsection (10), the office shall approve an application to an applicant
1923 who is not denied under Subsection (5), (6), or (14).

1924 (8) (a) The office may conditionally approve an application of an applicant, for a
1925 maximum of 60 days after the day on which the office sends written notice to the applicant
1926 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

1927 (i) is awaiting the results of the criminal history search of national criminal background
1928 databases; and

1929 (ii) would otherwise approve an application of the applicant under Subsection (7).

1930 (b) The office may conditionally approve an application of an applicant, for a
1931 maximum of one year after the day on which the office sends written notice to the applicant
1932 under Subsection (12), without requiring that the applicant be directly supervised if the office:

1933 (i) is awaiting the results of an out-of-state registry for providers other than foster and
1934 adoptive parents; and

1935 (ii) would otherwise approve an application of the applicant under Subsection (7).

1936 (c) Upon receiving the results of the criminal history search of a national criminal
1937 background database, the office shall approve or deny the application of the applicant in
1938 accordance with Subsections (5) through (7).

1939 (9) A licensee or department contractor may not permit an individual to have direct
1940 access to a child or a vulnerable adult unless, subject to Subsection (10):

1941 (a) the individual is associated with the licensee or department contractor and:

1942 (i) the individual's application is approved by the office under this section;

1943 (ii) the individual's application is conditionally approved by the office under

1944 Subsection (8); or

1945 (iii) (A) the individual has submitted the background check information described in
1946 Subsection (2) to the office;

1947 (B) the office has not determined whether to approve the applicant's application; and

1948 (C) the individual is directly supervised by an individual who has a current background
1949 screening approval issued by the office under this section and is associated with the licensee or
1950 department contractor;

1951 (b) (i) the individual is associated with the licensee or department contractor;

1952 (ii) the individual has a current background screening approval issued by the office

1953 under this section;

1954 (iii) one of the following circumstances, that the office has not yet reviewed under
1955 Subsection (6), applies to the individual:

1956 (A) the individual was charged with an offense described in Subsection (5)(a);
1957 (B) the individual is listed in the Licensing Information System, described in Section
1958 62A-4a-1006;

1959 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
1960 database, described in Section 62A-3-311.1;

1961 (D) the individual has a record in the juvenile court of a substantiated finding of severe
1962 child abuse or neglect, described in Section 80-3-404; or

1963 (E) the individual has a record of an adjudication in juvenile court for an act that, if
1964 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
1965 or (6); and

1966 (iv) the individual is directly supervised by an individual who:

1967 (A) has a current background screening approval issued by the office under this
1968 section; and

1969 (B) is associated with the licensee or department contractor;

1970 (c) the individual:

1971 (i) is not associated with the licensee or department contractor; and
1972 (ii) is directly supervised by an individual who:

1973 (A) has a current background screening approval issued by the office under this
1974 section; and

1975 (B) is associated with the licensee or department contractor;

1976 (d) the individual is the parent or guardian of the child, or the guardian of the
1977 vulnerable adult;

1978 (e) the individual is approved by the parent or guardian of the child, or the guardian of
1979 the vulnerable adult, to have direct access to the child or the vulnerable adult;

1980 (f) the individual is only permitted to have direct access to a vulnerable adult who
1981 voluntarily invites the individual to visit; or

1982 (g) the individual only provides incidental care for a foster child on behalf of a foster
1983 parent who has used reasonable and prudent judgment to select the individual to provide the

1984 incidental care for the foster child.

1985 (10) An individual may not have direct access to a child or a vulnerable adult if the
1986 individual is prohibited by court order from having that access.

1987 (11) Notwithstanding any other provision of this section, an individual for whom the
1988 office denies an application may not have direct access to a child or vulnerable adult unless the
1989 office approves a subsequent application by the individual.

1990 (12) (a) Within 30 days after the day on which the office receives the background
1991 check information for an applicant, the office shall give notice of the clearance status to:

1992 (i) the applicant, and the licensee or department contractor, of the office's decision
1993 regarding the background check and findings; and

1994 (ii) the applicant of any convictions and potentially disqualifying charges and
1995 adjudications found in the search.

1996 (b) With the notice described in Subsection (12)(a), the office shall also give the
1997 applicant the details of any comprehensive review conducted under Subsection (6).

1998 (c) If the notice under Subsection (12)(a) states that the applicant's application is
1999 denied, the notice shall further advise the applicant that the applicant may, under Subsection
2000 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
2001 challenge the office's decision.

2002 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2003 office shall make rules, consistent with this chapter:

2004 (i) defining procedures for the challenge of the office's background check decision
2005 described in Subsection (12)(c); and

2006 (ii) expediting the process for renewal of a license under the requirements of this
2007 section and other applicable sections.

2008 (13) An individual or a department contractor who provides services in an adults only
2009 substance use disorder program, as defined by rule, is exempt from this section. This
2010 exemption does not extend to a program director or a member, as defined by Section
2011 62A-2-108, of the program.

2012 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
2013 of this section, if the background check of an applicant is being conducted for the purpose of
2014 giving clearance status to an applicant seeking a position in a congregate care program, an

2015 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or
2016 an applicant seeking to provide a prospective adoptive home, the office shall:

2017 (i) check the child abuse and neglect registry in each state where each applicant resided
2018 in the five years immediately preceding the day on which the applicant applied to be a foster
2019 parent or adoptive parent, to determine whether the prospective foster parent or prospective
2020 adoptive parent is listed in the registry as having a substantiated or supported finding of child
2021 abuse or neglect; and

2022 (ii) check the child abuse and neglect registry in each state where each adult living in
2023 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
2024 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
2025 parent, to determine whether the adult is listed in the registry as having a substantiated or
2026 supported finding of child abuse or neglect.

2027 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

2028 (i) federal law or rule permits otherwise; or

2029 (ii) the requirements would prohibit the Division of Child and Family Services or a
2030 court from placing a child with:

2031 (A) a noncustodial parent under Section 62A-4a-209, 80-3-302, or 80-3-303; or

2032 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 80-3-302,
2033 or 80-3-303, pending completion of the background check described in Subsection (5).

2034 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
2035 applicant seeking a position in a congregate care program, an applicant for a one-time adoption,
2036 an applicant to become a prospective foster parent, or an applicant to become a prospective
2037 adoptive parent if the applicant has been convicted of:

2038 (i) a felony involving conduct that constitutes any of the following:

2039 (A) child abuse, as described in [~~Section 76-5-109~~] Sections 76-5-109, 76-5-109.2, and
2040 76-5-109.3;

2041 (B) commission of domestic violence in the presence of a child, as described in Section
2042 [~~76-5-109.1~~] 76-5-114;

2043 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

2044 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

2045 (E) aggravated murder, as described in Section 76-5-202;

- 2046 (F) murder, as described in Section 76-5-203;
- 2047 (G) manslaughter, as described in Section 76-5-205;
- 2048 (H) child abuse homicide, as described in Section 76-5-208;
- 2049 (I) homicide by assault, as described in Section 76-5-209;
- 2050 (J) kidnapping, as described in Section 76-5-301;
- 2051 (K) child kidnapping, as described in Section 76-5-301.1;
- 2052 (L) aggravated kidnapping, as described in Section 76-5-302;
- 2053 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 2054 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2055 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2056 (P) aggravated arson, as described in Section 76-6-103;
- 2057 (Q) aggravated burglary, as described in Section 76-6-203;
- 2058 (R) aggravated robbery, as described in Section 76-6-302; or
- 2059 (S) domestic violence, as described in Section 77-36-1; or
- 2060 (ii) an offense committed outside the state that, if committed in the state, would
- 2061 constitute a violation of an offense described in Subsection (14)(c)(i).
- 2062 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 2063 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 2064 five years immediately preceding the day on which the individual's application or license would
- 2065 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 2066 constitutes a violation of any of the following:
- 2067 (i) aggravated assault, as described in Section 76-5-103;
- 2068 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 2069 (iii) mayhem, as described in Section 76-5-105;
- 2070 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 2071 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 2072 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 2073 Act;
- 2074 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 2075 Precursor Act; or
- 2076 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

2077 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
2078 conduct the comprehensive review of an applicant's background check pursuant to this section
2079 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
2080 child abuse and neglect registry of another state as having a substantiated or supported finding
2081 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

2082 Section 33. Section **62A-3-301** is amended to read:

2083 **62A-3-301. Definitions.**

2084 As used in this part:

2085 (1) "Abandonment" means any knowing or intentional action or failure to act,
2086 including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the
2087 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
2088 medical or other health care.

2089 (2) "Abuse" means:

2090 (a) knowingly or intentionally:

2091 (i) attempting to cause harm;

2092 (ii) causing harm; or

2093 (iii) placing another in fear of harm;

2094 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
2095 causes or is likely to cause harm to a vulnerable adult;

2096 (c) emotional or psychological abuse;

2097 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the [Person]

2098 Individual; or

2099 (e) deprivation of life sustaining treatment, or medical or mental health treatment,
2100 except:

2101 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

2102 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

2103 (3) "Adult" means an individual who is 18 years [~~of age~~] old or older.

2104 (4) "Adult protection case file" means a record, stored in any format, contained in a
2105 case file maintained by Adult Protective Services.

2106 (5) "Adult Protective Services" means the unit within the division responsible to
2107 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate

2108 protective services.

2109 (6) "Capacity to consent" means the ability of an individual to understand and
2110 communicate regarding the nature and consequences of decisions relating to the individual, and
2111 relating to the individual's property and lifestyle, including a decision to accept or refuse
2112 services.

2113 (7) "Caretaker" means a person or public institution that is entrusted with or assumes
2114 the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision,
2115 medical or other health care, resource management, or other necessities for pecuniary gain, by
2116 contract, or as a result of friendship, or who is otherwise in a position of trust and confidence
2117 with a vulnerable adult, including a relative, a household member, an attorney-in-fact, a
2118 neighbor, a person who is employed or who provides volunteer work, a court-appointed or
2119 voluntary guardian, or a person who contracts or is under court order to provide care.

2120 (8) "Counsel" means an attorney licensed to practice law in this state.

2121 (9) "Database" means the statewide database maintained by the division under Section
2122 62A-3-311.1.

2123 (10) (a) "Dependent adult" means an individual 18 years old or older, who has a
2124 physical or mental impairment that restricts the individual's ability to carry out normal
2125 activities or to protect the individual's rights.

2126 (b) "Dependent adult" includes an individual who has physical or developmental
2127 disabilities or whose physical or mental capacity has substantially diminished because of age.

2128 (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

2129 (12) "Elder adult" means an individual 65 years old or older.

2130 (13) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
2131 risk of death, serious physical injury, or serious physical, emotional, or financial harm.

2132 (14) "Emergency protective services" means measures taken by Adult Protective
2133 Services under time-limited, court-ordered authority for the purpose of remediating an
2134 emergency.

2135 (15) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
2136 nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering
2137 mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

2138 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,

2139 coercing, or harassing.

2140 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
2141 by a vulnerable adult who lacks the capacity to intentionally or knowingly:

2142 (i) engage in the conduct; or

2143 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation,
2144 or confusion.

2145 (16) "Exploitation" means an offense described in [~~Subsection 76-5-111(4) or (9) or~~]
2146 Section 76-5-111.3, 76-5-111.4, or 76-5b-202.

2147 (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
2148 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
2149 knowingly or intentionally.

2150 (18) "Inconclusive" means a finding by the division that there is not a reasonable basis
2151 to conclude that abuse, neglect, or exploitation occurred.

2152 (19) "Intimidation" means communication through verbal or nonverbal conduct which
2153 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
2154 supervision, health care, or companionship, or which threatens isolation or abuse.

2155 (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
2156 from having contact with another person, unless the restriction of personal rights is authorized
2157 by court order, by:

2158 (i) preventing the vulnerable adult from communicating, visiting, interacting, or
2159 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
2160 calls, contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor
2161 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
2162 knowing that communication to be false;

2163 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
2164 from meeting with a visitor; or

2165 (iii) making false or misleading statements to the vulnerable adult in order to induce
2166 the vulnerable adult to refuse to receive communication from visitors or other family members.

2167 (b) "Isolation" does not include an act:

2168 (i) intended in good faith to protect the physical or mental welfare of the vulnerable
2169 adult; or

2170 (ii) performed pursuant to the treatment plan or instructions of a physician or other
2171 professional advisor of the vulnerable adult.

2172 (21) "Lacks capacity to consent" is as defined in Section [~~76-5-111~~] 76-5-111.4.

2173 (22) (a) "Neglect" means:

2174 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
2175 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
2176 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
2177 assistance; or

2178 (B) failure of a caretaker to provide protection from health and safety hazards or
2179 maltreatment;

2180 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
2181 with the degree of care that a reasonable person in a like position would exercise;

2182 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
2183 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
2184 heating, or other services necessary to maintain the vulnerable adult's well being;

2185 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
2186 plan that causes or is likely to cause harm to the vulnerable adult;

2187 (v) self-neglect by the vulnerable adult; or

2188 (vi) abandonment by a caretaker.

2189 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
2190 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

2191 (23) "Physical injury" includes the damage and conditions described in Section
2192 76-5-111.

2193 (24) "Protected person" means a vulnerable adult for whom the court has ordered
2194 protective services.

2195 (25) "Protective services" means services to protect a vulnerable adult from abuse,
2196 neglect, or exploitation.

2197 (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
2198 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to
2199 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or
2200 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be

- 2201 evidence of self-neglect.
- 2202 (27) "Serious physical injury" is as defined in Section 76-5-111.
- 2203 (28) "Supported" means a finding by the division that there is a reasonable basis to
- 2204 conclude that abuse, neglect, or exploitation occurred.
- 2205 (29) "Undue influence" occurs when a person:
- 2206 (a) uses influence to take advantage of a vulnerable adult's mental or physical
- 2207 impairment; or
- 2208 (b) uses the person's role, relationship, or power:
- 2209 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
- 2210 fear of a vulnerable adult; or
- 2211 (ii) to gain control deceptively over the decision making of the vulnerable adult.
- 2212 (30) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or
- 2213 physical impairment which substantially affects that person's ability to:
- 2214 (a) provide personal protection;
- 2215 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 2216 (c) obtain services necessary for health, safety, or welfare;
- 2217 (d) carry out the activities of daily living;
- 2218 (e) manage the adult's own financial resources; or
- 2219 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 2220 neglect, or exploitation.
- 2221 (31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.
- 2222 Section 34. Section **62A-4a-105** is amended to read:
- 2223 **62A-4a-105. Division responsibilities.**
- 2224 (1) The division shall:
- 2225 (a) administer services to minors and families, including:
- 2226 (i) child welfare services;
- 2227 (ii) domestic violence services; and
- 2228 (iii) all other responsibilities that the Legislature or the executive director may assign
- 2229 to the division;
- 2230 (b) provide the following services:
- 2231 (i) financial and other assistance to an individual adopting a child with special needs

2232 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the
2233 child as a legal ward of the state;

2234 (ii) non-custodial and in-home services, including:

2235 (A) services designed to prevent family break-up; and

2236 (B) family preservation services;

2237 (iii) reunification services to families whose children are in substitute care in
2238 accordance with the requirements of this chapter and Title 80, Chapter 3, Abuse, Neglect, and
2239 Dependency Proceedings;

2240 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
2241 or neglect of a child in that family;

2242 (v) shelter care in accordance with the requirements of this chapter and Title 80,
2243 Chapter 3, Abuse, Neglect, and Dependency Proceedings;

2244 (vi) domestic violence services, in accordance with the requirements of federal law;

2245 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,
2246 and their children, in accordance with the provisions of this chapter and Title 80, Chapter 3,
2247 Abuse, Neglect, and Dependency Proceedings;

2248 (viii) substitute care for dependent, abused, and neglected children;

2249 (ix) services for minors who are victims of human trafficking or human smuggling as
2250 described in Sections 76-5-308 through ~~[76-5-310]~~ 76-5-310.1 or who have engaged in
2251 prostitution or sexual solicitation as defined in Sections 76-10-1302 and 76-10-1313; and

2252 (x) training for staff and providers involved in the administration and delivery of
2253 services offered by the division in accordance with this chapter;

2254 (c) establish standards for all:

2255 (i) contract providers of out-of-home care for minors and families;

2256 (ii) facilities that provide substitute care for dependent, abused, and neglected children
2257 placed in the custody of the division; and

2258 (iii) direct or contract providers of domestic violence services described in Subsection
2259 (1)(b)(vi);

2260 (d) have authority to:

2261 (i) contract with a private, nonprofit organization to recruit and train foster care
2262 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

2263 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
2264 provide substitute care for dependent, abused, and neglected children placed in the custody of
2265 the division;

2266 (e) cooperate with the federal government in the administration of child welfare and
2267 domestic violence programs and other human service activities assigned by the department;

2268 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of
2269 division records to the same extent that the division is required to protect division records,
2270 cooperate with and share all appropriate information in the division's possession regarding an
2271 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child
2272 with the Indian tribe that is affiliated with the Indian child;

2273 (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws
2274 enacted for the protection of abused, neglected, and dependent children, in accordance with the
2275 requirements of this chapter, unless administration is expressly vested in another division or
2276 department of the state;

2277 (h) cooperate with the Workforce Development Division within the Department of
2278 Workforce Services in meeting the social and economic needs of an individual who is eligible
2279 for public assistance;

2280 (i) compile relevant information, statistics, and reports on child and family service
2281 matters in the state;

2282 (j) prepare and submit to the department, the governor, and the Legislature reports of
2283 the operation and administration of the division in accordance with the requirements of
2284 Sections 62A-4a-117 and 62A-4a-118;

2285 (k) within appropriations from the Legislature, provide or contract for a variety of
2286 domestic violence services and treatment methods;

2287 (l) ensure regular, periodic publication, including electronic publication, regarding the
2288 number of children in the custody of the division who:

2289 (i) have a permanency goal of adoption; or

2290 (ii) have a final plan of termination of parental rights, pursuant to Section 80-3-409,
2291 and promote adoption of those children;

2292 (m) subject to Subsections (2)(b) and (5), refer an individual receiving services from
2293 the division to the local substance abuse authority or other private or public resource for a

2294 court-ordered drug screening test;

2295 (n) report before November 30, 2020, and every third year thereafter, to the Social

2296 Services Appropriations Subcommittee regarding:

2297 (i) the daily reimbursement rate that is provided to licensed foster parents based on

2298 level of care;

2299 (ii) the amount of money spent on daily reimbursements for licensed foster parents in

2300 the state during the previous fiscal year; and

2301 (iii) any recommended changes to the division's budget to support the daily

2302 reimbursement rates described in Subsection (1)(n)(i); and

2303 (o) perform other duties and functions required by law.

2304 (2) (a) In carrying out the requirements of Subsection (1)(g), the division shall:

2305 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and

2306 with all public and private licensed child welfare agencies and institutions to develop and

2307 administer a broad range of services and support;

2308 (ii) take the initiative in all matters involving the protection of abused or neglected

2309 children, if adequate provisions have not been made or are not likely to be made; and

2310 (iii) make expenditures necessary for the care and protection of the children described

2311 in this Subsection (2)(a), within the division's budget.

2312 (b) When an individual is referred to a local substance abuse authority or other private

2313 or public resource for court-ordered drug screening under Subsection (1)(m), the court shall

2314 order the individual to pay all costs of the tests unless:

2315 (i) the cost of the drug screening is specifically funded or provided for by other federal

2316 or state programs;

2317 (ii) the individual is a participant in a drug court; or

2318 (iii) the court finds that the individual is impecunious.

2319 (3) Except to the extent provided by rule, the division is not responsible for

2320 investigating domestic violence in the presence of a child, as described in Section [76-5-109.1]

2321 76-5-114.

2322 (4) The division may not require a parent who has a child in the custody of the division

2323 to pay for some or all of the cost of any drug testing the parent is required to undergo.

2324 (5) The division may not refer an individual who is receiving services from the division

2325 for drug testing by means of a hair or fingernail test that is administered to detect the presence
2326 of drugs.

2327 Section 35. Section **62A-4a-412** is amended to read:

2328 **62A-4a-412. Reports, information, and referrals confidential.**

2329 (1) Except as otherwise provided in this chapter, reports made under this part, as well
2330 as any other information in the possession of the division obtained as the result of a report are
2331 private, protected, or controlled records under Title 63G, Chapter 2, Government Records
2332 Access and Management Act, and may only be made available to:

2333 (a) a police or law enforcement agency investigating a report of known or suspected
2334 abuse or neglect, including members of a child protection team;

2335 (b) a physician who reasonably believes that a child may be the subject of abuse or
2336 neglect;

2337 (c) an agency that has responsibility or authority to care for, treat, or supervise a minor
2338 who is the subject of a report;

2339 (d) a contract provider that has a written contract with the division to render services to
2340 a minor who is the subject of a report;

2341 (e) a subject of the report, the natural parents of the child, and the guardian ad litem;

2342 (f) a court, upon a finding that access to the records may be necessary for the
2343 determination of an issue before the court, provided that in a divorce, custody, or related
2344 proceeding between private parties, the record alone is:

2345 (i) limited to objective or undisputed facts that were verified at the time of the
2346 investigation; and

2347 (ii) devoid of conclusions drawn by the division or any of the division's workers on the
2348 ultimate issue of whether or not an individual's acts or omissions constituted any level of abuse
2349 or neglect of another individual;

2350 (g) an office of the public prosecutor or its deputies in performing an official duty;

2351 (h) a person authorized by a Children's Justice Center, for the purposes described in
2352 Section 67-5b-102;

2353 (i) a person engaged in bona fide research, when approved by the director of the
2354 division, if the information does not include names and addresses;

2355 (j) the State Board of Education, acting on behalf of itself or on behalf of a local

2356 education agency, as defined in Section 63J-5-102, for the purpose of evaluating whether an
2357 individual should be permitted to obtain or retain a license as an educator or serve as an
2358 employee or volunteer in a school, limited to information with substantiated or supported
2359 findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug
2360 offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against
2361 the ~~[Person]~~ Individual, and with the understanding that the office must provide the subject of a
2362 report received under Subsection (1)(k) with an opportunity to respond to the report before
2363 making a decision concerning licensure or employment;

2364 (k) any individual identified in the report as a perpetrator or possible perpetrator of
2365 abuse or neglect, after being advised of the screening prohibition in Subsection (2);

2366 (l) a person filing a petition for a child protective order on behalf of a child who is the
2367 subject of the report;

2368 (m) a licensed child-placing agency or person who is performing a preplacement
2369 adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and
2370 78B-6-130;

2371 (n) an Indian tribe to:

2372 (i) certify or license a foster home;

2373 (ii) render services to a subject of a report; or

2374 (iii) investigate an allegation of abuse, neglect, or dependency; or

2375 (o) the Division of Substance Abuse and Mental Health, the Department of Health, or a
2376 local substance abuse authority, described in Section 17-43-201, for the purpose of providing
2377 substance abuse treatment to a pregnant woman or a parent of a newborn child, or the services
2378 described in Subsection 62A-15-103(2)(o).

2379 (2) (a) A person, unless listed in Subsection (1), may not request another person to
2380 obtain or release a report or any other information in the possession of the division obtained as
2381 a result of the report that is available under Subsection (1)(k) to screen for potential
2382 perpetrators of abuse or neglect.

2383 (b) A person who requests information knowing that the request is a violation of
2384 Subsection (2)(a) is subject to the criminal penalty in Subsection (4).

2385 (3) (a) Except as provided in Section 62A-4a-1007, the division and law enforcement
2386 officials shall ensure the anonymity of the person or persons making the initial report and any

2387 others involved in the division's or law enforcement officials' subsequent investigation.

2388 (b) Notwithstanding any other provision of law, excluding Section 80-3-107, but
2389 including this chapter and Title 63G, Chapter 2, Government Records Access and Management
2390 Act, when the division makes a report or other information in the division's possession
2391 available under Subsection (1)(e) to a subject of the report or a parent of a child, the division
2392 shall remove from the report or other information only the names, addresses, and telephone
2393 numbers of individuals or specific information that could:

2394 (i) identify the referent;

2395 (ii) impede a criminal investigation; or

2396 (iii) endanger an individual's safety.

2397 (4) Any person who willfully permits, or aides and abets the release of data or
2398 information obtained as a result of this part, in the possession of the division or contained on
2399 any part of the Management Information System, in violation of this part or Sections
2400 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

2401 (5) (a) As used in this Subsection (5), "physician" means an individual licensed to
2402 practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical
2403 Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

2404 (b) The physician-patient privilege does not:

2405 (i) excuse a physician from reporting suspected abuse, neglect, fetal alcohol syndrome,
2406 or fetal drug dependency under this part; and

2407 (ii) constitute grounds for excluding evidence regarding a child's injuries, or the cause
2408 of the child's injuries, in any judicial or administrative proceeding resulting from a report under
2409 this part.

2410 (6) A child-placing agency or person who receives a report in connection with a
2411 preplacement adoptive evaluation under Sections 78B-6-128 and 78B-6-130:

2412 (a) may provide this report to the person who is the subject of the report; and

2413 (b) may provide this report to a person who is performing a preplacement adoptive
2414 evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a
2415 licensed child-placing agency or to an attorney seeking to facilitate an adoption.

2416 (7) A member of a child protection team may, before the day on which the child is
2417 removed, share case-specific information obtained from the division under this section with

2418 other members of the child protection team.

2419 (8) (a) Except as provided in Subsection (8)(b), in a divorce, custody, or related
2420 proceeding between private parties, a court may not receive into evidence a report that:

2421 (i) is provided to the court:

2422 (A) under Subsection (1)(f); or

2423 (B) by a parent of the child after the record is made available to the parent under
2424 Subsection (1)(e);

2425 (ii) describes a parent of the child as the alleged perpetrator; and

2426 (iii) is found to be unsubstantiated, unsupported, or without merit.

2427 (b) (i) After a motion to admit the report described in Subsection (8)(a) is made, the
2428 court shall allow sufficient time for all subjects of the record to respond before making a
2429 finding on the motion.

2430 (ii) After considering the motion described in Subsection (8)(b), the court may receive
2431 the report into evidence upon a finding on the record of good cause.

2432 Section 36. Section **63G-12-102** is amended to read:

2433 **63G-12-102. Definitions.**

2434 As used in this chapter:

2435 (1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a
2436 federally qualified high deductible health plan.

2437 (2) "Department" means the Department of Public Safety created in Section 53-1-103.

2438 (3) "Employee" means an individual employed by an employer under a contract for
2439 hire.

2440 (4) "Employer" means a person who has one or more employees employed in the same
2441 business, or in or about the same establishment, under any contract of hire, express or implied,
2442 oral or written.

2443 (5) "E-verify program" means the electronic verification of the work authorization
2444 program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8
2445 U.S.C. Sec. 1324a, known as the e-verify program.

2446 (6) "Family member" means for an undocumented individual:

2447 (a) a member of the undocumented individual's immediate family;

2448 (b) the undocumented individual's grandparent;

- 2449 (c) the undocumented individual's sibling;
- 2450 (d) the undocumented individual's grandchild;
- 2451 (e) the undocumented individual's nephew;
- 2452 (f) the undocumented individual's niece;
- 2453 (g) a spouse of an individual described in this Subsection (6); or
- 2454 (h) an individual who is similar to one listed in this Subsection (6).
- 2455 (7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements
- 2456 Program operated by the United States Department of Homeland Security or an equivalent
- 2457 program designated by the Department of Homeland Security.
- 2458 (8) "Guest worker" means an undocumented individual who holds a guest worker
- 2459 permit.
- 2460 (9) "Guest worker permit" means a permit issued in accordance with Section
- 2461 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section
- 2462 63G-12-205.
- 2463 (10) "Immediate family" means for an undocumented individual:
- 2464 (a) the undocumented individual's spouse; or
- 2465 (b) a child of the undocumented individual if the child is:
- 2466 (i) under 21 years ~~[of age]~~ old; and
- 2467 (ii) unmarried.
- 2468 (11) "Immediate family permit" means a permit issued in accordance with Section
- 2469 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section
- 2470 63G-12-206.
- 2471 (12) "Permit" means a permit issued under Part 2, Guest Worker Program, and
- 2472 includes:
- 2473 (a) a guest worker permit; and
- 2474 (b) an immediate family permit.
- 2475 (13) "Permit holder" means an undocumented individual who holds a permit.
- 2476 (14) "Private employer" means an employer who is not the federal government or a
- 2477 public employer.
- 2478 (15) "Program" means the Guest Worker Program described in Section 63G-12-201.
- 2479 (16) "Program start date" means the day on which the department is required to

- 2480 implement the program under Subsection 63G-12-202(3).
- 2481 (17) "Public employer" means an employer that is:
- 2482 (a) the state of Utah or any administrative subunit of the state;
- 2483 (b) a state institution of higher education, as defined in Section 53B-3-102;
- 2484 (c) a political subdivision of the state including a county, city, town, school district,
- 2485 local district, or special service district; or
- 2486 (d) an administrative subunit of a political subdivision.
- 2487 (18) "Relevant contact information" means the following for an undocumented
- 2488 individual:
- 2489 (a) the undocumented individual's name;
- 2490 (b) the undocumented individual's residential address;
- 2491 (c) the undocumented individual's residential telephone number;
- 2492 (d) the undocumented individual's personal email address;
- 2493 (e) the name of the person with whom the undocumented individual has a contract for
- 2494 hire;
- 2495 (f) the name of the contact person for the person listed in Subsection (18)(e);
- 2496 (g) the address of the person listed in Subsection (18)(e);
- 2497 (h) the telephone number for the person listed in Subsection (18)(e);
- 2498 (i) the names of the undocumented individual's immediate family members;
- 2499 (j) the names of the family members who reside with the undocumented individual;
- 2500 and
- 2501 (k) any other information required by the department by rule made in accordance with
- 2502 Chapter 3, Utah Administrative Rulemaking Act.
- 2503 (19) "Restricted account" means the Immigration Act Restricted Account created in
- 2504 Section 63G-12-103.
- 2505 (20) "Serious felony" means a felony under:
- 2506 (a) Title 76, Chapter 5, Offenses Against the ~~[Person]~~ Individual;
- 2507 (b) Title 76, Chapter 5b, Sexual Exploitation Act;
- 2508 (c) Title 76, Chapter 6, Offenses Against Property;
- 2509 (d) Title 76, Chapter 7, Offenses Against the Family;
- 2510 (e) Title 76, Chapter 8, Offenses Against the Administration of Government;

- 2511 (f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and
- 2512 (g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.
- 2513 (21) (a) "Status verification system" means an electronic system operated by the federal
- 2514 government, through which an authorized official of a state agency or a political subdivision of
- 2515 the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to
- 2516 verify the citizenship or immigration status of an individual within the jurisdiction of the
- 2517 agency or political subdivision for a purpose authorized under this section.
- 2518 (b) "Status verification system" includes:
- 2519 (i) the e-verify program;
- 2520 (ii) an equivalent federal program designated by the United States Department of
- 2521 Homeland Security or other federal agency authorized to verify the work eligibility status of a
- 2522 newly hired employee pursuant to the Immigration Reform and Control Act of 1986;
- 2523 (iii) the Social Security Number Verification Service or similar online verification
- 2524 process implemented by the United States Social Security Administration; or
- 2525 (iv) an independent third-party system with an equal or higher degree of reliability as
- 2526 the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).
- 2527 (22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).
- 2528 (23) "Undocumented individual" means an individual who:
- 2529 (a) lives or works in the state; and
- 2530 (b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101
- 2531 et seq. with regard to presence in the United States.
- 2532 (24) "U-verify program" means the verification procedure developed by the department
- 2533 in accordance with Section 63G-12-210.
- 2534 Section 37. Section **63M-7-502** is amended to read:
- 2535 **63M-7-502. Definitions.**
- 2536 As used in this part:
- 2537 (1) "Accomplice" means an individual who has engaged in criminal conduct as
- 2538 described in Section 76-2-202.
- 2539 (2) "Board" means the Crime Victim Reparations and Assistance Board created under
- 2540 Section 63M-7-504.
- 2541 (3) "Bodily injury" means physical pain, illness, or any impairment of physical

2542 condition.

2543 (4) "Claimant" means any of the following claiming reparations under this part:

2544 (a) a victim;

2545 (b) a dependent of a deceased victim; or

2546 (c) an individual or representative who files a reparations claim on behalf of a victim.

2547 (5) "Child" means an unemancipated individual who is under 18 years old.

2548 (6) "Collateral source" means any source of benefits or advantages for economic loss

2549 otherwise reparable under this part that the victim or claimant has received, or that is readily

2550 available to the victim from:

2551 (a) the offender;

2552 (b) the insurance of the offender or the victim;

2553 (c) the United States government or any of its agencies, a state or any of its political
2554 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory
2555 state-funded programs;

2556 (d) social security, Medicare, and Medicaid;

2557 (e) state-required temporary nonoccupational income replacement insurance or
2558 disability income insurance;

2559 (f) workers' compensation;

2560 (g) wage continuation programs of any employer;

2561 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
2562 sustained because of the criminally injurious conduct;

2563 (i) a contract providing prepaid hospital and other health care services or benefits for
2564 disability; or

2565 (j) veteran's benefits, including veteran's hospitalization benefits.

2566 (7) (a) "Criminally injurious conduct" other than acts of war declared or not declared
2567 means conduct that:

2568 (i) is or would be subject to prosecution in this state under Section 76-1-201;

2569 (ii) occurs or is attempted;

2570 (iii) causes, or poses a substantial threat of causing, bodily injury or death;

2571 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the
2572 conduct possessed the capacity to commit the conduct; and

2573 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
2574 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
2575 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
2576 [Person] Individual, or as any offense chargeable as driving under the influence of alcohol or
2577 drugs.

2578 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
2579 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
2580 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

2581 (c) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and
2582 other conduct leading to the psychological injury of an individual resulting from living in a
2583 setting that involves a bigamous relationship.

2584 (8) (a) "Dependent" means a natural person to whom the victim is wholly or partially
2585 legally responsible for care or support.

2586 (b) "Dependent" includes a child of the victim born after the victim's death.

2587 (9) "Dependent's economic loss" means loss after the victim's death of contributions of
2588 things of economic value to the victim's dependent, not including services the dependent would
2589 have received from the victim if the victim had not suffered the fatal injury, less expenses of
2590 the dependent avoided by reason of victim's death.

2591 (10) "Dependent's replacement services loss" means loss reasonably and necessarily
2592 incurred by the dependent after the victim's death in obtaining services in lieu of those the
2593 decedent would have performed for the victim's benefit if the victim had not suffered the fatal
2594 injury, less expenses of the dependent avoided by reason of the victim's death and not
2595 subtracted in calculating the dependent's economic loss.

2596 (11) "Director" means the director of the office.

2597 (12) "Disposition" means the sentencing or determination of penalty or punishment to
2598 be imposed upon an individual:

2599 (a) convicted of a crime;

2600 (b) found delinquent; or

2601 (c) against whom a finding of sufficient facts for conviction or finding of delinquency
2602 is made.

2603 (13) (a) "Economic loss" means economic detriment consisting only of allowable

2604 expense, work loss, replacement services loss, and if injury causes death, dependent's economic
2605 loss and dependent's replacement service loss.

2606 (b) "Economic loss" includes economic detriment even if caused by pain and suffering
2607 or physical impairment.

2608 (c) "Economic loss" does not include noneconomic detriment.

2609 (14) "Elderly victim" means an individual 60 years old or older who is a victim.

2610 (15) "Fraudulent claim" means a filed reparations based on material misrepresentation
2611 of fact and intended to deceive the reparations staff for the purpose of obtaining reparation
2612 funds for which the claimant is not eligible.

2613 (16) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

2614 (17) "Law enforcement officer" means the same as that term is defined in Section
2615 53-13-103.

2616 (18) (a) "Medical examination" means a physical examination necessary to document
2617 criminally injurious conduct.

2618 (b) "Medical examination" does not include mental health evaluations for the
2619 prosecution and investigation of a crime.

2620 (19) "Mental health counseling" means outpatient and inpatient counseling necessitated
2621 as a result of criminally injurious conduct, is subject to rules made by the board in accordance
2622 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2623 (20) "Misconduct" means conduct by the victim that was attributable to the injury or
2624 death of the victim as provided by rules made by the board in accordance with Title 63G,
2625 Chapter 3, Utah Administrative Rulemaking Act.

2626 (21) "Noneconomic detriment" means pain, suffering, inconvenience, physical
2627 impairment, and other nonpecuniary damage, except as provided in this part.

2628 (22) "Pecuniary loss" does not include loss attributable to pain and suffering except as
2629 otherwise provided in this part.

2630 (23) "Offender" means an individual who has violated Title 76, Utah Criminal Code,
2631 through criminally injurious conduct regardless of whether the individual is arrested,
2632 prosecuted, or convicted.

2633 (24) "Offense" means a violation of Title 76, Utah Criminal Code.

2634 (25) "Office" means the director, the reparations and assistance officers, and any other

2635 staff employed for the purpose of carrying out the provisions of this part.

2636 (26) "Perpetrator" means the individual who actually participated in the criminally
2637 injurious conduct.

2638 (27) "Reparations award" means money or other benefits provided to a claimant or to
2639 another on behalf of a claimant after the day on which a reparations claim is approved by the
2640 office.

2641 (28) "Reparations claim" means a claimant's request or application made to the office
2642 for a reparations award.

2643 (29) (a) "Reparations officer" means an individual employed by the office to
2644 investigate claims of victims and award reparations under this part.

2645 (b) "Reparations officer" includes the director when the director is acting as a
2646 reparations officer.

2647 (30) "Replacement service loss" means expenses reasonably and necessarily incurred in
2648 obtaining ordinary and necessary services in lieu of those the injured individual would have
2649 performed, not for income but the benefit of the injured individual or the injured individual's
2650 dependents if the injured individual had not been injured.

2651 (31) (a) "Representative" means the victim, immediate family member, legal guardian,
2652 attorney, conservator, executor, or an heir of an individual.

2653 (b) "Representative" does not include a service provider or collateral source.

2654 (32) "Restitution" means the same as that term is defined in Section 77-38b-102.

2655 (33) "Secondary victim" means an individual who is traumatically affected by the
2656 criminally injurious conduct subject to rules made by the board in accordance with Title 63G,
2657 Chapter 3, Utah Administrative Rulemaking Act.

2658 (34) "Service provider" means an individual or agency who provides a service to a
2659 victim for a monetary fee, except attorneys as provided in Section 63M-7-524.

2660 (35) "Serious bodily injury" means the same as that term is defined in Section
2661 ~~[76-1-601]~~ 76-1-101.5.

2662 (36) "Substantial bodily injury" means the same as that term is defined in Section
2663 ~~[76-1-601]~~ 76-1-101.5.

2664 (37) (a) "Victim" means an individual who suffers bodily or psychological injury or
2665 death as a direct result of:

2666 (i) criminally injurious conduct; or
2667 (ii) the production of pornography in violation of Section 76-5b-201 if the individual is
2668 a minor.

2669 (b) "Victim" does not include an individual who participated in or observed the judicial
2670 proceedings against an offender unless otherwise provided by statute or rule made in
2671 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2672 (c) "Victim" includes a resident of this state who is injured or killed by an act of
2673 terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States.

2674 (38) "Work loss" means loss of income from work the injured victim would have
2675 performed if the injured victim had not been injured and expenses reasonably incurred by the
2676 injured victim in obtaining services in lieu of those the injured victim would have performed
2677 for income, reduced by any income from substitute work the injured victim was capable of
2678 performing but unreasonably failed to undertake.

2679 Section 38. Section **63M-7-513** is amended to read:

2680 **63M-7-513. Collateral sources.**

2681 (1) (a) An order for restitution may not be considered readily available as a collateral
2682 source.

2683 (b) Receipt of a reparations award under this part is considered an assignment of the
2684 victim's rights to restitution from the offender.

2685 (2) (a) The victim may not discharge a claim against an individual or entity without the
2686 office's written permission.

2687 (b) The victim shall fully cooperate with the office in pursuing the office's right of
2688 reimbursement, including providing the office with any evidence in the victim's possession.

2689 (3) The office's right of reimbursement applies regardless of whether the victim is fully
2690 compensated for the victim's losses.

2691 (4) Notwithstanding Subsection 63M-7-512(1)(a), a victim of a sexual offense who
2692 requests testing of the victim's self may be reimbursed for the costs of the HIV test only as
2693 provided in Subsection [~~76-5-503~~] 53-10-803(4).

2694 Section 39. Section **63N-10-102** is amended to read:

2695 **63N-10-102. Definitions.**

2696 As used in this chapter:

- 2697 (1) "Bodily injury" has the same meaning as defined in Section [~~76-1-601~~] 76-1-101.5.
- 2698 (2) "Boxing" means the sport of attack and defense using the fist, which is covered by
2699 an approved boxing glove.
- 2700 (3) (a) "Club fighting" means any contest of unarmed combat, whether admission is
2701 charged or not, where:
- 2702 (i) the rules of the contest are not approved by the commission;
- 2703 (ii) a licensed physician, osteopath, or physician assistant approved by the commission
2704 is not in attendance;
- 2705 (iii) a correct HIV negative test regarding each contestant has not been provided to the
2706 commission;
- 2707 (iv) the contest is not conducted in accordance with commission rules; or
- 2708 (v) the contestants are not matched by the weight standards established in accordance
2709 with Section 63N-10-316.
- 2710 (b) "Club fighting" does not include sparring if:
- 2711 (i) it is conducted for training purposes;
- 2712 (ii) no tickets are sold to spectators;
- 2713 (iii) no concessions are available for spectators;
- 2714 (iv) protective clothing, including protective headgear, a mouthguard, and a protective
2715 cup, is worn; and
- 2716 (v) for boxing, 16 ounce boxing gloves are worn.
- 2717 (4) "Commission" means the Pete Suazo Utah Athletic Commission created by this
2718 chapter.
- 2719 (5) "Contest" means a live match, performance, or exhibition involving two or more
2720 persons engaged in unarmed combat.
- 2721 (6) "Contestant" means an individual who participates in a contest.
- 2722 (7) "Designated commission member" means a member of the commission designated
2723 to:
- 2724 (a) attend and supervise a particular contest; and
- 2725 (b) act on the behalf of the commission at a contest venue.
- 2726 (8) "Director" means the director appointed by the commission.
- 2727 (9) "Elimination unarmed combat contest" means a contest where:

- 2728 (a) a number of contestants participate in a tournament;
- 2729 (b) the duration is not more than 48 hours; and
- 2730 (c) the loser of each contest is eliminated from further competition.
- 2731 (10) "Exhibition" means an engagement in which the participants show or display their
- 2732 skills without necessarily striving to win.
- 2733 (11) "Judge" means an individual qualified by training or experience to:
- 2734 (a) rate the performance of contestants;
- 2735 (b) score a contest; and
- 2736 (c) determine with other judges whether there is a winner of the contest or whether the
- 2737 contestants performed equally, resulting in a draw.
- 2738 (12) "Licensee" means an individual licensed by the commission to act as a:
- 2739 (a) contestant;
- 2740 (b) judge;
- 2741 (c) manager;
- 2742 (d) promoter;
- 2743 (e) referee;
- 2744 (f) second; or
- 2745 (g) other official established by the commission by rule.
- 2746 (13) "Manager" means an individual who represents a contestant for the purpose of:
- 2747 (a) obtaining a contest for a contestant;
- 2748 (b) negotiating terms and conditions of the contract under which the contestant will
- 2749 engage in a contest; or
- 2750 (c) arranging for a second for the contestant at a contest.
- 2751 (14) "Promoter" means a person who engages in producing or staging contests and
- 2752 promotions.
- 2753 (15) "Promotion" means a single contest or a combination of contests that:
- 2754 (a) occur during the same time and at the same location; and
- 2755 (b) is produced or staged by a promoter.
- 2756 (16) "Purse" means any money, prize, remuneration, or any other valuable
- 2757 consideration a contestant receives or may receive for participation in a contest.
- 2758 (17) "Referee" means an individual qualified by training or experience to act as the

2759 official attending a contest at the point of contact between contestants for the purpose of:

2760 (a) enforcing the rules relating to the contest;

2761 (b) stopping the contest in the event the health, safety, and welfare of a contestant or
2762 any other person in attendance at the contest is in jeopardy; and

2763 (c) acting as a judge if so designated by the commission.

2764 (18) "Round" means one of a number of individual time periods that, taken together,
2765 constitute a contest during which contestants are engaged in a form of unarmed combat.

2766 (19) "Second" means an individual who attends a contestant at the site of the contest
2767 before, during, and after the contest in accordance with contest rules.

2768 (20) "Serious bodily injury" has the same meaning as defined in Section [~~76-1-601~~]
2769 76-1-101.5.

2770 (21) "Total gross receipts" means the amount of the face value of all tickets sold to a
2771 particular contest plus any sums received as consideration for holding the contest at a particular
2772 location.

2773 (22) "Ultimate fighting" means a live contest, whether or not an admission fee is
2774 charged, in which:

2775 (a) contest rules permit contestants to use a combination of boxing, kicking, wrestling,
2776 hitting, punching, or other combative contact techniques;

2777 (b) contest rules incorporate a formalized system of combative techniques against
2778 which a contestant's performance is judged to determine the prevailing contestant;

2779 (c) contest rules divide nonchampionship contests into three equal and specified rounds
2780 of no more than five minutes per round with a rest period of one minute between each round;

2781 (d) contest rules divide championship contests into five equal and specified rounds of
2782 no more than five minutes per round with a rest period of one minute between each round; and

2783 (e) contest rules prohibit contestants from:

2784 (i) using anything that is not part of the human body, except for boxing gloves, to
2785 intentionally inflict serious bodily injury upon an opponent through direct contact or the
2786 expulsion of a projectile;

2787 (ii) striking a person who demonstrates an inability to protect himself from the
2788 advances of an opponent;

2789 (iii) biting; or

2790 (iv) direct, intentional, and forceful strikes to the eyes, groin area, Adam's apple area of
2791 the neck, and the rear area of the head and neck.

2792 (23) (a) "Unarmed combat" means boxing or any other form of competition in which a
2793 blow is usually struck which may reasonably be expected to inflict bodily injury.

2794 (b) "Unarmed combat" does not include a competition or exhibition between
2795 participants in which the participants engage in simulated combat for entertainment purposes.

2796 (24) "Unlawful conduct" means organizing, promoting, or participating in a contest
2797 which involves contestants that are not licensed under this chapter.

2798 (25) "Unprofessional conduct" means:

2799 (a) entering into a contract for a contest in bad faith;

2800 (b) participating in any sham or fake contest;

2801 (c) participating in a contest pursuant to a collusive understanding or agreement in
2802 which the contestant competes in or terminates the contest in a manner that is not based upon
2803 honest competition or the honest exhibition of the skill of the contestant;

2804 (d) engaging in an act or conduct that is detrimental to a contest, including any foul or
2805 unsportsmanlike conduct in connection with a contest;

2806 (e) failing to comply with any limitation, restriction, or condition placed on a license;

2807 (f) striking of a downed opponent by a contestant while the contestant remains on the
2808 contestant's feet, unless the designated commission member or director has exempted the
2809 contest and each contestant from the prohibition on striking a downed opponent before the start
2810 of the contest;

2811 (g) after entering the ring or contest area, penetrating an area within four feet of an
2812 opponent by a contestant, manager, or second before the commencement of the contest; or

2813 (h) as further defined by rules made by the commission under Title 63G, Chapter 3,
2814 Utah Administrative Rulemaking Act.

2815 (26) "White-collar contest" means a contest conducted at a training facility where no
2816 alcohol is served in which:

2817 (a) for boxing:

2818 (i) neither contestant is or has been a licensed contestant in any state or an amateur
2819 registered with USA Boxing, Inc.;

2820 (ii) no cash prize, or other prize valued at greater than \$35, is awarded;

2821 (iii) protective clothing, including protective headgear, a mouthguard, a protective cup,
2822 and for a female contestant a chestguard, is worn;

2823 (iv) 16 ounce boxing gloves are worn;

2824 (v) the contest is no longer than three rounds of no longer than three minutes each;

2825 (vi) no winner or loser is declared or recorded; and

2826 (vii) the contestants do not compete in a cage; and

2827 (b) for ultimate fighting:

2828 (i) neither contestant is or has been a licensed contestant in any state or an amateur
2829 registered with USA Boxing, Inc.;

2830 (ii) no cash prize, or other prize valued at greater than \$35, is awarded;

2831 (iii) protective clothing, including a protective mouthguard and a protective cup, is
2832 worn;

2833 (iv) downward elbow strikes are not allowed;

2834 (v) a contestant is not allowed to stand and strike a downed opponent;

2835 (vi) a closed-hand blow to the head is not allowed while either contestant is on the
2836 ground;

2837 (vii) the contest is no longer than three rounds of no longer than three minutes each;

2838 and

2839 (viii) no winner or loser is declared or recorded.

2840 Section 40. Section **75-2-803** is amended to read:

2841 **75-2-803. Definitions -- Effect of homicide on intestate succession, wills, trusts,**
2842 **joint assets, life insurance, and beneficiary designations -- Forfeiture -- Revocation.**

2843 (1) As used in this section:

2844 (a) "Disposition or appointment of property" includes a transfer of an item of property
2845 or any other benefit to a beneficiary designated in a governing instrument.

2846 (b) "Disqualifying homicide" means a homicide established by a preponderance of the
2847 evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5,
2848 Offenses Against the ~~Person~~ Individual, except automobile homicide, applying the same
2849 principles of culpability and defenses as in Title 76, Utah Criminal Code, including but not
2850 limited to Chapter 2, Principles of Criminal Responsibility.

2851 (c) "Governing instrument" means a governing instrument executed by the decedent.

2852 (d) "Killer" means a person who commits a disqualifying homicide.

2853 (e) "Revocable," with respect to a disposition, appointment, provision, or nomination,
2854 means one under which the decedent, at the time of or immediately before death, was alone
2855 empowered, by law or under the governing instrument, to cancel the designation, in favor of
2856 the killer, whether or not the decedent was then empowered to designate himself in place of his
2857 killer and whether or not the decedent then had capacity to exercise the power.

2858 (2) An individual who commits a disqualifying homicide of the decedent forfeits all
2859 benefits under this chapter with respect to the decedent's estate, including an intestate share, an
2860 elective share, an omitted spouse's or child's share, a homestead allowance, exempt property,
2861 and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as
2862 if the killer disclaimed his intestate share.

2863 (3) The killing of the decedent by means of a disqualifying homicide:

2864 (a) revokes any revocable:

2865 (i) disposition or appointment of property made by the decedent to the killer in a
2866 governing instrument;

2867 (ii) provision in a governing instrument conferring a general or nongeneral power of
2868 appointment on the killer; and

2869 (iii) nomination of the killer in a governing instrument, nominating or appointing the
2870 killer to serve in any fiduciary or representative capacity, including a personal representative,
2871 executor, trustee, or agent; and

2872 (b) severs the interests of the decedent and killer in property held by them at the time of
2873 the killing as joint tenants with the right of survivorship, transforming the interests of the
2874 decedent and killer into tenancies in common.

2875 (4) A severance under Subsection (3)(b) does not affect any third-party interest in
2876 property acquired for value and in good faith reliance on an apparent title by survivorship in the
2877 killer unless a writing declaring the severance has been noted, registered, filed, or recorded in
2878 records appropriate to the kind and location of the property which are relied upon, in the
2879 ordinary course of transactions involving such property, as evidence of ownership.

2880 (5) Provisions of a governing instrument are given effect as if the killer disclaimed all
2881 provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or
2882 representative capacity, as if the killer predeceased the decedent.

2883 (6) A wrongful acquisition of property or interest by one who kills another under
2884 circumstances not covered by this section shall be treated in accordance with the principle that
2885 one who kills cannot profit from his wrong.

2886 (7) The court, upon the petition of an interested person, shall determine whether, under
2887 the preponderance of evidence standard, the individual has committed a disqualifying homicide
2888 of the decedent. If the court determines that, under that standard, the individual has committed
2889 a disqualifying homicide of the decedent, the determination conclusively establishes that
2890 individual as having committed a disqualifying homicide for purposes of this section, unless
2891 the court finds that the act of disinheritance would create a manifest injustice. A judgment of
2892 criminal conviction for a disqualifying homicide of the decedent, after all direct appeals have
2893 been exhausted, conclusively establishes that the convicted individual has committed the
2894 disqualifying homicide for purposes of this section.

2895 (8) (a) A payor or other third party is not liable for having made a payment or
2896 transferred an item of property or any other benefit to a beneficiary designated in a governing
2897 instrument affected by a disqualifying homicide, or for having taken any other action in good
2898 faith reliance on the validity of the governing instrument, upon request and satisfactory proof of
2899 the decedent's death, before the payor or other third party received written notice of a claimed
2900 forfeiture or revocation under this section. A payor or other third party is liable for a payment
2901 made or other action taken after the payor or other third party received written notice of a
2902 claimed forfeiture or revocation under this section.

2903 (b) Written notice of a claimed forfeiture or revocation under Subsection (8)(a) shall be
2904 mailed to the payor's or other third party's main office or home by registered or certified mail,
2905 return receipt requested, or served upon the payor or other third party in the same manner as a
2906 summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation
2907 under this section, a payor or other third party may pay any amount owed or transfer or deposit
2908 any item of property held by it to or with the court having jurisdiction of the probate
2909 proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or
2910 with the court having jurisdiction of probate proceedings relating to the decedent's estates
2911 located in the county of the decedent's residence. The court shall hold the funds or item of
2912 property and, upon its determination under this section, shall order disbursement in accordance
2913 with the determination. Payments, transfers, or deposits made to or with the court discharge

2914 the payor or other third party from all claims for the value of amounts paid to or items of
2915 property transferred to or deposited with the court.

2916 (9) (a) A person who purchases property for value and without notice, or who receives
2917 a payment or other item of property in partial or full satisfaction of a legally enforceable
2918 obligation, is neither obligated under this section to return the payment, item of property, or
2919 benefit nor is liable under this section for the amount of the payment or the value of the item of
2920 property or benefit. But a person who, not for value, receives a payment, item of property, or
2921 any other benefit to which the person is not entitled under this section is obligated to return the
2922 payment, item of property, or benefit, or is personally liable for the amount of the payment or
2923 the value of the item of property or benefit, to the person who is entitled to it under this section.

2924 (b) If this section or any part of this section is preempted by federal law with respect to
2925 a payment, an item of property, or any other benefit covered by this section, a person who, not
2926 for value, receives the payment, item of property, or any other benefit to which the person is
2927 not entitled under this section is obligated to return the payment, item of property, or benefit, or
2928 is personally liable for the amount of the payment or the value of the item of property or
2929 benefit, to the person who would have been entitled to it were this section or part of this section
2930 not preempted.

2931 Section 41. Section **75-2-807** is amended to read:

2932 **75-2-807. Effect of disqualifying felony offense on intestate succession, wills,**
2933 **trusts, joint assets, life insurance, beneficiary designations -- Forfeiture -- Revocation.**

2934 (1) As used in this section:

2935 (a) "Abuser" means a person who is convicted of committing a disqualifying felony
2936 offense against a vulnerable adult.

2937 (b) "Dependent adult" means the same as that term is defined in Section 76-5-111.

2938 (c) "Disposition or apportionment of property" means a transfer of an item of property
2939 or any other benefit to a beneficiary designated in a governing instrument.

2940 (d) "Disqualifying felony offense" means a felony offense against a vulnerable adult
2941 that meets the elements of:

2942 (i) felony financial exploitation of a vulnerable adult, as described in [~~Subsection~~
2943 ~~76-5-111(9)~~] Section 76-5-111.4;

2944 (ii) felony aggravated abuse of a vulnerable adult, as described in [~~Subsection~~

2945 ~~76-5-111(2)]~~ Section 76-5-111.2;

2946 (iii) felony abuse of a vulnerable adult based on isolation, as described in Subsection

2947 76-5-111(3); or

2948 (iv) any felony offense in another state, territory, or district of the United States that, if

2949 committed in Utah, would constitute a felony offense described in this Subsection (1)(d).

2950 (e) "Elder adult" means the same as that term is defined in Section 76-5-111.

2951 (f) "Governing instrument" means a governing instrument executed by a vulnerable

2952 adult.

2953 (g) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

2954 (2) (a) An abuser who is convicted of a disqualifying felony offense against a

2955 vulnerable adult forfeits any benefit under this chapter with respect to the vulnerable adult's

2956 estate:

2957 (i) that the vulnerable adult made to the abuser in a governing instrument; or

2958 (ii) according to intestate succession, as described in Title 75, Chapter 2, Intestate

2959 Succession and Wills.

2960 (b) The abuser described in Subsection (2)(a):

2961 (i) may not inherit, take, enjoy, receive, or otherwise benefit from the estate of the

2962 vulnerable adult described in Subsection (2)(a), including by any:

2963 (A) intestate share;

2964 (B) elective share;

2965 (C) omitted spouse's or child's share;

2966 (D) homestead allowance;

2967 (E) exempt property;

2968 (F) family allowance;

2969 (G) banknote or other form of physical currency;

2970 (H) deposit account;

2971 (I) interest-bearing account;

2972 (J) contents of a safe deposit box;

2973 (K) investment;

2974 (L) retirement benefit or account;

2975 (M) pension;

2976 (N) annuity; or
2977 (O) insurance proceed; and
2978 (ii) is considered to have predeceased the vulnerable adult with respect to any intestate
2979 property or governing instrument belonging to the vulnerable adult.

2980 (3) Conviction of a disqualifying felony offense against a vulnerable adult:
2981 (a) revokes any revocable:
2982 (i) disposition or apportionment of property that the vulnerable adult made to the
2983 abuser in a governing instrument;
2984 (ii) provision in a governing instrument conferring a general or nongeneral power of
2985 appointment on the abuser; and
2986 (iii) nomination of the abuser in a governing instrument nominating or appointing the
2987 abuser to serve in any fiduciary or representative capacity, including a personal representative,
2988 representative payee, executor, trustee, or agent; and
2989 (b) (i) severs any interest in property held by the abuser and the vulnerable adult as
2990 joint tenants with the right of survivorship; and
2991 (ii) transforms the interests described in Subsection (3)(b)(i) to a tenancy in common.

2992 (4) A wrongful acquisition of property or interest by an abuser under circumstances not
2993 covered by this section shall be treated in accordance with the principle that one cannot profit
2994 from one's own wrongdoing.

2995 (5) Revocation by the court of an abuser's interest in the property of the vulnerable
2996 adult and of an abuser's powers and appointments in the estate of the vulnerable adult as
2997 established by any governing instrument is final.

2998 (6) Conviction of a disqualifying felony offense against a vulnerable adult:
2999 (a) prevents any revocable interest or share an abuser has or may have in the estate of
3000 the vulnerable adult, under Subsection (2), from vesting into a right of property upon the death
3001 of the vulnerable adult; and
3002 (b) is the triggering event for action under this section.

3003 (7) As a consequence of bringing an action under this section, a court may not reduce
3004 or eliminate the rights, interest, or share in the estate of a vulnerable adult belonging to any
3005 interested person who:
3006 (a) petitions the court under this section; and

3007 (b) retains a property or other interest in the estate of a vulnerable adult, either as an
3008 heir, devisee, legatee, beneficiary, survivor, appointee, or claimant, notwithstanding any
3009 no-contest provision which appears in any governing instrument of the vulnerable adult.

3010 (8) (a) A payor or other third party is not liable for having made a payment or
3011 transferred an item of property or any other benefit to a beneficiary designated in a governing
3012 instrument that a disqualifying felony offense affects, or for having taken any other action in
3013 good faith reliance on the validity of the governing instrument, upon request and satisfactory
3014 proof of the decedent's death, before the payor or other third party received written notice of a
3015 claimed forfeiture or revocation under this section.

3016 (b) A payor or other third party is liable for a payment made or other action taken after
3017 the payor or other third party received written notice of a claimed forfeiture or revocation under
3018 this section.

3019 (c) (i) An individual seeking enforcement of this section shall mail a written notice of a
3020 claimed forfeiture or revocation to the payor's or other third party's main office or home by
3021 registered or certified mail, return receipt requested, or served upon the payor or other third
3022 party in the same manner as a summons in a civil action.

3023 (ii) Upon receipt of a written notice of a claimed forfeiture or revocation described in
3024 Subsection (8)(c)(i), a payor or other third party may pay any amount owed or transfer or
3025 deposit any item of property the payor or third party holds to or with:

3026 (A) the court having jurisdiction of the probate proceedings relating to the vulnerable
3027 adult's estate; or

3028 (B) if the individual who gave notice has not brought an action under this section, to or
3029 with the court having jurisdiction of probate proceedings relating to the decedent's estate
3030 located in the county of the decedent's residence.

3031 (d) A court described in Subsection (8)(c)(ii) shall:

3032 (i) hold the funds or item of property; and

3033 (ii) upon the court's determination under this section, order disbursement in accordance
3034 with the determination.

3035 (e) A payor's or third party's payment, transfer, or deposit made to or with the court
3036 discharges the payor or third party from all claims for the value of the paid amounts or
3037 transferred or deposited items of property.

3038 (9) (a) A person who purchases property for value and without notice, or who receives
3039 a payment or other item of property in partial or full satisfaction of a legally enforceable
3040 obligation:

3041 (i) may retain the payment, item of property, or benefit; and

3042 (ii) is not liable under this section for the amount of the payment or the value of the
3043 item of property or benefit.

3044 (b) A person who, not for value, receives a payment, item of property, or any other
3045 benefit to which the person is not entitled under this section:

3046 (i) shall return the payment, item of property, or benefit to the person who is entitled to
3047 the payment or the item of property or benefit under this section; or

3048 (ii) is personally liable for the amount of the payment or the value of the item of
3049 property or benefit, to the person who is entitled to the payment or the item of property or
3050 benefit under this section.

3051 (c) If this section, or any part of this section, is preempted by federal law with respect
3052 to a payment, an item of property, or any other benefit that this section addresses, a person
3053 who, not for value, receives the payment, item of property, or any other benefit to which the
3054 person is not entitled under this section:

3055 (i) shall return the payment, item of property, or benefit to the person who would have
3056 been entitled to the payment or the item of property or benefit if this section or the relevant part
3057 of this section was not preempted; or

3058 (ii) is personally liable for the amount of the payment, or the value of the item of
3059 property or benefit, to the person who would have been entitled to the payment or the item of
3060 property or benefit if this section or the relevant part of this section was not preempted.

3061 (10) Notwithstanding Subsections (2) through (6), and notwithstanding an abuser's
3062 conviction for a disqualifying felony offense, the abuser may inherit, take, enjoy, receive, or
3063 otherwise benefit from the estate of the vulnerable adult if:

3064 (a) (i) after the abuser's conviction, the vulnerable adult executes a new governing
3065 instrument or amends or affirms an existing governing instrument under which the abuser
3066 receives a benefit; and

3067 (ii) the vulnerable adult is not incapacitated, as that term is defined in Section
3068 75-1-201, at the time the vulnerable adult makes the execution, amendment, or affirmation

3069 described in Subsection (10)(a)(i); or

3070 (b) the court reviewing a petition under this section determines that a manifest injustice
3071 would result if the abuser is disinherited by operation of this section.

3072 (11) This section:

3073 (a) does not operate retrospectively;

3074 (b) except as provided in Subsection (11)(c), does not apply to a disqualifying felony
3075 offense that occurred prior to May 5, 2021; and

3076 (c) applies to a disqualifying felony offense described in Subsection (10)(b) if any
3077 portion of the offense persists after May 5, 2021.

3078 Section 42. Section **75-9-105** is amended to read:

3079 **75-9-105. Execution of power of attorney.**

3080 (1) A power of attorney shall be signed by the principal or in the principal's conscious
3081 presence by another individual directed by the principal to sign the principal's name on the
3082 power of attorney before a notary public or other individual authorized by the law to take
3083 acknowledgments. A signature on a power of attorney is presumed to be genuine if the
3084 principal acknowledges the signature before a notary public or other individual authorized by
3085 law to take acknowledgments.

3086 (2) If the principal resides or is about to reside in a hospital, assisted living, skilled
3087 nursing, or similar facility, at the time of execution of the power of attorney, the principal may
3088 not name any agent that is the owner, operator, health care provider, or employee of the
3089 hospital, assisted living facility, skilled nursing, or similar residential care facility unless the
3090 agent is the spouse, legal guardian, or next of kin of the principal, or unless the agent's
3091 authority is strictly limited to the purpose of assisting the principal to establish eligibility for
3092 Medicaid.

3093 (3) A violation of Subsection (2) is a violation of Subsection [~~76-5-111(9)(a)~~] Section
3094 76-5-111.4.

3095 Section 43. Section **77-23a-8** is amended to read:

3096 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

3097 (1) The attorney general of the state, any assistant attorney general specially designated
3098 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
3099 district attorney specially designated by the county attorney or by the district attorney, may

3100 authorize an application to a judge of competent jurisdiction for an order for an interception of
3101 wire, electronic, or oral communications by any law enforcement agency of the state, the
3102 federal government or of any political subdivision of the state that is responsible for
3103 investigating the type of offense for which the application is made.

3104 (2) The judge may grant the order in conformity with the required procedures when the
3105 interception sought may provide or has provided evidence of the commission of:

3106 (a) any act:

3107 (i) prohibited by the criminal provisions of:

3108 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

3109 (B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

3110 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

3111 (ii) punishable by a term of imprisonment of more than one year;

3112 (b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
3113 Securities Act, and punishable by a term of imprisonment of more than one year;

3114 (c) an offense:

3115 (i) of:

3116 (A) attempt, Section 76-4-101;

3117 (B) conspiracy, Section 76-4-201;

3118 (C) solicitation, Section 76-4-203; and

3119 (ii) punishable by a term of imprisonment of more than one year;

3120 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of
3121 more than one year, Section 76-5-107.3;

3122 (e) (i) aggravated murder, Section 76-5-202;

3123 (ii) murder, Section 76-5-203; or

3124 (iii) manslaughter, Section 76-5-205;

3125 (f) (i) kidnapping, Section 76-5-301;

3126 (ii) child kidnapping, Section 76-5-301.1;

3127 (iii) aggravated kidnapping, Section 76-5-302;

3128 (iv) human trafficking, Section 76-5-308, 76-5-308.1, or 76-5-308.5, or human

3129 smuggling, Section ~~[76-5-308]~~ 76-5-308.3; or

3130 (v) aggravated human trafficking, Section 76-5-310, or aggravated human smuggling,

- 3131 Section ~~[76-5-310]~~ 76-5-310.1;
- 3132 (g) (i) arson, Section 76-6-102; or
- 3133 (ii) aggravated arson, Section 76-6-103;
- 3134 (h) (i) burglary, Section 76-6-202; or
- 3135 (ii) aggravated burglary, Section 76-6-203;
- 3136 (i) (i) robbery, Section 76-6-301; or
- 3137 (ii) aggravated robbery, Section 76-6-302;
- 3138 (j) an offense:
- 3139 (i) of:
- 3140 (A) theft, Section 76-6-404;
- 3141 (B) theft by deception, Section 76-6-405; or
- 3142 (C) theft by extortion, Section 76-6-406; and
- 3143 (ii) punishable by a maximum term of imprisonment of more than one year;
- 3144 (k) an offense of receiving stolen property that is punishable by a maximum term of
- 3145 imprisonment of more than one year, Section 76-6-408;
- 3146 (l) a financial card transaction offense punishable by a maximum term of imprisonment
- 3147 of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
- 3148 (m) bribery of a labor official, Section 76-6-509;
- 3149 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 3150 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
- 3151 more than one year, Section 76-6-518;
- 3152 (p) criminal usury, Section 76-6-520;
- 3153 (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment
- 3154 of more than one year, Section 76-6-521;
- 3155 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by
- 3156 a maximum term of imprisonment of more than one year, Section 76-6-703;
- 3157 (s) bribery to influence official or political actions, Section 76-8-103;
- 3158 (t) misusing public money or public property, Section 76-8-402;
- 3159 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 3160 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 3161 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;

- 3162 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 3163 (y) obstruction of justice, Section 76-8-306;
- 3164 (z) destruction of property to interfere with preparation for defense or war, Section
3165 76-8-802;
- 3166 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 3167 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 3168 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 3169 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 3170 (ee) riot punishable by a maximum term of imprisonment of more than one year,
3171 Section 76-9-101;
- 3172 (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a
3173 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 3174 (gg) possession, use, or removal of an explosive, chemical, or incendiary device and
3175 parts, Section 76-10-306;
- 3176 (hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary
3177 device, Section 76-10-307;
- 3178 (ii) exploiting prostitution, Section 76-10-1305;
- 3179 (jj) aggravated exploitation of prostitution, Section 76-10-1306;
- 3180 (kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;
- 3181 (ll) discharging firearms and hurling missiles, Section 76-10-1505;
- 3182 (mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and
3183 the offenses listed under the definition of unlawful activity in the act, including the offenses not
3184 punishable by a maximum term of imprisonment of more than one year when those offenses
3185 are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;
- 3186 (nn) communications fraud, Section 76-10-1801;
- 3187 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or
- 3188 (pp) reporting by a person engaged in a trade or business when the offense is
3189 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.
3190 Section 44. Section 77-27-7 is amended to read:
- 3191 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**
3192 **Mental competency.**

3193 (1) The Board of Pardons and Parole shall determine within six months after the date
3194 of an offender's commitment to the custody of the Department of Corrections, for serving a
3195 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the
3196 offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and
3197 shall promptly notify the offender of the date.

3198 (2) Before reaching a final decision to release any offender under this chapter, the chair
3199 shall cause the offender to appear before the board, its panel, or any appointed hearing officer,
3200 who shall personally interview the offender to consider the offender's fitness for release and
3201 verify as far as possible information furnished from other sources. Any offender may waive a
3202 personal appearance before the board. Any offender outside of the state shall, if ordered by the
3203 board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in
3204 which the offender is housed in lieu of an appearance before the board. The offender shall be
3205 promptly notified in writing of the board's decision.

3206 (3) (a) In the case of an offender convicted of violating or attempting to violate any of
3207 the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402,
3208 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-404.3,
3209 or 76-5-405, the chair may appoint one or more alienists who shall examine the offender within
3210 six months prior to a hearing at which an original parole date is granted on any offense listed in
3211 this Subsection (3).

3212 (b) The alienists shall report in writing the results of the examination to the board prior
3213 to the hearing. The report of the appointed alienists shall specifically address the question of
3214 the offender's current mental condition and attitudes as they relate to any danger the offender
3215 may pose to children or others if the offender is released on parole.

3216 (4) A parolee may petition the board for termination of lifetime parole as provided in
3217 Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or
3218 convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302[~~(1)~~](2)(b)(vi),
3219 Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1,
3220 76-5-404.3, or 76-5-405, and released on parole before January 1, 2019.

3221 (5) In any case where an offender's mental competency is questioned by the board, the
3222 chair may appoint one or more alienists to examine the offender and report in writing to the
3223 board, specifically addressing the issue of competency.

3224 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3225 board shall make rules governing:

- 3226 (a) the hearing process;
3227 (b) alienist examination; and
3228 (c) parolee petitions for termination of parole.

3229 Section 45. Section ~~77-27-9~~ is amended to read:

3230 **77-27-9. Parole proceedings.**

3231 (1) (a) The Board of Pardons and Parole may parole any offender or terminate the
3232 sentence of any offender committed to a penal or correctional facility under the jurisdiction of
3233 the Department of Corrections except as provided in Subsection (2).

3234 (b) The board may not release any offender before the minimum term has been served
3235 unless the board finds mitigating circumstances which justify the release and unless the board
3236 has granted a full hearing, in open session, after previous notice of the time and location of the
3237 hearing, and recorded the proceedings and decisions of the board.

3238 (c) The board may not parole any offender or terminate the sentence of any offender
3239 unless the board has granted a full hearing, in open session, after previous notice of the time
3240 and location of the hearing, and recorded the proceedings and decisions of the board.

3241 (d) The release of an offender shall be at the initiative of the board, which shall
3242 consider each case as the offender becomes eligible. However, a prisoner may submit the
3243 prisoner's own application, subject to the rules of the board promulgated in accordance with
3244 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3245 (2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree
3246 felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
3247 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
3248 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
3249 76-5-403.1; aggravated sexual abuse of a child, a violation of [~~Subsection 76-5-404.1(4)~~]
3250 Section 76-5-404.3; aggravated sexual assault, a violation of Section 76-5-405; or a prior
3251 offense as described in Section 76-3-407, may not be eligible for release on parole by the Board
3252 of Pardons and Parole until the offender has fully completed serving the minimum mandatory
3253 sentence imposed by the court. This Subsection (2)(a) supersedes any other provision of law.

3254 (b) The board may not parole any offender or commute or terminate the sentence of

3255 any offender before the offender has served the minimum term for the offense, if the offender
3256 was sentenced prior to April 29, 1996, and if:

3257 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,
3258 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined
3259 in Title 76, Chapter 5, Offenses Against the [Person] Individual; and

3260 (ii) the victim of the offense was under 18 years old at the time the offense was
3261 committed.

3262 (c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the
3263 board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as
3264 provided in this section.

3265 (d) The board may not pardon or parole any offender or commute or terminate the
3266 sentence of any offender who is sentenced to life in prison without parole except as provided in
3267 Subsection (7).

3268 (e) On or after April 27, 1992, the board may commute a sentence of death only to a
3269 sentence of life in prison without parole.

3270 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come
3271 before the Board of Pardons and Parole on or after April 27, 1992.

3272 (g) The board may not parole any offender convicted of a homicide unless:

3273 (i) the remains of the victim have been recovered; or

3274 (ii) the offender can demonstrate by a preponderance of the evidence that the offender
3275 has cooperated in good faith in efforts to locate the remains.

3276 (h) Subsection (2)(g) applies to any offender convicted of a homicide after February
3277 25, 2021, or any offender who was incarcerated in a correctional facility on or after February
3278 25, 2021, for a homicide offense.

3279 (3) The board may rescind:

3280 (a) an inmate's prison release date prior to the inmate being released from custody; or

3281 (b) an offender's termination date from parole prior to the offender being terminated
3282 from parole.

3283 (4) (a) The board may issue subpoenas to compel the attendance of witnesses and the
3284 production of evidence, to administer oaths, and to take testimony for the purpose of any
3285 investigation by the board or any of the board's members or by a designated hearing examiner

3286 in the performance of the board's duties.

3287 (b) A person who willfully disobeys a properly served subpoena issued by the board is
3288 guilty of a class B misdemeanor.

3289 (5) (a) The board may adopt rules consistent with law for the board's government,
3290 meetings and hearings, the conduct of proceedings before the board, the parole and pardon of
3291 offenders, the commutation and termination of sentences, and the general conditions under
3292 which parole may be granted and revoked.

3293 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings
3294 held under this chapter, as provided in Section 77-27-9.5.

3295 (c) The rules may allow the board to establish reasonable and equitable time limits on
3296 the presentations by all participants in hearings held under this chapter.

3297 (6) The board does not provide counseling or therapy for victims as a part of their
3298 participation in any hearing under this chapter.

3299 (7) The board may parole a person sentenced to life in prison without parole if the
3300 board finds by clear and convincing evidence that the person is permanently incapable of being
3301 a threat to the safety of society.

3302 Section 46. Section 77-27-10 is amended to read:

3303 **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking --**
3304 **Intensive early release parole program.**

3305 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
3306 issue to the parolee a certificate setting forth the conditions of parole, including the graduated
3307 and evidence-based responses to a violation of a condition of parole established by the
3308 Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept
3309 and agree to as evidenced by the offender's signature affixed to the agreement.

3310 (b) The parole agreement shall require that the inmate agree in writing that the board
3311 may issue a warrant and conduct a parole revocation hearing if:

3312 (i) the board determines after the grant of parole that the inmate willfully provided to
3313 the board false or inaccurate information that the board finds was significant in the board's
3314 determination to grant parole; or

3315 (ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and

3316 (B) the board did not have information regarding the conduct at the time parole was

3317 granted.

3318 (c) A copy of the agreement shall be delivered to the Department of Corrections and a
3319 copy shall be given to the parolee. The original shall remain with the board's file.

3320 (2) (a) If an offender convicted of violating or attempting to violate Section
3321 76-5-301.1, [~~Subsection 76-5-302(1), Section~~] 76-5-302, 76-5-402, 76-5-402.1, 76-5-402.2,
3322 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-404.3, or 76-5-405, is released
3323 on parole, the board shall order outpatient mental health counseling and treatment as a
3324 condition of parole.

3325 (b) The board shall develop standards and conditions of parole under this Subsection
3326 (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3327 (c) This Subsection (2) does not apply to intensive early release parole.

3328 (3) (a) In addition to the conditions set out in Subsection (1), the board may place
3329 offenders in an intensive early release parole program. The board shall determine the
3330 conditions of parole which are reasonably necessary to protect the community as well as to
3331 protect the interests of the offender and to assist the offender to lead a law-abiding life.

3332 (b) The offender is eligible for this program only if the offender:

3333 (i) has not been convicted of a sexual offense; or

3334 (ii) has not been sentenced pursuant to Section 76-3-406.

3335 (c) The department shall:

3336 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
3337 Rulemaking Act, for operation of the program;

3338 (ii) adopt and implement internal management policies for operation of the program;

3339 (iii) determine whether or not to refer an offender into this program within 120 days
3340 from the date the offender is committed to prison by the sentencing court; and

3341 (iv) make the final recommendation to the board regarding the placement of an
3342 offender into the program.

3343 (d) The department may not consider credit for time served in a county jail awaiting
3344 trial or sentencing when calculating the 120-day period.

3345 (e) The prosecuting attorney or sentencing court may refer an offender for
3346 consideration by the department for participation in the program.

3347 (f) The board shall determine whether or not to place an offender into this program

3348 within 30 days of receiving the department's recommendation.

3349 (4) This program shall be implemented by the department within the existing budget.

3350 (5) During the time the offender is on parole, the department shall collect from the
3351 offender the monthly supervision fee authorized by Section 64-13-21.

3352 (6) When a parolee commits a violation of the parole agreement, the department may:

3353 (a) respond in accordance with the graduated and evidence-based responses established
3354 in accordance with Section 64-13-21; or

3355 (b) when the graduated and evidence-based responses established in accordance with
3356 Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation
3357 of parole.

3358 Section 47. Section **77-36-1** is amended to read:

3359 **77-36-1. Definitions.**

3360 As used in this chapter:

3361 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

3362 (2) "Department" means the Department of Public Safety.

3363 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
3364 3, Divorce.

3365 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
3366 involving violence or physical harm or threat of violence or physical harm, or any attempt,
3367 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
3368 when committed by one cohabitant against another. "Domestic violence" or "domestic
3369 violence offense" includes commission or attempt to commit, any of the following offenses by
3370 one cohabitant against another:

3371 (a) aggravated assault, as described in Section 76-5-103;

3372 (b) aggravated cruelty to an animal, as described in Subsection 76-9-301(4), with the
3373 intent to harass or threaten the other cohabitant;

3374 (c) assault, as described in Section 76-5-102;

3375 (d) criminal homicide, as described in Section 76-5-201;

3376 (e) harassment, as described in Section 76-5-106;

3377 (f) electronic communication harassment, as described in Section 76-9-201;

3378 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections

- 3379 76-5-301, 76-5-301.1, and 76-5-302;
- 3380 (h) mayhem, as described in Section 76-5-105;
- 3381 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 3382 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 3383 (j) stalking, as described in Section 76-5-106.5;
- 3384 (k) unlawful detention or unlawful detention of a minor, as described in Section
- 3385 76-5-304;
- 3386 (l) violation of a protective order or ex parte protective order, as described in Section
- 3387 76-5-108;
- 3388 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 3389 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
- 3390 Part 3, Robbery;
- 3391 (n) possession of a deadly weapon with criminal intent, as described in Section
- 3392 76-10-507;
- 3393 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 3394 person, building, or vehicle, as described in Section 76-10-508;
- 3395 (p) disorderly conduct, as defined in Section 76-9-102, if a conviction or adjudication
- 3396 of disorderly conduct is the result of a plea agreement in which the perpetrator was originally
- 3397 charged with a domestic violence offense otherwise described in this Subsection (4), except
- 3398 that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the
- 3399 manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of
- 3400 domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18
- 3401 U.S.C. Sec. 921 et seq.;
- 3402 (q) child abuse, as described in Section ~~[76-5-109.1]~~ 76-5-114;
- 3403 (r) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 3404 (s) threatening violence, as described in Section 76-5-107;
- 3405 (t) tampering with a witness, as described in Section 76-8-508;
- 3406 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;
- 3407 (v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or
- 3408 unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;
- 3409 (w) sexual battery, as described in Section 76-9-702.1;

- 3410 (x) voyeurism, as described in Section 76-9-702.7;
- 3411 (y) damage to or interruption of a communication device, as described in Section
3412 76-6-108; or
- 3413 (z) an offense described in Subsection 78B-7-806(1).
- 3414 (5) "Jail release agreement" means the same as that term is defined in Section
3415 78B-7-801.
- 3416 (6) "Jail release court order" means the same as that term is defined in Section
3417 78B-7-801.
- 3418 (7) "Marital status" means married and living together, divorced, separated, or not
3419 married.
- 3420 (8) "Married and living together" means a couple whose marriage was solemnized
3421 under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- 3422 (9) "Not married" means any living arrangement other than married and living together,
3423 divorced, or separated.
- 3424 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).
- 3425 (11) "Pretrial protective order" means a written order:
- 3426 (a) specifying and limiting the contact a person who has been charged with a domestic
3427 violence offense may have with an alleged victim or other specified individuals; and
- 3428 (b) specifying other conditions of release under [~~Sections~~] Section 78B-7-802 or
3429 78B-7-803, pending trial in the criminal case.
- 3430 (12) "Sentencing protective order" means a written order of the court as part of
3431 sentencing in a domestic violence case that limits the contact an individual who is convicted or
3432 adjudicated of a domestic violence offense may have with a victim or other specified
3433 individuals under Section 78B-7-804.
- 3434 (13) "Separated" means a couple who have had their marriage solemnized under
3435 Section 30-1-4 or 30-1-6 and who are not living in the same residence.
- 3436 (14) "Victim" means a cohabitant who has been subjected to domestic violence.
3437 Section 48. Section **77-36-2.2** is amended to read:
- 3438 **77-36-2.2. Powers and duties of law enforcement officers to arrest -- Reports of**
3439 **domestic violence cases -- Reports of parties' marital status.**
- 3440 (1) The primary duty of law enforcement officers responding to a domestic violence

3441 call is to protect the victim and enforce the law.

3442 (2) (a) In addition to the arrest powers described in Section 77-7-2, when a peace
3443 officer responds to a domestic violence call and has probable cause to believe that an act of
3444 domestic violence has been committed, the peace officer shall arrest without a warrant or shall
3445 issue a citation to any person that the peace officer has probable cause to believe has committed
3446 an act of domestic violence.

3447 (b) (i) If the peace officer has probable cause to believe that there will be continued
3448 violence against the alleged victim, or if there is evidence that the perpetrator has either
3449 recently caused serious bodily injury or used a dangerous weapon in the domestic violence
3450 offense, the officer shall arrest and take the alleged perpetrator into custody, and may not
3451 utilize the option of issuing a citation under this section.

3452 (ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous
3453 weapon" mean the same as those terms are defined in Section ~~[76-1-601]~~ 76-1-101.5.

3454 (c) If a peace officer does not immediately exercise arrest powers or initiate criminal
3455 proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a
3456 criminal proceeding and of the importance of preserving evidence, in accordance with the
3457 requirements of Section 77-36-2.1.

3458 (3) If a law enforcement officer receives complaints of domestic violence from two or
3459 more opposing persons, the officer shall evaluate each complaint separately to determine who
3460 the predominant aggressor was. If the officer determines that one person was the predominant
3461 physical aggressor, the officer need not arrest the other person alleged to have committed
3462 domestic violence. In determining who the predominant aggressor was, the officer shall
3463 consider:

- 3464 (a) any prior complaints of domestic violence;
- 3465 (b) the relative severity of injuries inflicted on each person;
- 3466 (c) the likelihood of future injury to each of the parties; and
- 3467 (d) whether one of the parties acted in self defense.

3468 (4) A law enforcement officer may not threaten, suggest, or otherwise indicate the
3469 possible arrest of all parties in order to discourage any party's request for intervention by law
3470 enforcement.

3471 (5) (a) A law enforcement officer who does not make an arrest after investigating a

3472 complaint of domestic violence, or who arrests two or more parties, shall submit a detailed,
3473 written report specifying the grounds for not arresting any party or for arresting both parties.

3474 (b) A law enforcement officer who does not make an arrest shall notify the victim of
3475 the right to initiate a criminal proceeding and of the importance of preserving evidence.

3476 (6) (a) A law enforcement officer responding to a complaint of domestic violence shall
3477 prepare an incident report that includes the officer's disposition of the case.

3478 (b) From January 1, 2009, until December 31, 2013, any law enforcement officer
3479 employed by a city of the first or second class responding to a complaint of domestic violence
3480 shall also report, either as a part of an incident report or on a separate form, the following
3481 information:

3482 (i) marital status of each of the parties involved;

3483 (ii) social, familial, or legal relationship of the suspect to the victim; and

3484 (iii) whether or not an arrest was made.

3485 (c) The information obtained in Subsection (6)(b):

3486 (i) shall be reported monthly to the department;

3487 (ii) shall be reported as numerical data that contains no personal identifiers; and

3488 (iii) is a public record as defined in Section 63G-2-103.

3489 (d) The incident report shall be made available to the victim, upon request, at no cost.

3490 (e) The law enforcement agency shall forward a copy of the incident report to the
3491 appropriate prosecuting attorney within five days after the complaint of domestic violence
3492 occurred.

3493 (7) The department shall compile the information described in Subsections (6)(b) and
3494 (c) into a report and present that report to the Law Enforcement and Criminal Justice Interim
3495 Committee during the 2013 interim, no later than May 31, 2013.

3496 (8) Each law enforcement agency shall, as soon as practicable, make a written record
3497 and maintain records of all incidents of domestic violence reported to it, and shall be identified
3498 by a law enforcement agency code for domestic violence.

3499 Section 49. Section **77-37-3** is amended to read:

3500 **77-37-3. Bill of rights.**

3501 (1) The bill of rights for victims and witnesses is:

3502 (a) Victims and witnesses have a right to be informed as to the level of protection from

3503 intimidation and harm available to them, and from what sources, as they participate in criminal
3504 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and
3505 Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and
3506 corrections personnel have the duty to timely provide this information in a form which is useful
3507 to the victim.

3508 (b) Victims and witnesses, including children and their guardians, have a right to be
3509 informed and assisted as to their role in the criminal justice process. All criminal justice
3510 agencies have the duty to provide this information and assistance.

3511 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
3512 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
3513 All criminal justice agencies have the duty to provide these explanations.

3514 (d) Victims and witnesses should have a secure waiting area that does not require them
3515 to be in close proximity to defendants or the family and friends of defendants. Agencies
3516 controlling facilities shall, whenever possible, provide this area.

3517 (e) Victims may seek restitution or reparations, including medical costs, as provided in
3518 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b, Crime
3519 Victims Restitution Act, and Section 80-6-710. State and local government agencies that serve
3520 victims have the duty to have a functional knowledge of the procedures established by the
3521 Crime Victim Reparations Board and to inform victims of these procedures.

3522 (f) Victims and witnesses have a right to have any personal property returned as
3523 provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously
3524 return the property when it is no longer needed for court law enforcement or prosecution
3525 purposes.

3526 (g) Victims and witnesses have the right to reasonable employer intercession services,
3527 including pursuing employer cooperation in minimizing employees' loss of pay and other
3528 benefits resulting from their participation in the criminal justice process. Officers of the court
3529 shall provide these services and shall consider victims' and witnesses' schedules so that
3530 activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may
3531 request that the responsible agency intercede with employers or other parties.

3532 (h) Victims and witnesses, particularly children, should have a speedy disposition of
3533 the entire criminal justice process. All involved public agencies shall establish policies and

3534 procedures to encourage speedy disposition of criminal cases.

3535 (i) Victims and witnesses have the right to timely notice of judicial proceedings they
3536 are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies
3537 have the duty to provide these notifications. Defense counsel and others have the duty to
3538 provide timely notice to prosecution of any continuances or other changes that may be required.

3539 (j) Victims of sexual offenses have the following rights:

3540 (i) the right to request voluntary testing for themselves for HIV infection as provided in
3541 Section [~~76-5-503~~] 53-10-803 and to request mandatory testing of the alleged sexual offender
3542 for HIV infection as provided in Section [~~76-5-502~~] 53-10-802;

3543 (ii) the right to be informed whether a DNA profile was obtained from the testing of
3544 the rape kit evidence or from other crime scene evidence;

3545 (iii) the right to be informed whether a DNA profile developed from the rape kit
3546 evidence or other crime scene evidence has been entered into the Utah Combined DNA Index
3547 System;

3548 (iv) the right to be informed whether there is a match between a DNA profile
3549 developed from the rape kit evidence or other crime scene evidence and a DNA profile
3550 contained in the Utah Combined DNA Index System, provided that disclosure would not
3551 impede or compromise an ongoing investigation; and

3552 (v) the right to designate a person of the victim's choosing to act as a recipient of the
3553 information provided under this Subsection (1)(j) and under Subsections (2) and (3).

3554 (k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency
3555 communicate with the victim or the victim's designee regarding the status of DNA testing,
3556 absent a specific request received from the victim or the victim's designee.

3557 (2) The law enforcement agency investigating a sexual offense may:

3558 (a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the
3559 request of a victim or the victim's designee and is the designated agency to provide that
3560 information to the victim or the victim's designee;

3561 (b) require that the victim's request be in writing; and

3562 (c) respond to the victim's request with verbal communication, written communication,
3563 or by email, if an email address is available.

3564 (3) The law enforcement agency investigating a sexual offense has the following

3565 authority and responsibilities:

3566 (a) If the law enforcement agency determines that DNA evidence will not be analyzed
3567 in a case where the identity of the perpetrator has not been confirmed, the law enforcement
3568 agency shall notify the victim or the victim's designee.

3569 (b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence
3570 or other crime scene evidence from an unsolved sexual assault case, the law enforcement
3571 agency shall provide written notification of that intention and information on how to appeal the
3572 decision to the victim or the victim's designee of that intention.

3573 (ii) Written notification under this Subsection (3) shall be made not fewer than 60 days
3574 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

3575 (c) A law enforcement agency responsible for providing information under Subsections
3576 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
3577 victim or the victim's designee, shall advise the victim or the victim's designee of any
3578 significant changes in the information of which the law enforcement agency is aware.

3579 (d) The law enforcement agency investigating the sexual offense is responsible for
3580 informing the victim or the victim's designee of the rights established under Subsections
3581 (1)(j)(ii) through (iv) and (2), and this Subsection (3).

3582 (4) Informational rights of the victim under this chapter are based upon the victim
3583 providing the current name, address, telephone number, and email address, if an email address
3584 is available, of the person to whom the information should be provided to the criminal justice
3585 agencies involved in the case.

3586 Section 50. Section **77-37-5** is amended to read:

3587 **77-37-5. Remedies -- District Victims' Rights Committee.**

3588 (1) In each judicial district, the Utah Council on Victims of Crime, established in
3589 Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights
3590 committee consisting of:

3591 (a) a county attorney or district attorney;

3592 (b) a sheriff;

3593 (c) a corrections field services administrator;

3594 (d) an appointed victim advocate;

3595 (e) a municipal attorney;

3596 (f) a municipal chief of police; and

3597 (g) other representatives as appropriate.

3598 (2) The committee shall meet at least semiannually to review progress and problems
3599 related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter
3600 38b, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and
3601 other interested parties may submit matters of concern to the victims' rights committee. The
3602 committee may hold a hearing open to the public on any appropriate matter of concern and may
3603 publish its findings. These matters shall also be considered at the meetings of the victims'
3604 rights committee. The committee shall forward minutes of all meetings to the Utah Council on
3605 Victims of Crime for review and other appropriate action.

3606 (3) If a victims' rights committee is unable to resolve a complaint, it may refer the
3607 complaint to the Utah Council on Victims of Crime.

3608 (4) The Utah Office for Victims of Crime shall provide materials to local law
3609 enforcement to inform every victim of a sexual offense of the right to request testing of the
3610 convicted sexual offender and of the victim as provided in Section [~~76-5-502~~] 53-10-802.

3611 (5) (a) If a person acting under color of state law willfully or wantonly fails to perform
3612 duties so that the rights in this chapter are not provided, an action for injunctive relief may be
3613 brought against the individual and the government entity that employs the individual.

3614 (b) For all other violations, if the committee finds a violation of a victim's right, it shall
3615 refer the matter to the appropriate court for further proceedings consistent with Subsection
3616 77-38-11(2).

3617 (c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of
3618 Crime Victims Act, does not constitute cause for a judgment against the state or any
3619 government entity, or any individual employed by the state or any government entity, for
3620 monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

3621 (6) The person accused of and subject to prosecution for the crime or the act which
3622 would be a crime if committed by a competent adult, has no standing to make a claim
3623 concerning any violation of the provisions of this chapter.

3624 Section 51. Section **77-38-3** is amended to read:

3625 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
3626 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**

3627 **order.**

3628 (1) Within seven days after the day on which felony criminal charges are filed against a
3629 defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and
3630 locatable victims of the crime contained in the charges, except as otherwise provided in this
3631 chapter.

3632 (2) The initial notice to the victim of a crime shall provide information about electing
3633 to receive notice of subsequent important criminal justice hearings listed in Subsections
3634 77-38-2(5)(a) through (f) and rights under this chapter.

3635 (3) The prosecuting agency shall provide notice to a victim of a crime:

3636 (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a)
3637 through (f), which the victim has requested; and

3638 (b) for a restitution request to be submitted in accordance with Section 77-38b-202.

3639 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
3640 in any reasonable manner, including telephonically, electronically, orally, or by means of a
3641 letter or form prepared for this purpose.

3642 (b) In the event of an unforeseen important criminal justice hearing, listed in
3643 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith
3644 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
3645 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

3646 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
3647 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for
3648 victims of crimes to be notified.

3649 (b) The court shall consider whether any notification system that the court might use to
3650 provide notice of judicial proceedings to defendants could be used to provide notice of judicial
3651 proceedings to victims of crimes.

3652 (6) A defendant or, if it is the moving party, the Division of Adult Probation and
3653 Parole, shall give notice to the responsible prosecuting agency of any motion for modification
3654 of any determination made at any of the important criminal justice hearings provided in
3655 Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so
3656 that the prosecuting agency may comply with the prosecuting agency's notification obligation.

3657 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and

3658 Parole for the important criminal justice hearing under Subsection 77-38-2(5)(g).

3659 (b) The board may provide notice in any reasonable manner, including telephonically,
3660 electronically, orally, or by means of a letter or form prepared for this purpose.

3661 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
3662 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
3663 (f) only where the victim has responded to the initial notice, requested notice of subsequent
3664 proceedings, and provided a current address and telephone number if applicable.

3665 (9) To facilitate the payment of restitution and the notice of hearings regarding
3666 restitution, a victim who seeks restitution and notice of restitution hearings shall provide the
3667 court with the victim's current address and telephone number.

3668 (10) (a) Law enforcement and criminal justice agencies shall refer any requests for
3669 notice or information about crime victim rights from victims to the responsible prosecuting
3670 agency.

3671 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
3672 prosecuting agency shall forward any request for notice the prosecuting agency has received
3673 from a victim to the Board of Pardons and Parole.

3674 (11) In all cases where the number of victims exceeds 10, the responsible prosecuting
3675 agency may send any notices required under this chapter in the prosecuting agency's discretion
3676 to a representative sample of the victims.

3677 (12) (a) A victim's address, telephone number, and victim impact statement maintained
3678 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
3679 Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for
3680 purposes of providing notice under this section, are classified as protected under Subsection
3681 63G-2-305(10).

3682 (b) The victim's address, telephone number, and victim impact statement is available
3683 only to the following persons or entities in the performance of their duties:

3684 (i) a law enforcement agency, including the prosecuting agency;

3685 (ii) a victims' right committee as provided in Section 77-37-5;

3686 (iii) a governmentally sponsored victim or witness program;

3687 (iv) the Department of Corrections;

3688 (v) the Utah Office for Victims of Crime;

3689 (vi) the Commission on Criminal and Juvenile Justice;

3690 (vii) the Utah State Courts; and

3691 (viii) the Board of Pardons and Parole.

3692 (13) The notice provisions as provided in this section do not apply to misdemeanors as
 3693 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
 3694 77-38-2.

3695 (14) (a) When a defendant is charged with a felony crime under Sections 76-5-301
 3696 through ~~[76-5-310]~~ 76-5-310.1 regarding kidnapping, human trafficking, and human
 3697 smuggling; Sections 76-5-401 through ~~[76-5-413]~~ 76-5-413.3 regarding sexual offenses; or
 3698 Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during
 3699 any court hearing where the defendant is present, issue a pretrial criminal no contact order:

3700 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
 3701 communicating with the victim directly or through a third party;

3702 (ii) ordering the defendant to stay away from the residence, school, place of
 3703 employment of the victim, and the premises of any of these, or any specified place frequented
 3704 by the victim or any designated family member of the victim directly or through a third party;
 3705 and

3706 (iii) ordering any other relief that the court considers necessary to protect and provide
 3707 for the safety of the victim and any designated family or household member of the victim.

3708 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
 3709 third degree felony.

3710 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
 3711 contact order that has been issued if the victim can be located with reasonable effort.

3712 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
 3713 domestic violence network in accordance with Section 78B-7-113.

3714 Section 52. Section **77-38-15** is amended to read:

3715 **77-38-15. Civil action against human traffickers and human smugglers.**

3716 (1) A victim of a person that commits any of the ~~[offense of]~~ following offenses may
 3717 bring a civil action against that person:

3718 (a) human trafficking ~~[or]~~ for labor under Section 76-5-308;

3719 (b) human trafficking for sexual exploitation under Section 76-5-308.1;

- 3720 (c) human smuggling under Section ~~[76-5-308,]~~ 76-5-308.3;
- 3721 (d) human trafficking of a child under Section 76-5-308.5[;];
- 3722 (e) aggravated human trafficking ~~[or]~~ under Section 76-5-310;
- 3723 (f) aggravated human smuggling under Section ~~[76-5-310,]~~ 76-5-310.1; or
- 3724 (g) benefitting from human trafficking under ~~[Subsection 76-5-309(4) may bring a civil~~
- 3725 ~~action against that person]~~ Section 76-5-309.
- 3726 (2) (a) The court may award actual damages, compensatory damages, punitive
- 3727 damages, injunctive relief, or any other appropriate relief.
- 3728 (b) The court may award treble damages on proof of actual damages if the court finds
- 3729 that the person's acts were willful and malicious.
- 3730 (3) In an action under this section, the court shall award a prevailing victim reasonable
- 3731 attorney fees and costs.
- 3732 (4) An action under this section shall be commenced no later than 10 years after the
- 3733 later of:
- 3734 (a) the day on which the victim was freed from the human trafficking or human
- 3735 smuggling situation;
- 3736 (b) the day on which the victim attains 18 years old; or
- 3737 (c) if the victim was unable to bring an action due to a disability, the day on which the
- 3738 victim's disability ends.
- 3739 (5) The time period described in Subsection (4) is tolled during a period of time when
- 3740 the victim fails to bring an action due to the person:
- 3741 (a) inducing the victim to delay filing the action;
- 3742 (b) preventing the victim from filing the action; or
- 3743 (c) threatening and causing duress upon the victim in order to prevent the victim from
- 3744 filing the action.
- 3745 (6) The court shall offset damages awarded to the victim under this section by any
- 3746 restitution paid to the victim under Title 77, Chapter 38b, Crime Victims Restitution Act.
- 3747 (7) A victim may bring an action described in this section in any court of competent
- 3748 jurisdiction where:
- 3749 (a) a violation described in Subsection (1) occurred;
- 3750 (b) the victim resides; or

3751 (c) the person that commits the offense resides or has a place of business.

3752 (8) If the victim is deceased or otherwise unable to represent the victim's own interests
3753 in court, a legal guardian, family member, representative of the victim, or court appointee may
3754 bring an action under this section on behalf of the victim.

3755 (9) This section does not preclude any other remedy available to the victim under the
3756 laws of this state or under federal law.

3757 Section 53. Section **77-40-102** is amended to read:

3758 **77-40-102. Definitions.**

3759 As used in this chapter:

3760 (1) "Administrative finding" means a decision upon a question of fact reached by an
3761 administrative agency following an administrative hearing or other procedure satisfying the
3762 requirements of due process.

3763 (2) "Agency" means a state, county, or local government entity that generates or
3764 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
3765 which expungement may be ordered.

3766 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public
3767 Safety established in Section 53-10-201.

3768 (4) "Certificate of eligibility" means a document issued by the bureau stating that the
3769 criminal record and all records of arrest, investigation, and detention associated with a case that
3770 is the subject of a petition for expungement is eligible for expungement.

3771 (5) (a) "Clean slate eligible case" means a case:

3772 (i) where, except as provided in Subsection (5)(c), each conviction within the case is:

3773 (A) a misdemeanor conviction for possession of a controlled substance in violation of
3774 Subsection 58-37-8(2)(a)(i);

3775 (B) a class B or class C misdemeanor conviction; or

3776 (C) an infraction conviction;

3777 (ii) that involves an individual:

3778 (A) whose total number of convictions in Utah state courts, not including infractions,
3779 traffic offenses, or minor regulatory offenses, does not exceed the limits described in

3780 Subsections 77-40-105(6) and (7) without taking into consideration the exception in Subsection

3781 77-40-105(9); and

3782 (B) against whom no criminal proceedings are pending in the state; and
3783 (iii) for which the following time periods have elapsed from the day on which the case
3784 is adjudicated:

3785 (A) at least five years for a class C misdemeanor or an infraction;

3786 (B) at least six years for a class B misdemeanor; and

3787 (C) at least seven years for a class A conviction for possession of a controlled
3788 substance in violation of Subsection 58-37-8(2)(a)(i).

3789 (b) "Clean slate eligible case" includes a case that is dismissed as a result of a
3790 successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b)
3791 if:

3792 (i) except as provided in Subsection (5)(c), each charge within the case is:

3793 (A) a misdemeanor for possession of a controlled substance in violation of Subsection
3794 58-37-8(2)(a)(i);

3795 (B) a class B or class C misdemeanor; or

3796 (C) an infraction;

3797 (ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and

3798 (iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed
3799 from the day on which the case is dismissed.

3800 (c) "Clean slate eligible case" does not include a case:

3801 (i) where the individual is found not guilty by reason of insanity;

3802 (ii) where the case establishes a criminal accounts receivable, as defined in Section
3803 77-32b-102, that:

3804 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as
3805 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt
3806 Collection under Section 77-18-114; or

3807 (B) has not been satisfied according to court records; or

3808 (iii) that resulted in one or more pleas held in abeyance or convictions for the following
3809 offenses:

3810 (A) any of the offenses listed in Subsection 77-40-105(2)(a);

3811 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
3812 the [Person] Individual;

- 3813 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 3814 (D) sexual battery in violation of Section 76-9-702.1;
- 3815 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 3816 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
- 3817 and Reckless Driving;
- 3818 (G) damage to or interruption of a communication device in violation of Section
- 3819 76-6-108;
- 3820 (H) a domestic violence offense as defined in Section 77-36-1; or
- 3821 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
- 3822 other than a class A misdemeanor conviction for possession of a controlled substance in
- 3823 violation of Subsection 58-37-8(2)(a)(i).
- 3824 (6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
- 3825 after trial, a plea of guilty, or a plea of nolo contendere.
- 3826 (7) "Department" means the Department of Public Safety established in Section
- 3827 53-1-103.
- 3828 (8) "Drug possession offense" means an offense under:
- 3829 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),
- 3830 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
- 3831 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a
- 3832 controlled substance illegally in the person's body and negligently causing serious bodily injury
- 3833 or death of another;
- 3834 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;
- 3835 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or
- 3836 (d) any local ordinance which is substantially similar to any of the offenses described
- 3837 in this Subsection (8).
- 3838 (9) "Expunge" means to seal or otherwise restrict access to the individual's record held
- 3839 by an agency when the record includes a criminal investigation, detention, arrest, or conviction.
- 3840 (10) "Jurisdiction" means a state, district, province, political subdivision, territory, or
- 3841 possession of the United States or any foreign country.
- 3842 (11) "Minor regulatory offense" means any class B or C misdemeanor offense, and any
- 3843 local ordinance, except:

- 3844 (a) any drug possession offense;
- 3845 (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 3846 (c) Sections 73-18-13 through 73-18-13.6;
- 3847 (d) those offenses defined in Title 76, Utah Criminal Code; or
- 3848 (e) any local ordinance that is substantially similar to those offenses listed in
- 3849 Subsections (11)(a) through (d).
- 3850 (12) "Petitioner" means an individual applying for expungement under this chapter.
- 3851 (13) (a) "Traffic offense" means:
- 3852 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
- 3853 Chapter 6a, Traffic Code;
- 3854 (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;
- 3855 (iii) Title 73, Chapter 18, State Boating Act; and
- 3856 (iv) all local ordinances that are substantially similar to those offenses.
- 3857 (b) "Traffic offense" does not mean:
- 3858 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 3859 (ii) Sections 73-18-13 through 73-18-13.6; or
- 3860 (iii) any local ordinance that is substantially similar to the offenses listed in
- 3861 Subsections (13)(b)(i) and (ii).
- 3862 Section 54. Section **77-41-102** is amended to read:
- 3863 **77-41-102. Definitions.**
- 3864 As used in this chapter:
- 3865 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
- 3866 Safety established in section 53-10-201.
- 3867 (2) "Business day" means a day on which state offices are open for regular business.
- 3868 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
- 3869 Identification showing that the offender has met the requirements of Section 77-41-112.
- 3870 (4) "Department" means the Department of Corrections.
- 3871 (5) "Division" means the Division of Juvenile Justice Services.
- 3872 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
- 3873 time, whether financially compensated, volunteered, or for the purpose of government or
- 3874 educational benefit.

3875 (7) "Indian Country" means:

3876 (a) all land within the limits of any Indian reservation under the jurisdiction of the
3877 United States government, regardless of the issuance of any patent, and includes rights-of-way
3878 running through the reservation;

3879 (b) all dependent Indian communities within the borders of the United States whether
3880 within the original or subsequently acquired territory, and whether or not within the limits of a
3881 state; and

3882 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
3883 not been extinguished, including rights-of-way running through the allotments.

3884 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
3885 property under the jurisdiction of the United States military, Canada, the United Kingdom,
3886 Australia, or New Zealand.

3887 (9) "Kidnap offender" means any individual, other than a natural parent of the victim:

3888 (a) who has been convicted in this state of a violation of:

3889 (i) Subsection 76-5-301~~(1)~~(2)(c) or (d), kidnapping;

3890 (ii) Section 76-5-301.1, child kidnapping;

3891 (iii) Section 76-5-302, aggravated kidnapping;

3892 (iv) Section 76-5-308, human trafficking for labor [~~and~~];

3893 (v) Section 76-5-308.3, human smuggling;

3894 [~~(v)~~] (vi) Section 76-5-308, human smuggling, when the individual smuggled is under
3895 18 years old;

3896 [~~(v)~~] (vii) Section 76-5-308.5, human trafficking of a child for labor;

3897 (vii) Section 76-5-310, aggravated human trafficking [~~and~~];

3898 (ix) Section 76-5-310.1, aggravated human smuggling[~~, on or after May 10, 2011~~];

3899 [~~(viii)~~] (x) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

3900 [~~(ix)~~] (xi) attempting, soliciting, or conspiring to commit any felony offense listed in
3901 Subsections (9)(a)(i) through (iii);

3902 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
3903 to commit a crime in another jurisdiction, including any state, federal, or military court that is
3904 substantially equivalent to the offenses listed in Subsection (9)(a); and

3905 (ii) who is:

- 3906 (A) a Utah resident; or
- 3907 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 3908 10 or more days, regardless of whether or not the offender intends to permanently reside in this
- 3909 state;
- 3910 (c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of
- 3911 original conviction;
- 3912 (B) who is required to register as a kidnap offender by any state, federal, or military
- 3913 court; or
- 3914 (C) who would be required to register as a kidnap offender if residing in the
- 3915 jurisdiction of the conviction regardless of the date of the conviction or any previous
- 3916 registration requirements; and
- 3917 (ii) in any 12-month period, who is in this state for a total of 10 or more days,
- 3918 regardless of whether or not the offender intends to permanently reside in this state;
- 3919 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
- 3920 (B) who is a student in this state; and
- 3921 (ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any
- 3922 substantially equivalent offense in another jurisdiction; or
- 3923 (B) as a result of the conviction, who is required to register in the individual's state of
- 3924 residence;
- 3925 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction
- 3926 of one or more offenses listed in Subsection (9); or
- 3927 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
- 3928 Subsection (9)(a); and
- 3929 (ii) who has been committed to the division for secure care, as defined in Section
- 3930 80-1-102, for that offense and:
- 3931 (A) the individual remains in the division's custody until 30 days before the individual's
- 3932 21st birthday; or
- 3933 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual
- 3934 under Section 80-6-605, the individual remains in the division's custody until 30 days before
- 3935 the individual's 25th birthday.
- 3936 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the

3937 minor's noncustodial parent.

3938 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
3939 as defined in Subsection (17).

3940 (12) "Online identifier" or "Internet identifier":

3941 (a) means any electronic mail, chat, instant messenger, social networking, or similar
3942 name used for Internet communication; and

3943 (b) does not include date of birth, social security number, PIN number, or Internet
3944 passwords.

3945 (13) "Primary residence" means the location where the offender regularly resides, even
3946 if the offender intends to move to another location or return to another location at any future
3947 date.

3948 (14) "Register" means to comply with the requirements of this chapter and
3949 administrative rules of the department made under this chapter.

3950 (15) "Registration website" means the Sex and Kidnap Offender Notification and
3951 Registration website described in Section 77-41-110 and the information on the website.

3952 (16) "Secondary residence" means any real property that the offender owns or has a
3953 financial interest in, or any location where, in any 12-month period, the offender stays
3954 overnight a total of 10 or more nights when not staying at the offender's primary residence.

3955 (17) "Sex offender" means any individual:

3956 (a) convicted in this state of:

3957 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

3958 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult[~~on or after May 10,~~
3959 ~~2011~~];

3960 (iii) Section ~~[76-5-308]~~ 76-5-308.1, human trafficking for sexual exploitation;

3961 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

3962 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

3963 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

3964 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in
3965 Subsection 76-5-401(3)(b) or (c);

3966 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection
3967 76-5-401.1(3);

- 3968 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 3969 (x) Section 76-5-402, rape;
- 3970 (xi) Section 76-5-402.1, rape of a child;
- 3971 (xii) Section 76-5-402.2, object rape;
- 3972 (xiii) Section 76-5-402.3, object rape of a child;
- 3973 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- 3974 (xv) Section 76-5-403.1, sodomy on a child;
- 3975 (xvi) Section 76-5-404, forcible sexual abuse;
- 3976 (xvii) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated
3977 sexual abuse of a child;
- 3978 (xviii) Section 76-5-405, aggravated sexual assault;
- 3979 (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is
3980 younger than 18 years old, if the offense is committed on or after May 10, 2011;
- 3981 (xx) Section 76-5b-201, sexual exploitation of a minor;
- 3982 (xxi) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 3983 (xxii) Section 76-7-102, incest;
- 3984 (xxiii) Section 76-9-702, lewdness, if the individual has been convicted of the offense
3985 four or more times;
- 3986 (xxiv) Section 76-9-702.1, sexual battery, if the individual has been convicted of the
3987 offense four or more times;
- 3988 (xxv) any combination of convictions of Section 76-9-702, lewdness, and of Section
3989 76-9-702.1, sexual battery, that total four or more convictions;
- 3990 (xxvi) Section 76-9-702.5, lewdness involving a child;
- 3991 (xxvii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 3992 (xxviii) Section 76-10-1306, aggravated exploitation of prostitution; or
- 3993 (xxix) attempting, soliciting, or conspiring to commit any felony offense listed in this
3994 Subsection (17)(a);
- 3995 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
3996 to commit a crime in another jurisdiction, including any state, federal, or military court that is
3997 substantially equivalent to the offenses listed in Subsection (17)(a); and
- 3998 (ii) who is:

3999 (A) a Utah resident; or
4000 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
4001 10 or more days, regardless of whether the offender intends to permanently reside in this state;
4002 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of
4003 original conviction;
4004 (B) who is required to register as a sex offender by any state, federal, or military court;
4005 or
4006 (C) who would be required to register as a sex offender if residing in the jurisdiction of
4007 the original conviction regardless of the date of the conviction or any previous registration
4008 requirements; and
4009 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,
4010 regardless of whether or not the offender intends to permanently reside in this state;
4011 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
4012 (B) who is a student in this state; and
4013 (ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any
4014 substantially equivalent offense in any jurisdiction; or
4015 (B) who is, as a result of the conviction, required to register in the individual's
4016 jurisdiction of residence;
4017 (e) who is found not guilty by reason of insanity in this state, or in any other
4018 jurisdiction of one or more offenses listed in Subsection (17)(a); or
4019 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
4020 Subsection (17)(a); and
4021 (ii) who has been committed to the division for secure care, as defined in Section
4022 80-1-102, for that offense and:
4023 (A) the individual remains in the division's custody until 30 days before the individual's
4024 21st birthday; or
4025 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual
4026 under Section 80-6-605, the individual remains in the division's custody until 30 days before
4027 the individual's 25th birthday.
4028 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
4029 Driving Under the Influence and Reckless Driving.

4030 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
4031 any jurisdiction.

4032 Section 55. Section **77-41-106** is amended to read:

4033 **77-41-106. Registerable offenses.**

4034 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

4035 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the
4036 conviction, the offender has previously been convicted of an offense listed in Subsection
4037 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense
4038 committed as a juvenile;

4039 (2) a conviction for any of the following offenses, including attempting, soliciting, or
4040 conspiring to commit any felony of:

4041 (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
4042 the victim;

4043 (b) Section 76-5-402, rape;

4044 (c) Section 76-5-402.1, rape of a child;

4045 (d) Section 76-5-402.2, object rape;

4046 (e) Section 76-5-402.3, object rape of a child;

4047 (f) Section 76-5-403.1, sodomy on a child;

4048 (g) [~~Subsection 76-5-404.1(4)~~] Section 76-4-404.3, aggravated sexual abuse of a child;

4049 or

4050 (h) Section 76-5-405, aggravated sexual assault;

4051 (3) Section [~~76-5-308~~] 76-5-308.1, human trafficking for sexual exploitation;

4052 (4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

4053 (5) Section 76-5-310, aggravated human trafficking for sexual exploitation;

4054 (6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

4055 (7) Section 76-4-401, a felony violation of enticing a minor over the Internet;

4056 (8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
4057 of the victim;

4058 (9) Section 76-5-403, forcible sodomy;

4059 (10) Section 76-5-404.1, sexual abuse of a child;

4060 (11) Section 76-5b-201, sexual exploitation of a minor;

- 4061 (12) Subsection 76-5b-204~~(4)~~(2)(b), aggravated sexual extortion; or
- 4062 (13) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10,
- 4063 2011.
- 4064 Section 56. Section **77-43-102** is amended to read:
- 4065 **77-43-102. Definitions.**
- 4066 As used in this chapter:
- 4067 (1) "Business day" means a day on which state offices are open for regular business.
- 4068 (2) "Child abuse offender" means any person who:
- 4069 (a) has been convicted in this state of a felony violation of:
- 4070 (i) Subsection ~~[76-5-109(2)(a) or (b),]~~ 76-5-109.2(3)(a) or (b), aggravated child abuse;
- 4071 (ii) Section 76-5-308.5, human trafficking of a child; or
- 4072 (iii) attempting, soliciting, or conspiring to commit any felony offense listed in
- 4073 Subsections (2)(a)(i) or (ii);
- 4074 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 4075 commit a crime in another jurisdiction, including any state, federal, or military court, that is
- 4076 substantially equivalent to the offenses listed in Subsection (2)(a) and who is:
- 4077 (i) a Utah resident; or
- 4078 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 4079 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 4080 (c) (i) is required to register as a child abuse offender in any other jurisdiction of
- 4081 original conviction, who is required to register as a child abuse offender by any state, federal,
- 4082 or military court, or who would be required to register as a child abuse offender if residing in
- 4083 the jurisdiction of the conviction regardless of the date of the conviction or any previous
- 4084 registration requirements; and
- 4085 (ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of
- 4086 whether the offender intends to permanently reside in this state;
- 4087 (d) is a nonresident regularly employed or working in this state, or who is a student in
- 4088 this state, and was convicted of one or more offenses listed in Subsection (2)(a), or any
- 4089 substantially equivalent offense in another jurisdiction, or who, as a result of the conviction, is
- 4090 required to register in the person's state of residence;
- 4091 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of

4092 one or more offenses listed in Subsection (2)(a); or

4093 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a)

4094 and who has been committed to the division for secure confinement for that offense and

4095 remains in the division's custody 30 days before the person's 21st birthday.

4096 (3) "Correctional facility" means the same as that term is defined in Section 64-13-1.

4097 (4) "Department" means the Department of Corrections.

4098 (5) "Division" means the Division of Juvenile Justice Services.

4099 (6) "Employed" or "carries on a vocation" includes employment that is full time or part

4100 time, whether financially compensated, volunteered, or for the purpose of government or

4101 educational benefit.

4102 (7) "Indian Country" means:

4103 (a) all land within the limits of any Indian reservation under the jurisdiction of the

4104 United States government, regardless of the issuance of any patent, and includes rights-of-way

4105 running through the reservation;

4106 (b) all dependent Indian communities within the borders of the United States whether

4107 within the original or subsequently acquired territory, and whether or not within the limits of a

4108 state; and

4109 (c) all Indian allotments, including the Indian allotments to which the Indian titles have

4110 not been extinguished, including rights-of-way running through the allotments.

4111 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any

4112 property under the jurisdiction of the United States Armed Forces, Canada, the United

4113 Kingdom, Australia, or New Zealand.

4114 (9) "Natural parent" means a minor's biological or adoptive parent, and includes the

4115 minor's noncustodial parent.

4116 (10) "Offender" means a child abuse offender as defined in Subsection (2).

4117 (11) "Online identifier" or "Internet identifier":

4118 (a) means any electronic mail, chat, instant messenger, social networking, or similar

4119 name used for Internet communication; and

4120 (b) does not include date of birth, Social Security number, PIN number, or Internet

4121 passwords.

4122 (12) "Primary residence" means the location where the offender regularly resides, even

4123 if the offender intends to move to another location or return to another location at any future
4124 date.

4125 (13) "Register" means to comply with the requirements of this chapter and
4126 administrative rules of the department made under this chapter.

4127 (14) "Registration website" means the Child Abuse Offender Notification and
4128 Registration website described in Section 77-43-108 and the information on the website.

4129 (15) "Secondary residence" means any real property that the offender owns or has a
4130 financial interest in, or any location where, in any 12-month period, the offender stays
4131 overnight a total of 10 or more nights when not staying at the offender's primary residence.

4132 (16) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
4133 Driving Under the Influence and Reckless Driving.

4134 (17) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
4135 any jurisdiction.

4136 Section 57. Section **78A-6-209** is amended to read:

4137 **78A-6-209. Court records -- Inspection.**

4138 (1) The juvenile court and the juvenile court's probation department shall keep records
4139 as required by the board and the presiding judge.

4140 (2) A court record shall be open to inspection by:

4141 (a) the parents or guardian of a child, a minor who is at least 18 years old, other parties
4142 in the case, the attorneys, and agencies to which custody of a minor has been transferred;

4143 (b) for information relating to adult offenders alleged to have committed a sexual
4144 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
4145 Title 76, Chapter 5, Offenses Against the ~~Person~~ Individual, the State Board of Education for
4146 the purpose of evaluating whether an individual should be permitted to obtain or retain a
4147 license as an educator or serve as an employee or volunteer in a school, with the understanding
4148 that the State Board of Education must provide the individual with an opportunity to respond to
4149 any information gathered from the State Board of Education's inspection of the records before
4150 the State Board of Education makes a decision concerning licensure or employment;

4151 (c) the Criminal Investigations and Technical Services Division, established in Section
4152 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
4153 and establishing good character for issuance of a concealed firearm permit as provided in

4154 Section 53-5-704;

4155 (d) the Division of Child and Family Services for the purpose of Child Protective
4156 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and
4157 administrative hearings in accordance with Section 62A-4a-1009;

4158 (e) the Office of Licensing for the purpose of conducting a background check in
4159 accordance with Section 62A-2-120;

4160 (f) for information related to a minor who has committed a sexual offense, a felony, or
4161 an offense that if committed by an adult would be a misdemeanor, the Department of Health
4162 for the purpose of evaluating under the provisions of Subsection 26-39-404(3) whether a
4163 licensee should be permitted to obtain or retain a license to provide child care, with the
4164 understanding that the department must provide the individual who committed the offense with
4165 an opportunity to respond to any information gathered from the Department of Health's
4166 inspection of records before the Department of Health makes a decision concerning licensure;

4167 (g) for information related to a minor who has committed a sexual offense, a felony, or
4168 an offense that if committed by an adult would be a misdemeanor, the Department of Health to
4169 determine whether an individual meets the background screening requirements of Title 26,
4170 Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that the
4171 department must provide the individual who committed the offense an opportunity to respond
4172 to any information gathered from the Department of Health's inspection of records before the
4173 Department of Health makes a decision under that part; and

4174 (h) for information related to a minor who has committed a sexual offense, a felony, or
4175 an offense that if committed by an adult would be a misdemeanor, the Department of Health to
4176 determine whether to grant, deny, or revoke background clearance under Section 26-8a-310 for
4177 an individual who is seeking or who has obtained an emergency medical service personnel
4178 license under Section 26-8a-302, with the understanding that the Department of Health must
4179 provide the individual who committed the offense an opportunity to respond to any information
4180 gathered from the Department of Health's inspection of records before the Department of
4181 Health makes a determination.

4182 (3) With the consent of the juvenile court, a court record may be inspected by the child,
4183 by persons having a legitimate interest in the proceedings, and by persons conducting pertinent
4184 research studies.

4185 (4) If a petition is filed charging a minor who is 14 years old or older with an offense
4186 that would be a felony if committed by an adult, the juvenile court shall make available to any
4187 person upon request the petition, any adjudication or disposition orders, and the delinquency
4188 history summary of the minor charged unless the records are closed by the juvenile court upon
4189 findings on the record for good cause.

4190 (5) A juvenile probation officer's records and reports of social and clinical studies are
4191 not open to inspection, except by consent of the juvenile court, given under rules adopted by
4192 the board.

4193 (6) The juvenile court may charge a reasonable fee to cover the costs associated with
4194 retrieving a requested record that has been archived.

4195 Section 58. Section **78B-2-308** is amended to read:

4196 **78B-2-308. Legislative findings -- Civil actions for sexual abuse of a child --**
4197 **Window for revival of time barred claims.**

4198 (1) The Legislature finds that:

4199 (a) child sexual abuse is a crime that hurts the most vulnerable in our society and
4200 destroys lives;

4201 (b) research over the last 30 years has shown that it takes decades for children and
4202 adults to pull their lives back together and find the strength to face what happened to them;

4203 (c) often the abuse is compounded by the fact that the perpetrator is a member of the
4204 victim's family and when such abuse comes out, the victim is further stymied by the family's
4205 wish to avoid public embarrassment;

4206 (d) even when the abuse is not committed by a family member, the perpetrator is rarely
4207 a stranger and, if in a position of authority, often brings pressure to bear on the victim to ensure
4208 silence;

4209 (e) in 1992, when the Legislature enacted the statute of limitations requiring victims to
4210 sue within four years of majority, society did not understand the long-lasting effects of abuse
4211 on the victim and that it takes decades for the healing necessary for a victim to seek redress;

4212 (f) the Legislature, as the policy-maker for the state, may take into consideration
4213 advances in medical science and understanding in revisiting policies and laws shown to be
4214 harmful to the citizens of this state rather than beneficial; and

4215 (g) the Legislature has the authority to change old laws in the face of new information,

4216 and set new policies within the limits of due process, fairness, and justice.

4217 (2) As used in this section:

4218 (a) "Child" means an individual under 18 years ~~[of age]~~ old.

4219 (b) "Discovery" means when a victim knows or reasonably should know that the injury
4220 or illness was caused by the intentional or negligent sexual abuse.

4221 (c) "Injury or illness" means either a physical injury or illness or a psychological injury
4222 or illness. A psychological injury or illness need not be accompanied by physical injury or
4223 illness.

4224 (d) "Molestation" means that an individual, with the intent to arouse or gratify the
4225 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
4226 or the breast of a female child, or takes indecent liberties with a child as defined in Section
4227 ~~[76-5-416]~~ 76-5-401.1.

4228 (e) "Negligently" means a failure to act to prevent the child sexual abuse from further
4229 occurring or to report the child sexual abuse to law enforcement when the adult who could act
4230 knows or reasonably should know of the child sexual abuse and is the victim's parent,
4231 stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister,
4232 uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any individual
4233 cohabiting in the child's home.

4234 (f) "Perpetrator" means an individual who has committed an act of sexual abuse.

4235 (g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or
4236 molestation by an adult directed towards a child.

4237 (h) "Victim" means an individual who was intentionally or negligently sexually abused.
4238 It does not include individuals whose claims are derived through another individual who was
4239 sexually abused.

4240 (3) (a) A victim may file a civil action against a perpetrator for intentional or negligent
4241 sexual abuse suffered as a child at any time.

4242 (b) A victim may file a civil action against a non-perpetrator for intentional or
4243 negligent sexual abuse suffered as a child:

4244 (i) within four years after the individual attains the age of 18 years; or

4245 (ii) if a victim discovers sexual abuse only after attaining the age of 18 years, that
4246 individual may bring a civil action for such sexual abuse within four years after discovery of

4247 the sexual abuse, whichever period expires later.

4248 (4) The victim need not establish which act in a series of continuing sexual abuse
4249 incidents caused the injury complained of, but may compute the date of discovery from the date
4250 of discovery of the last act by the same perpetrator which is part of a common scheme or plan
4251 of sexual abuse.

4252 (5) The knowledge of a custodial parent or guardian may not be imputed to an
4253 individual under the age of 18 years.

4254 (6) A civil action may be brought only against a living individual who:

4255 (a) intentionally perpetrated the sexual abuse;

4256 (b) would be criminally responsible for the sexual abuse in accordance with Section
4257 76-2-202; or

4258 (c) negligently permitted the sexual abuse to occur.

4259 (7) A civil action against an individual described in Subsection (6)(a) or (b) for sexual
4260 abuse that was time barred as of July 1, 2016, may be brought within 35 years of the victim's
4261 18th birthday, or within three years of the effective date of this Subsection (7), whichever is
4262 longer.

4263 (8) A civil action may not be brought as provided in Subsection (7) for:

4264 (a) any claim that has been litigated to finality on the merits in a court of competent
4265 jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the
4266 expiration of the statute of limitations does not constitute a claim that has been litigated to
4267 finality on the merits; and

4268 (b) any claim where a written settlement agreement was entered into between a victim
4269 and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress,
4270 or unconscionability. There is a rebuttable presumption that a settlement agreement signed by
4271 the victim when the victim was not represented by an attorney admitted to practice law in this
4272 state at the time of the settlement was the result of fraud, duress, or unconscionability.

4273 Section 59. Section **78B-6-117** is amended to read:

4274 **78B-6-117. Who may adopt -- Adoption of minor.**

4275 (1) A minor child may be adopted by an adult individual, in accordance with this
4276 section and this part.

4277 (2) A child may be adopted by:

- 4278 (a) adults who are legally married to each other in accordance with the laws of this
4279 state, including adoption by a stepparent; or
- 4280 (b) subject to Subsections (3) and (4), a single adult.
- 4281 (3) A child may not be adopted by an individual who is cohabiting in a relationship that
4282 is not a legally valid and binding marriage under the laws of this state unless the individual is a
4283 relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C.
4284 Sec. 1901 et seq.
- 4285 (4) To provide a child who is in the custody of the division with the most beneficial
4286 family structure, when a child in the custody of the division is placed for adoption, the division
4287 or child-placing agency shall place the child with a married couple, unless:
- 4288 (a) there are no qualified married couples who:
- 4289 (i) have applied to adopt a child;
- 4290 (ii) are willing to adopt the child; and
- 4291 (iii) are an appropriate placement for the child;
- 4292 (b) the child is placed with a relative of the child;
- 4293 (c) the child is placed with an individual who has already developed a substantial
4294 relationship with the child;
- 4295 (d) the child is placed with an individual who:
- 4296 (i) is selected by a parent or former parent of the child, if the parent or former parent
4297 consented to the adoption of the child; and
- 4298 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 4299 (A) knew the individual with whom the child is placed before the parent consented to
4300 the adoption; or
- 4301 (B) became aware of the individual with whom the child is placed through a source
4302 other than the division or the child-placing agency that assists with the adoption of the child; or
- 4303 (e) it is in the best interests of the child to place the child with a single adult.
- 4304 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
4305 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
4306 to a felony or attempted felony involving conduct that constitutes any of the following:
- 4307 (a) child abuse, as described in Section 76-5-109;
- 4308 (b) child abuse homicide, as described in Section 76-5-208;

- 4309 (c) child kidnapping, as described in Section 76-5-301.1;
- 4310 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 4311 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 4312 (f) rape of a child, as described in Section 76-5-402.1;
- 4313 (g) object rape of a child, as described in Section 76-5-402.3;
- 4314 (h) sodomy on a child, as described in Section 76-5-403.1;
- 4315 (i) sexual abuse of a child [~~or aggravated sexual abuse of a child~~], as described in
- 4316 Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- 4317 (j) sexual exploitation of a minor, as described in Section 76-5b-201; [~~or~~]
- 4318 (k) aggravated child abuse, as described in Section 76-5-109.2;
- 4319 (l) child abandonment, as described in Section 76-5-109.3;
- 4320 (m) commission of domestic violence in the presence of a child, as described in
- 4321 Section 76-5-114; or
- 4322 [~~(k)~~] (n) an offense in another state that, if committed in this state, would constitute an
- 4323 offense described in this Subsection (5).
- 4324 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
- 4325 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
- 4326 child except as provided in this Subsection (6).
- 4327 (b) An individual described in Subsection (5) may only be considered for adoption of a
- 4328 child if the following criteria are met by clear and convincing evidence:
- 4329 (i) at least 10 years have elapsed from the day on which the individual is successfully
- 4330 released from prison, jail, parole, or probation related to a disqualifying offense;
- 4331 (ii) during the 10 years before the day on which the individual files a petition with the
- 4332 court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no
- 4333 contest to an offense greater than an infraction or traffic violation that would likely impact the
- 4334 health, safety, or well-being of the child;
- 4335 (iii) the individual can provide evidence of successful treatment or rehabilitation
- 4336 directly related to the disqualifying offense;
- 4337 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
- 4338 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
- 4339 time in the future when considering all of the following:

- 4340 (A) the child's age;
- 4341 (B) the child's gender;
- 4342 (C) the child's development;
- 4343 (D) the nature and seriousness of the disqualifying offense;
- 4344 (E) the preferences of a child 12 years old or older;
- 4345 (F) any available assessments, including custody evaluations, home studies,
- 4346 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
- 4347 assessments, and bonding assessments; and
- 4348 (G) any other relevant information;
- 4349 (v) the individual can provide evidence of all of the following:
- 4350 (A) the relationship with the child is of long duration;
- 4351 (B) that an emotional bond exists with the child; and
- 4352 (C) that adoption by the individual who has committed the disqualifying offense
- 4353 ensures the best interests of the child are met; and
- 4354 (vi) the adoption is by:
- 4355 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- 4356 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102
- 4357 and there is not another relative without a disqualifying offense filing an adoption petition.
- 4358 (c) The individual with the disqualifying offense bears the burden of proof regarding
- 4359 why adoption with that individual is in the best interest of the child over another responsible
- 4360 relative or equally situated individual who does not have a disqualifying offense.
- 4361 (d) If there is an alternative responsible relative who does not have a disqualifying
- 4362 offense filing an adoption petition, the following applies:
- 4363 (i) preference for adoption shall be given to a relative who does not have a
- 4364 disqualifying offense; and
- 4365 (ii) before the court may grant adoption to the individual who has the disqualifying
- 4366 offense over another responsible, willing, and able relative:
- 4367 (A) an impartial custody evaluation shall be completed; and
- 4368 (B) a guardian ad litem shall be assigned.
- 4369 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a
- 4370 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

4371 Section 60. Section **78B-7-102** is amended to read:

4372 **78B-7-102. Definitions.**

4373 As used in this chapter:

4374 (1) "Abuse" means, except as provided in Section 78B-7-201, intentionally or
4375 knowingly causing or attempting to cause another individual physical harm or intentionally or
4376 knowingly placing another individual in reasonable fear of imminent physical harm.

4377 (2) "Affinity" means the same as that term is defined in Section ~~[76-1-601]~~ 76-1-101.5.

4378 (3) "Civil protective order" means an order issued, subsequent to a hearing on the
4379 petition, of which the petitioner and respondent have been given notice, under:

4380 (a) Part 2, Child Protective Orders;

4381 (b) Part 4, Dating Violence Protective Orders;

4382 (c) Part 5, Sexual Violence Protective Orders; or

4383 (d) Part 6, Cohabitant Abuse Protective Orders.

4384 (4) "Civil stalking injunction" means a stalking injunction issued under Part 7, Civil
4385 Stalking Injunctions.

4386 (5) (a) "Cohabitant" means an emancipated individual under Section 15-2-1 or an
4387 individual who is 16 years old or older who:

4388 (i) is or was a spouse of the other party;

4389 (ii) is or was living as if a spouse of the other party;

4390 (iii) is related by blood or marriage to the other party as the individual's parent,
4391 grandparent, sibling, or any other individual related to the individual by consanguinity or
4392 affinity to the second degree;

4393 (iv) has or had one or more children in common with the other party;

4394 (v) is the biological parent of the other party's unborn child;

4395 (vi) resides or has resided in the same residence as the other party; or

4396 (vii) is or was in a consensual sexual relationship with the other party.

4397 (b) "Cohabitant" does not include:

4398 (i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

4399 (ii) the relationship between natural, adoptive, step, or foster siblings who are under 18
4400 years old.

4401 (6) "Consanguinity" means the same as that term is defined in Section ~~[76-1-601]~~

4402 76-1-101.5.

4403 (7) "Criminal protective order" means an order issued under Part 8, Criminal Protective
4404 Orders.

4405 (8) "Criminal stalking injunction" means a stalking injunction issued under Part 9,
4406 Criminal Stalking Injunctions.

4407 (9) "Court clerk" means a district court clerk.

4408 (10) (a) "Dating partner" means an individual who:

4409 (i) (A) is an emancipated individual under Section 15-2-1 or Title 80, Chapter 7,
4410 Emancipation; or

4411 (B) is 18 years old or older; and

4412 (ii) is, or has been, in a dating relationship with the other party.

4413 (b) "Dating partner" does not include an intimate partner.

4414 (11) (a) "Dating relationship" means a social relationship of a romantic or intimate
4415 nature, or a relationship which has romance or intimacy as a goal by one or both parties,
4416 regardless of whether the relationship involves sexual intimacy.

4417 (b) "Dating relationship" does not include casual fraternization in a business,
4418 educational, or social context.

4419 (c) In determining, based on a totality of the circumstances, whether a dating
4420 relationship exists:

4421 (i) all relevant factors shall be considered, including:

4422 (A) whether the parties developed interpersonal bonding above a mere casual
4423 fraternization;

4424 (B) the length of the parties' relationship;

4425 (C) the nature and the frequency of the parties' interactions, including communications
4426 indicating that the parties intended to begin a dating relationship;

4427 (D) the ongoing expectations of the parties, individual or jointly, with respect to the
4428 relationship;

4429 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
4430 relationship to others; and

4431 (F) whether other reasons exist that support or detract from a finding that a dating
4432 relationship exists; and

4433 (ii) it is not necessary that all, or a particular number, of the factors described in
4434 Subsection (11)(c)(i) are found to support the existence of a dating relationship.

4435 (12) "Domestic violence" means the same as that term is defined in Section 77-36-1.

4436 (13) "Ex parte civil protective order" means an order issued without notice to the
4437 respondent under:

4438 (a) Part 2, Child Protective Orders;

4439 (b) Part 4, Dating Violence Protective Orders;

4440 (c) Part 5, Sexual Violence Protective Orders; or

4441 (d) Part 6, Cohabitant Abuse Protective Orders.

4442 (14) "Ex parte civil stalking injunction" means a stalking injunction issued without
4443 notice to the respondent under Part 7, Civil Stalking Injunctions.

4444 (15) "Foreign protection order" means the same as that term is defined in Section
4445 78B-7-302.

4446 (16) "Intimate partner" means the same as that term is defined in 18 U.S.C. Sec. 921.

4447 (17) "Law enforcement unit" or "law enforcement agency" means any public agency
4448 having general police power and charged with making arrests in connection with enforcement
4449 of the criminal statutes and ordinances of this state or any political subdivision.

4450 (18) "Peace officer" means those individuals specified in Title 53, Chapter 13, Peace
4451 Officer Classifications.

4452 (19) "Qualifying domestic violence offense" means the same as that term is defined in
4453 Section 77-36-1.1.

4454 (20) "Respondent" means the individual against whom enforcement of a protective
4455 order is sought.

4456 (21) "Stalking" means the same as that term is defined in Section 76-5-106.5.

4457 Section 61. Section **78B-7-502** is amended to read:

4458 **78B-7-502. Definitions.**

4459 As used in this part:

4460 (1) "Ex parte sexual violence protective order" means an order issued without notice to
4461 the respondent under this part.

4462 (2) "Protective order" means:

4463 (a) a sexual violence protective order; or

- 4464 (b) an ex parte sexual violence protective order.
- 4465 (3) "Sexual violence" means the commission or the attempt to commit:
- 4466 (a) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or
- 4467 Title 76, Chapter 5b, Part 2, Sexual Exploitation;
- 4468 (b) human trafficking for sexual exploitation under Section [~~76-5-308~~] 76-5-308.1; or
- 4469 (c) aggravated human trafficking for forced sexual exploitation under Section
- 4470 76-5-310.
- 4471 (4) "Sexual violence protective order" means an order issued under this part after a
- 4472 hearing on the petition, of which the petitioner and respondent have been given notice.
- 4473 Section 62. Section **78B-7-801** is amended to read:
- 4474 **78B-7-801. Definitions.**
- 4475 As used in this part:
- 4476 (1) (a) "Jail release agreement" means a written agreement that is entered into by an
- 4477 individual who is arrested or issued a citation, regardless of whether the individual is booked
- 4478 into jail:
- 4479 (i) under which the arrested or cited individual agrees to not engage in any of the
- 4480 following:
- 4481 (A) telephoning, contacting, or otherwise communicating with the alleged victim,
- 4482 directly or indirectly;
- 4483 (B) threatening or harassing the alleged victim; or
- 4484 (C) knowingly entering onto the premises of the alleged victim's residence or on
- 4485 premises temporarily occupied by the alleged victim; and
- 4486 (ii) that specifies other conditions of release from jail or arrest.
- 4487 (b) "Jail release agreement" includes a written agreement that includes the conditions
- 4488 described in Section (1)(a) entered into by a minor who is taken into custody or placed in
- 4489 detention or a shelter facility under Section 78A-6-112.
- 4490 (2) "Jail release court order" means a written court order that:
- 4491 (a) orders an arrested or cited individual not to engage in any of the following:
- 4492 (i) telephoning, contacting, or otherwise communicating with the alleged victim,
- 4493 directly or indirectly;
- 4494 (ii) threatening or harassing the alleged victim; or

4495 (iii) knowingly entering onto the premises of the alleged victim's residence or on
4496 premises temporarily occupied by the alleged victim; and

4497 (b) specifies other conditions of release from jail.

4498 (3) "Minor" means the same as that term is defined in Section 80-1-102.

4499 (4) "Offense against a child or vulnerable adult" means the commission or attempted
4500 commission of an offense described in [~~Section 76-5-109, 76-5-109.1, 76-5-110, 76-5-111, or~~
4501 ~~76-9-702.1~~];

4502 (a) Section 76-5-109, child abuse;

4503 (b) Section 76-5-109.2, aggravated child abuse;

4504 (c) Section 76-5-109.3, child abandonment;

4505 (d) Section 76-5-110, abuse or neglect of a child with a disability;

4506 (e) Section 76-5-111, abuse of a vulnerable adult;

4507 (f) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

4508 (g) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

4509 (h) Section 76-5-111.4, financial exploitation of a vulnerable adult;

4510 (i) Section 76-5-114, commission of domestic violence in the presence of a child; or

4511 (j) Section 76-9-702.1, sexual battery.

4512 (5) "Qualifying offense" means:

4513 (a) domestic violence;

4514 (b) an offense against a child or vulnerable adult; or

4515 (c) the commission or attempted commission of an offense described in Section
4516 76-9-702.1 or Title 76, Chapter 5, Part 4, Sexual Offenses.

4517 Section 63. Section **78B-7-903** is amended to read:

4518 **78B-7-903. Penalties.**

4519 (1) A violation of a permanent criminal stalking injunction issued under this part is a
4520 third degree felony in accordance with Subsection [~~76-5-106.5(7)~~] 76-5-106.5(3)(b).

4521 (2) A violation of a permanent criminal stalking injunction issued under this part may
4522 be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a
4523 prosecuting attorney, or both.

4524 Section 64. Section **78B-9-402** is amended to read:

4525 **78B-9-402. Petition for determination of factual innocence -- Sufficient**

4526 **allegations -- Notification of victim -- Payment to surviving spouse.**

4527 (1) A person who has been convicted of a felony offense may petition the district court
4528 in the county in which the person was convicted for a hearing to establish that the person is
4529 factually innocent of the crime or crimes of which the person was convicted.

4530 (2) (a) The petition shall contain an assertion of factual innocence under oath by the
4531 petitioner and shall aver, with supporting affidavits or other credible documents, that:

4532 (i) newly discovered material evidence exists that, if credible, establishes that the
4533 petitioner is factually innocent;

4534 (ii) the specific evidence identified by the petitioner in the petition establishes
4535 innocence;

4536 (iii) the material evidence is not merely cumulative of evidence that was known;

4537 (iv) the material evidence is not merely impeachment evidence; and

4538 (v) viewed with all the other evidence, the newly discovered evidence demonstrates
4539 that the petitioner is factually innocent.

4540 (b) (i) The court shall review the petition in accordance with the procedures in
4541 Subsection (9)(b), and make a finding that the petition has satisfied the requirements of
4542 Subsection (2)(a).

4543 (ii) If the court finds the petition does not meet all the requirements of Subsection
4544 (2)(a), the court shall dismiss the petition without prejudice and send notice of the dismissal to
4545 the petitioner and the attorney general.

4546 (3) (a) The petition shall also contain an averment that:

4547 (i) neither the petitioner nor the petitioner's counsel knew of the evidence at the time of
4548 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or
4549 postconviction motion, and the evidence could not have been discovered by the petitioner or
4550 the petitioner's counsel through the exercise of reasonable diligence; or

4551 (ii) a court has found ineffective assistance of counsel for failing to exercise reasonable
4552 diligence in uncovering the evidence.

4553 (b) (i) Upon entry of a finding that the petition is sufficient under Subsection (2)(a), the
4554 court shall then review the petition to determine if Subsection (3)(a) has been satisfied.

4555 (ii) If the court finds that the requirements of Subsection (3)(a) have not been satisfied,
4556 the court may dismiss the petition without prejudice and give notice to the petitioner and the

4557 attorney general of the dismissal, or the court may waive the requirements of Subsection (3)(a)
4558 if the court finds the petition should proceed to hearing based upon the strength of the petition,
4559 and that there is other evidence that could have been discovered through the exercise of
4560 reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:

4561 (A) was not discovered by the petitioner or the petitioner's counsel;

4562 (B) is material upon the issue of factual innocence; and

4563 (C) has never been presented to a court.

4564 (4) (a) If the conviction for which the petitioner asserts factual innocence was based
4565 upon a plea of guilty, the petition shall contain the specific nature and content of the evidence
4566 that establishes factual innocence.

4567 (b) The court shall review the evidence and may dismiss the petition at any time in the
4568 course of the proceedings, if the court finds that the evidence of factual innocence relies solely
4569 upon the recantation of testimony or prior statements made by a witness against the petitioner,
4570 and the recantation appears to the court to be equivocal or self serving.

4571 (5) A person who has already obtained postconviction relief that vacated or reversed
4572 the person's conviction or sentence may also file a petition under this part in the same manner
4573 and form as described above, if no retrial or appeal regarding this offense is pending.

4574 (6) If some or all of the evidence alleged to be exonerating is biological evidence
4575 subject to DNA testing, the petitioner shall seek DNA testing in accordance with Section
4576 78B-9-301.

4577 (7) Except as provided in Subsection (9), the petition and all subsequent proceedings
4578 shall be in compliance with and governed by Utah Rules of Civil Procedure, Rule 65C and
4579 shall include the underlying criminal case number.

4580 (8) After a petition is filed under this section, prosecutors, law enforcement officers,
4581 and crime laboratory personnel shall cooperate in preserving evidence and in determining the
4582 sufficiency of the chain of custody of the evidence which is the subject of the petition.

4583 (9) (a) A person who files a petition under this section shall serve notice of the petition
4584 and a copy of the petition upon the office of the prosecutor who obtained the conviction and
4585 upon the Utah attorney general.

4586 (b) (i) The assigned judge shall conduct an initial review of the petition.

4587 (ii) If it is apparent to the court that the petitioner is either merely relitigating facts,

4588 issues, or evidence presented in previous proceedings or presenting issues that appear frivolous
4589 or speculative on their face, the court shall dismiss the petition, state the basis for the dismissal,
4590 and serve notice of dismissal upon the petitioner and the attorney general.

4591 (iii) If, upon completion of the initial review, the court does not dismiss the petition,
4592 the court shall order the attorney general to file a response to the petition.

4593 (iv) The attorney general shall, within 30 days after the day on which the attorney
4594 general receives the court's order, or within any additional period of time the court allows,
4595 answer or otherwise respond to all proceedings initiated under this part.

4596 (c) (i) After the time for response by the attorney general under Subsection (9)(b) has
4597 passed, the court shall order a hearing if the court finds the petition meets the requirements of
4598 Subsections (2) and (3) and finds there is a bona fide and compelling issue of factual innocence
4599 regarding the charges of which the petitioner was convicted.

4600 (ii) No bona fide and compelling issue of factual innocence exists if the petitioner is
4601 merely relitigating facts, issues, or evidence presented in a previous proceeding or if the
4602 petitioner is unable to identify with sufficient specificity the nature and reliability of the newly
4603 discovered evidence that establishes the petitioner's factual innocence.

4604 (d) (i) If the parties stipulate that the evidence establishes that the petitioner is factually
4605 innocent, the court may find the petitioner is factually innocent without holding a hearing.

4606 (ii) If the state will not stipulate that the evidence establishes that the petitioner is
4607 factually innocent, no determination of factual innocence may be made by the court without
4608 first holding a hearing under this part.

4609 (10) The court may not grant a petition for a hearing under this part during the period
4610 in which criminal proceedings in the matter are pending before any trial or appellate court,
4611 unless stipulated to by the parties.

4612 (11) Any victim of a crime that is the subject of a petition under this part, and who has
4613 elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any
4614 hearing regarding the petition.

4615 (12) (a) A petition to determine factual innocence under this part, or Part 3,
4616 Postconviction Testing of DNA, shall be filed separately from any petition for postconviction
4617 relief under Part 1, General Provisions.

4618 (b) Separate petitions may be filed simultaneously in the same court.

4619 (13) The procedures governing the filing and adjudication of a petition to determine
4620 factual innocence apply to all petitions currently filed or pending in the district court and any
4621 new petitions filed on or after June 1, 2012.

4622 (14) (a) As used in this Subsection (14) and in Subsection (15):

4623 (i) "Married" means the legal marital relationship established between two individuals
4624 and as recognized by the law; and

4625 (ii) "Spouse" means an individual married to the petitioner at the time the petitioner
4626 was found guilty of the offense regarding which a petition is filed and who has since then been
4627 continuously married to the petitioner until the petitioner's death.

4628 (b) A claim for determination of factual innocence under this part is not extinguished
4629 upon the death of the petitioner.

4630 (c) (i) If any payments are already being made to the petitioner under this part at the
4631 time of the death of the petitioner, or if the finding of factual innocence occurs after the death
4632 of the petitioner, the payments due under Section 78B-9-405 shall be paid in accordance with
4633 Section 78B-9-405 to the petitioner's surviving spouse.

4634 (ii) Payments cease upon the death of the spouse.

4635 (15) The spouse under Subsection (14) forfeits all rights to receive any payment under
4636 this part if the spouse is charged with a homicide established by a preponderance of the
4637 evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5,
4638 Offenses Against the ~~Person~~ Individual, except automobile homicide, applying the same
4639 principles of culpability and defenses as in Title 76, Utah Criminal Code, including Title 76,
4640 Chapter 2, Principles of Criminal Responsibility.

4641 Section 65. Section **80-1-102** is amended to read:

4642 **80-1-102. Juvenile code definitions.**

4643 As used in this title:

4644 (1) (a) "Abuse" means:

4645 (i) (A) nonaccidental harm of a child;

4646 (B) threatened harm of a child;

4647 (C) sexual exploitation;

4648 (D) sexual abuse; or

4649 (E) human trafficking of a child in violation of Section 76-5-308.5; or

- 4650 (ii) that a child's natural parent:
- 4651 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
- 4652 child;
- 4653 (B) is identified by a law enforcement agency as the primary suspect in an investigation
- 4654 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 4655 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 4656 recklessly causing the death of another parent of the child.
- 4657 (b) "Abuse" does not include:
- 4658 (i) reasonable discipline or management of a child, including withholding privileges;
- 4659 (ii) conduct described in Section 76-2-401; or
- 4660 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 4661 (A) in self-defense;
- 4662 (B) in defense of others;
- 4663 (C) to protect the child; or
- 4664 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 4665 Subsections (1)(b)(iii)(A) through (C).
- 4666 (2) "Abused child" means a child who has been subjected to abuse.
- 4667 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the
- 4668 facts alleged in the petition have been proved.
- 4669 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance
- 4670 with Section 80-6-402.
- 4671 (4) (a) "Adult" means an individual who is 18 years old or older.
- 4672 (b) "Adult" does not include an individual:
- 4673 (i) who is 18 years old or older; and
- 4674 (ii) who is a minor.
- 4675 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
- 4676 78A-2-801.
- 4677 (6) "Board" means the Board of Juvenile Court Judges.
- 4678 (7) "Child" means an individual who is under 18 years old.
- 4679 (8) "Child and family plan" means a written agreement between a child's parents or
- 4680 guardian and the Division of Child and Family Services as described in Section 62A-4a-205.

- 4681 (9) "Child placement agency" means:
- 4682 (a) a private agency licensed to receive a child for placement or adoption under this
- 4683 code; or
- 4684 (b) a private agency that receives a child for placement or adoption in another state,
- 4685 which is licensed or approved where such license or approval is required by law.
- 4686 (10) "Clandestine laboratory operation" means the same as that term is defined in
- 4687 Section 58-37d-3.
- 4688 (11) "Commit" or "committed" means, unless specified otherwise:
- 4689 (a) with respect to a child, to transfer legal custody; and
- 4690 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 4691 (12) "Community-based program" means a nonsecure residential or nonresidential
- 4692 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
- 4693 restrictive setting, consistent with public safety, and operated by or under contract with the
- 4694 Division of Juvenile Justice Services.
- 4695 (13) "Community placement" means placement of a minor in a community-based
- 4696 program described in Section 80-5-402.
- 4697 (14) "Correctional facility" means:
- 4698 (a) a county jail; or
- 4699 (b) a secure correctional facility as defined in Section 64-13-1.
- 4700 (15) "Criminogenic risk factors" means evidence-based factors that are associated with
- 4701 a minor's likelihood of reoffending.
- 4702 (16) "Department" means the Department of Human Services created in Section
- 4703 62A-1-102.
- 4704 (17) "Dependent child" or "dependency" means a child who is without proper care
- 4705 through no fault of the child's parent, guardian, or custodian.
- 4706 (18) "Deprivation of custody" means transfer of legal custody by the juvenile court
- 4707 from a parent or a previous custodian to another person, agency, or institution.
- 4708 (19) "Detention" means home detention or secure detention.
- 4709 (20) "Detention risk assessment tool" means an evidence-based tool established under
- 4710 Section 80-5-203 that:
- 4711 (a) assesses a minor's risk of failing to appear in court or reoffending before

4712 adjudication; and

4713 (b) is designed to assist in making a determination of whether a minor shall be held in
4714 detention.

4715 (21) "Developmental immaturity" means incomplete development in one or more
4716 domains that manifests as a functional limitation in the minor's present ability to:

4717 (a) consult with counsel with a reasonable degree of rational understanding; and

4718 (b) have a rational as well as factual understanding of the proceedings.

4719 (22) "Disposition" means an order by a juvenile court, after the adjudication of a
4720 minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

4721 (23) "Educational neglect" means that, after receiving a notice of compulsory education
4722 violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to
4723 ensure that the child receives an appropriate education.

4724 (24) "Educational series" means an evidence-based instructional series:

4725 (a) obtained at a substance abuse program that is approved by the Division of

4726 Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

4727 (b) designed to prevent substance use or the onset of a mental health disorder.

4728 (25) "Emancipated" means the same as that term is defined in Section 80-7-102.

4729 (26) "Evidence-based" means a program or practice that has had multiple randomized
4730 control studies or a meta-analysis demonstrating that the program or practice is effective for a
4731 specific population or has been rated as effective by a standardized program evaluation tool.

4732 (27) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

4733 (28) "Formal probation" means a minor is:

4734 (a) supervised in the community by, and reports to, a juvenile probation officer or an
4735 agency designated by the juvenile court; and

4736 (b) subject to return to the juvenile court in accordance with Section 80-6-607.

4737 (29) "Group rehabilitation therapy" means psychological and social counseling of one
4738 or more individuals in the group, depending upon the recommendation of the therapist.

4739 (30) "Guardian" means a person appointed by a court to make decisions regarding a
4740 minor, including the authority to consent to:

4741 (a) marriage;

4742 (b) enlistment in the armed forces;

- 4743 (c) major medical, surgical, or psychiatric treatment; or
4744 (d) legal custody, if legal custody is not vested in another individual, agency, or
4745 institution.
- 4746 (31) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 4747 (32) "Harm" means:
- 4748 (a) physical or developmental injury or damage;
4749 (b) emotional damage that results in a serious impairment in the child's growth,
4750 development, behavior, or psychological functioning;
- 4751 (c) sexual abuse; or
4752 (d) sexual exploitation.
- 4753 (33) "Home detention" means placement of a minor:
- 4754 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the
4755 consent of the minor's parent, guardian, or custodian, under terms and conditions established by
4756 the Division of Juvenile Justice Services or the juvenile court; or
4757 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the
4758 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or
4759 custodian, under terms and conditions established by the Division of Juvenile Justice Services
4760 or the juvenile court.
- 4761 (34) (a) "Incest" means engaging in sexual intercourse with an individual whom the
4762 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
4763 nephew, niece, or first cousin.
- 4764 (b) "Incest" includes:
- 4765 (i) blood relationships of the whole or half blood, without regard to legitimacy;
4766 (ii) relationships of parent and child by adoption; and
4767 (iii) relationships of stepparent and stepchild while the marriage creating the
4768 relationship of a stepparent and stepchild exists.
- 4769 (35) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 4770 (36) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 4771 (37) "Indigent defense service provider" means the same as that term is defined in
4772 Section 78B-22-102.
- 4773 (38) "Indigent defense services" means the same as that term is defined in Section

- 4774 78B-22-102.
- 4775 (39) "Indigent individual" means the same as that term is defined in Section
- 4776 78B-22-102.
- 4777 (40) (a) "Intake probation" means a minor is:
- 4778 (i) monitored by a juvenile probation officer; and
- 4779 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 4780 (b) "Intake probation" does not include formal probation.
- 4781 (41) "Intellectual disability" means a significant subaverage general intellectual
- 4782 functioning existing concurrently with deficits in adaptive behavior that constitutes a
- 4783 substantial limitation to the individual's ability to function in society.
- 4784 (42) "Juvenile offender" means:
- 4785 (a) a serious youth offender; or
- 4786 (b) a youth offender.
- 4787 (43) "Juvenile probation officer" means a probation officer appointed under Section
- 4788 78A-6-205.
- 4789 (44) "Juvenile receiving center" means a nonsecure, nonresidential program established
- 4790 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile
- 4791 Justice Services, that is responsible for minors taken into temporary custody under Section
- 4792 80-6-201.
- 4793 (45) "Legal custody" means a relationship embodying:
- 4794 (a) the right to physical custody of the minor;
- 4795 (b) the right and duty to protect, train, and discipline the minor;
- 4796 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
- 4797 medical care;
- 4798 (d) the right to determine where and with whom the minor shall live; and
- 4799 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 4800 (46) "Mental illness" means:
- 4801 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
- 4802 behavioral, or related functioning; or
- 4803 (b) the same as that term is defined in:
- 4804 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders

4805 published by the American Psychiatric Association; or

4806 (ii) the current edition of the International Statistical Classification of Diseases and
4807 Related Health Problems.

4808 (47) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

4809 (a) a child; or

4810 (b) an individual:

4811 (i) (A) who is at least 18 years old and younger than 21 years old; and

4812 (B) for whom the Division of Child and Family Services has been specifically ordered
4813 by the juvenile court to provide services because the individual was an abused, neglected, or
4814 dependent child or because the individual was adjudicated for an offense; or

4815 (ii) (A) who is at least 18 years old and younger than 25 years old; and

4816 (B) whose case is under the continuing jurisdiction of the juvenile court under Chapter
4817 6, Juvenile Justice.

4818 (48) "Mobile crisis outreach team" means the same as that term is defined in Section
4819 62A-15-102.

4820 (49) "Molestation" means that an individual, with the intent to arouse or gratify the
4821 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
4822 or the breast of a female child, or takes indecent liberties with a child as defined in Section
4823 ~~[76-5-416]~~ 76-5-401.1.

4824 (50) (a) "Natural parent" means a minor's biological or adoptive parent.

4825 (b) "Natural parent" includes the minor's noncustodial parent.

4826 (51) (a) "Neglect" means action or inaction causing:

4827 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
4828 Relinquishment of a Newborn Child;

4829 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
4830 guardian, or custodian;

4831 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
4832 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or
4833 well-being;

4834 (iv) a child to be at risk of being neglected or abused because another child in the same
4835 home is neglected or abused;

- 4836 (v) abandonment of a child through an unregulated custody transfer; or
4837 (vi) educational neglect.
- 4838 (b) "Neglect" does not include:
- 4839 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
4840 reason, does not provide specified medical treatment for a child;
- 4841 (ii) a health care decision made for a child by the child's parent or guardian, unless the
4842 state or other party to a proceeding shows, by clear and convincing evidence, that the health
4843 care decision is not reasonable and informed;
- 4844 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 4845 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
4846 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,
4847 including:
- 4848 (A) traveling to and from school, including by walking, running, or bicycling;
4849 (B) traveling to and from nearby commercial or recreational facilities;
4850 (C) engaging in outdoor play;
4851 (D) remaining in a vehicle unattended, except under the conditions described in
4852 Subsection 76-10-2202(2);
- 4853 (E) remaining at home unattended; or
- 4854 (F) engaging in a similar independent activity.
- 4855 (52) "Neglected child" means a child who has been subjected to neglect.
- 4856 (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile
4857 probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the
4858 consent in writing of:
- 4859 (a) the assigned juvenile probation officer; and
- 4860 (b) (i) the minor; or
- 4861 (ii) the minor and the minor's parent, legal guardian, or custodian.
- 4862 (54) "Not competent to proceed" means that a minor, due to a mental illness,
4863 intellectual disability or related condition, or developmental immaturity, lacks the ability to:
- 4864 (a) understand the nature of the proceedings against the minor or of the potential
4865 disposition for the offense charged; or
- 4866 (b) consult with counsel and participate in the proceedings against the minor with a

4867 reasonable degree of rational understanding.

4868 (55) "Parole" means a conditional release of a juvenile offender from residency in
4869 secure care to live outside of secure care under the supervision of the Division of Juvenile
4870 Justice Services, or another person designated by the Division of Juvenile Justice Services.

4871 (56) "Physical abuse" means abuse that results in physical injury or damage to a child.

4872 (57) (a) "Probation" means a legal status created by court order, following an
4873 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's
4874 home under prescribed conditions.

4875 (b) "Probation" includes intake probation or formal probation.

4876 (58) "Prosecuting attorney" means:

4877 (a) the attorney general and any assistant attorney general;

4878 (b) any district attorney or deputy district attorney;

4879 (c) any county attorney or assistant county attorney; and

4880 (d) any other attorney authorized to commence an action on behalf of the state.

4881 (59) "Protective custody" means the shelter of a child by the Division of Child and
4882 Family Services from the time the child is removed from the home until the earlier of:

4883 (a) the day on which the shelter hearing is held under Section 80-3-301; or

4884 (b) the day on which the child is returned home.

4885 (60) "Protective supervision" means a legal status created by court order, following an
4886 adjudication on the ground of abuse, neglect, or dependency, whereby:

4887 (a) the minor is permitted to remain in the minor's home; and

4888 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
4889 by an agency designated by the juvenile court.

4890 (61) (a) "Related condition" means a condition that:

4891 (i) is found to be closely related to intellectual disability;

4892 (ii) results in impairment of general intellectual functioning or adaptive behavior
4893 similar to that of an intellectually disabled individual;

4894 (iii) is likely to continue indefinitely; and

4895 (iv) constitutes a substantial limitation to the individual's ability to function in society.

4896 (b) "Related condition" does not include mental illness, psychiatric impairment, or
4897 serious emotional or behavioral disturbance.

4898 (62) (a) "Residual parental rights and duties" means the rights and duties remaining
4899 with a parent after legal custody or guardianship, or both, have been vested in another person or
4900 agency, including:

- 4901 (i) the responsibility for support;
- 4902 (ii) the right to consent to adoption;
- 4903 (iii) the right to determine the child's religious affiliation; and
- 4904 (iv) the right to reasonable parent-time unless restricted by the court.

4905 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
4906 right to consent to:

- 4907 (i) marriage;
- 4908 (ii) enlistment; and
- 4909 (iii) major medical, surgical, or psychiatric treatment.

4910 (63) "Runaway" means a child, other than an emancipated child, who willfully leaves
4911 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,
4912 without permission.

4913 (64) "Secure care" means placement of a minor, who is committed to the Division of
4914 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the
4915 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the
4916 minor.

4917 (65) "Secure care facility" means a facility, established in accordance with Section
4918 80-5-503, for juvenile offenders in secure care.

4919 (66) "Secure detention" means temporary care of a minor who requires secure custody
4920 in a physically restricting facility operated by, or under contract with, the Division of Juvenile
4921 Justice Services:

4922 (a) before disposition of an offense that is alleged to have been committed by the
4923 minor; or

4924 (b) under Section 80-6-704.

4925 (67) "Serious youth offender" means an individual who:

4926 (a) is at least 14 years old, but under 25 years old;

4927 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
4928 of the juvenile court was extended over the individual's case until the individual was 25 years

4929 old in accordance with Section 80-6-605; and

4930 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for
4931 secure care under Sections 80-6-703 and 80-6-705.

4932 (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
4933 child.

4934 (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
4935 child.

4936 (70) "Sexual abuse" means:

4937 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
4938 adult directed towards a child;

4939 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
4940 committed by a child towards another child if:

4941 (i) there is an indication of force or coercion;

4942 (ii) the children are related, as described in Subsection (34), including siblings by
4943 marriage while the marriage exists or by adoption;

4944 (iii) there have been repeated incidents of sexual contact between the two children,
4945 unless the children are 14 years old or older; or

4946 (iv) there is a disparity in chronological age of four or more years between the two
4947 children;

4948 (c) engaging in any conduct with a child that would constitute an offense under any of
4949 the following, regardless of whether the individual who engages in the conduct is actually
4950 charged with, or convicted of, the offense:

4951 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
4952 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

4953 (ii) child bigamy, Section 76-7-101.5;

4954 (iii) incest, Section 76-7-102;

4955 (iv) lewdness, Section 76-9-702;

4956 (v) sexual battery, Section 76-9-702.1;

4957 (vi) lewdness involving a child, Section 76-9-702.5; or

4958 (vii) voyeurism, Section 76-9-702.7; or

4959 (d) subjecting a child to participate in or threatening to subject a child to participate in

4960 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
4961 marriage.

4962 (71) "Sexual exploitation" means knowingly:

4963 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

4964 (i) pose in the nude for the purpose of sexual arousal of any individual; or

4965 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
4966 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

4967 (b) displaying, distributing, possessing for the purpose of distribution, or selling
4968 material depicting a child:

4969 (i) in the nude, for the purpose of sexual arousal of any individual; or

4970 (ii) engaging in sexual or simulated sexual conduct; or

4971 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
4972 sexual exploitation of a minor, regardless of whether the individual who engages in the conduct
4973 is actually charged with, or convicted of, the offense.

4974 (72) "Shelter" means the temporary care of a child in a physically unrestricted facility
4975 pending a disposition or transfer to another jurisdiction.

4976 (73) "Shelter facility" means the same as that term is defined in Section 62A-4a-101.

4977 (74) "Single criminal episode" means the same as that term is defined in Section
4978 76-1-401.

4979 (75) "Status offense" means an offense that would not be an offense but for the age of
4980 the offender.

4981 (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
4982 substances.

4983 (77) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

4984 (78) "Supported" means the same as that term is defined in Section 62A-4a-101.

4985 (79) "Termination of parental rights" means the permanent elimination of all parental
4986 rights and duties, including residual parental rights and duties, by court order.

4987 (80) "Therapist" means:

4988 (a) an individual employed by a state division or agency for the purpose of conducting
4989 psychological treatment and counseling of a minor in the division's or agency's custody; or

4990 (b) any other individual licensed or approved by the state for the purpose of conducting

4991 psychological treatment and counseling.

4992 (81) "Threatened harm" means actions, inactions, or credible verbal threats, indicating
4993 that the child is at an unreasonable risk of harm or neglect.

4994 (82) "Ungovernable" means a child in conflict with a parent or guardian, and the
4995 conflict:

4996 (a) results in behavior that is beyond the control or ability of the child, or the parent or
4997 guardian, to manage effectively;

4998 (b) poses a threat to the safety or well-being of the child, the child's family, or others;

4999 or

5000 (c) results in the situations described in Subsections (82)(a) and (b).

5001 (83) "Unregulated custody transfer" means the placement of a child:

5002 (a) with an individual who is not the child's parent, step-parent, grandparent, adult
5003 sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with
5004 whom the child is familiar, or a member of the child's federally recognized tribe;

5005 (b) with the intent of severing the child's existing parent-child or guardian-child
5006 relationship; and

5007 (c) without taking:

5008 (i) reasonable steps to ensure the safety of the child and permanency of the placement;

5009 and

5010 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
5011 guardianship to the individual taking custody of the child.

5012 (84) "Unsupported" means the same as that term is defined in Section 62A-4a-101.

5013 (85) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

5014 (86) "Validated risk and needs assessment" means an evidence-based tool that assesses
5015 a minor's risk of reoffending and a minor's criminogenic needs.

5016 (87) "Without merit" means the same as that term is defined in Section 62A-4a-101.

5017 (88) "Youth offender" means an individual who is:

5018 (a) at least 12 years old, but under 21 years old; and

5019 (b) committed by the juvenile court to the Division of Juvenile Justice Services for
5020 secure care under Sections 80-6-703 and 80-6-705.

5021 Section 66. Section **80-6-304** is amended to read:

5022 **80-6-304. Nonjudicial adjustments.**

5023 (1) If the juvenile court receives a referral for an offense committed by a minor that is,
5024 or appears to be, within the juvenile court's jurisdiction, a juvenile probation officer shall make
5025 a preliminary inquiry in accordance with Subsections (3), (4), and (5) to determine whether the
5026 minor is eligible to enter into a nonjudicial adjustment.

5027 (2) If a minor is referred to the juvenile court for multiple offenses arising from a
5028 single criminal episode, and the minor is eligible under this section for a nonjudicial
5029 adjustment, the juvenile probation officer shall offer the minor one nonjudicial adjustment for
5030 all offenses arising from the single criminal episode.

5031 (3) (a) The juvenile probation officer may:

5032 (i) conduct a validated risk and needs assessment; and

5033 (ii) request that a prosecuting attorney review a referral in accordance with Subsection
5034 (9) if:

5035 (A) the results of the validated risk and needs assessment indicate the minor is high
5036 risk; or

5037 (B) the results of the validated risk and needs assessment indicate the minor is
5038 moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5,
5039 Offenses Against the ~~Person~~ Individual, or Title 76, Chapter 9, Part 7, Miscellaneous
5040 Provisions.

5041 (b) If a minor violates Section 41-6a-502, the minor shall:

5042 (i) undergo a drug and alcohol screening;

5043 (ii) if found appropriate by the screening, participate in an assessment; and

5044 (iii) if warranted by the screening and assessment, follow the recommendations of the
5045 assessment.

5046 (4) Except as provided in Subsection (5)(b), the juvenile probation officer shall request
5047 that a prosecuting attorney review a referral in accordance with Subsection (9) if:

5048 (a) the referral involves:

5049 (i) a felony offense; or

5050 (ii) a violation of:

5051 (A) Section 41-6a-502, driving under the influence;

5052 (B) Section 76-5-112, reckless endangerment creating a substantial risk of death or

5053 serious bodily injury;

5054 (C) Section 76-5-206, negligent homicide;

5055 (D) Section 76-9-702.1, sexual battery;

5056 (E) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled

5057 shotgun on or about school premises; or

5058 (F) Section 76-10-509, possession of a dangerous weapon by minor, but only if the

5059 dangerous weapon is a firearm;

5060 (b) the minor has a current suspended order for custody under Section 80-6-711; or

5061 (c) the referral involves an offense alleged to have occurred before an individual was

5062 12 years old and the offense is a felony violation of:

5063 (i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

5064 (ii) Section 76-5-202, aggravated murder or attempted aggravated murder;

5065 (iii) Section 76-5-203, murder or attempted murder;

5066 (iv) Section 76-5-302, aggravated kidnapping;

5067 (v) Section 76-5-405, aggravated sexual assault;

5068 (vi) Section 76-6-103, aggravated arson;

5069 (vii) Section 76-6-203, aggravated burglary;

5070 (viii) Section 76-6-302, aggravated robbery; or

5071 (ix) Section 76-10-508.1, felony discharge of a firearm.

5072 (5) (a) Except as provided in Subsections (3) and (4), the juvenile probation officer

5073 shall offer a nonjudicial adjustment to a minor if the minor:

5074 (i) is referred for an offense that is a misdemeanor, infraction, or status offense;

5075 (ii) has no more than two prior adjudications; and

5076 (iii) has no more than three prior unsuccessful nonjudicial adjustment attempts.

5077 (b) If the juvenile court receives a referral for an offense that is alleged to have

5078 occurred before an individual was 12 years old, the juvenile probation officer shall offer a

5079 nonjudicial adjustment to the individual, unless the referral includes an offense described in

5080 Subsection (4)(c).

5081 (c) (i) For purposes of determining a minor's eligibility for a nonjudicial adjustment

5082 under this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a

5083 single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial

5084 adjustment.

5085 (ii) For purposes of determining a minor's eligibility for a nonjudicial adjustment under
5086 this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a single
5087 criminal episode that resulted in one or more prior adjudications as a single adjudication.

5088 (d) Except as provided in Subsection (4), the juvenile probation officer may offer a
5089 nonjudicial adjustment to a minor who does not meet the criteria provided in Subsection (5)(a).

5090 (6) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:

5091 (a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the
5092 terms established under Subsection (8)(c);

5093 (b) pay restitution to any victim;

5094 (c) complete community or compensatory service;

5095 (d) attend counseling or treatment with an appropriate provider;

5096 (e) attend substance abuse treatment or counseling;

5097 (f) comply with specified restrictions on activities or associations;

5098 (g) attend victim-offender mediation if requested by the victim; and

5099 (h) comply with any other reasonable action that is in the interest of the minor, the
5100 community, or the victim.

5101 (7) (a) Within seven days of receiving a referral that appears to be eligible for a
5102 nonjudicial adjustment in accordance with Subsection (5), the juvenile probation officer shall
5103 provide an initial notice to reasonably identifiable and locatable victims of the offense
5104 contained in the referral.

5105 (b) The victim shall be responsible to provide to the juvenile probation officer upon
5106 request:

5107 (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and
5108 out-of-pocket loss;

5109 (ii) documentation and evidence of compensation or reimbursement from an insurance
5110 company or an agency of the state, any other state, or the federal government received as a
5111 direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and

5112 (iii) proof of identification, including home and work address and telephone numbers.

5113 (c) The inability, failure, or refusal of the victim to provide all or part of the requested
5114 information shall result in the juvenile probation officer determining restitution based on the

5115 best information available.

5116 (8) (a) The juvenile probation officer may not predicate acceptance of an offer of a
5117 nonjudicial adjustment on an admission of guilt.

5118 (b) The juvenile probation officer may not deny a minor an offer of a nonjudicial
5119 adjustment due to a minor's inability to pay a financial penalty under Subsection (6).

5120 (c) The juvenile probation officer shall base a fee, fine, or the restitution for a
5121 nonjudicial adjustment under Subsection (6) upon the ability of the minor's family to pay as
5122 determined by a statewide sliding scale developed in accordance with Section 63M-7-208.

5123 (d) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile
5124 court judge extends the nonjudicial adjustment for an additional 90 days.

5125 (e) (i) Notwithstanding Subsection (8)(d), a juvenile court judge may extend a
5126 nonjudicial adjustment beyond the 180 days permitted under Subsection (8)(d) for a minor who
5127 is offered a nonjudicial adjustment under Subsection (5)(b) for a sexual offense under Title 76,
5128 Chapter 5, Part 4, Sexual Offenses, or is referred under Subsection (9)(b)(ii) for a sexual
5129 offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the
5130 minor was 12 years old, if the judge determines that:

5131 (A) the nonjudicial adjustment requires specific treatment for the sexual offense;

5132 (B) the treatment cannot be completed within 180 days after the day on which the
5133 minor entered into the nonjudicial adjustment; and

5134 (C) the treatment is necessary based on a clinical assessment that is developmentally
5135 appropriate for the minor.

5136 (ii) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection
5137 (8)(e)(i), the judge may extend the nonjudicial adjustment until the minor completes the
5138 treatment under this Subsection (8)(e), but the judge may only grant each extension for 90 days
5139 at a time.

5140 (f) If a minor violates Section 76-10-105, the minor may be required to pay a fine or
5141 penalty and participate in a court-approved tobacco education program with a participation fee.

5142 (9) If a prosecuting attorney is requested to review a referral in accordance with
5143 Subsection (3) or (4), a minor fails to substantially comply with a condition agreed upon as part
5144 of the nonjudicial adjustment, or a minor is not offered or declines a nonjudicial adjustment in
5145 accordance with Subsection (5), the prosecuting attorney shall:

5146 (a) review the case; and
5147 (b) (i) dismiss the case;
5148 (ii) refer the case back to the juvenile probation officer for a new attempt at nonjudicial
5149 adjustment; or
5150 (iii) except as provided in Subsections (10)(b), (11), and 80-6-305(2), file a petition
5151 with the juvenile court.

5152 (10) (a) A prosecuting attorney may file a petition only upon reasonable belief that:
5153 (i) the charges are supported by probable cause;
5154 (ii) admissible evidence will be sufficient to support adjudication beyond a reasonable
5155 doubt; and
5156 (iii) the decision to charge is in the interests of justice.

5157 (b) Failure to pay a fine or fee may not serve as a basis for filing of a petition under
5158 Subsection (9)(b)(iii) if the minor has substantially complied with the other conditions agreed
5159 upon in accordance with Subsection (6) or conditions imposed through any other court
5160 diversion program.

5161 (11) A prosecuting attorney may not file a petition against a minor unless:
5162 (a) the prosecuting attorney has statutory authority to file the petition under Section
5163 80-6-305; and
5164 (b) (i) the minor does not qualify for a nonjudicial adjustment under Subsection (5);
5165 (ii) the minor declines a nonjudicial adjustment;
5166 (iii) the minor fails to substantially comply with the conditions agreed upon as part of
5167 the nonjudicial adjustment;
5168 (iv) the minor fails to respond to the juvenile probation officer's inquiry regarding
5169 eligibility for or an offer of a nonjudicial adjustment after being provided with notice for
5170 preliminary inquiry; or
5171 (v) the prosecuting attorney is acting under Subsection (9).

5172 (12) If the prosecuting attorney files a petition in a juvenile court, or a proceeding is
5173 commenced against a minor under Section 80-6-302, the juvenile court may refer the case to
5174 the juvenile probation officer for another offer of nonjudicial adjustment.

5175 Section 67. Section **80-6-703** is amended to read:
5176 **80-6-703. Placement of a child -- Commitment of a minor to the division --**

5177 **Limitations.**

5178 (1) (a) If a child is adjudicated for an offense under Section 80-6-701, the juvenile
5179 court may:

5180 (i) place the child in the legal custody of a relative or other suitable individual
5181 regardless of whether the minor is placed on probation under Subsection 80-6-702(1); or

5182 (ii) appoint a guardian for the child if it appears that a guardian is necessary in the
5183 interest of the child.

5184 (b) The juvenile court may not assume the function of developing foster home services
5185 in placing a child in the legal custody of a relative or other suitable individual under Subsection
5186 (1)(a).

5187 (c) (i) If the juvenile court appoints a guardian for a child under Subsection (1)(a)(ii),
5188 the juvenile court:

5189 (A) may appoint a public or private institution or agency as the guardian of the child;
5190 and

5191 (B) may not appoint a nonsecure residential placement provider for which legal
5192 custody of the child is vested.

5193 (d) In placing a child under the guardianship or legal custody of an individual or
5194 private agency or institution under Subsection (1)(a)(ii), the juvenile court:

5195 (i) shall give primary consideration to the welfare of the child; and

5196 (ii) may take into consideration the religious preferences of the child and the child's
5197 parent.

5198 (2) If a minor is adjudicated under Section 80-6-701, the juvenile court shall only
5199 commit the minor to the division and order the division to provide recommendations and
5200 services if:

5201 (a) nonresidential treatment options have been exhausted or nonresidential treatment
5202 options are not appropriate; and

5203 (b) the minor is adjudicated under this chapter for:

5204 (i) a felony;

5205 (ii) a misdemeanor when the minor has five prior misdemeanors or felony
5206 adjudications arising from separate criminal episodes; or

5207 (iii) a misdemeanor involving the use of a dangerous weapon as defined in Section

5208 ~~[76-1-601]~~ 76-1-101.5.

5209 (3) A juvenile court may not commit a minor to the division:

5210 (a) for residential observation and evaluation or residential observation and
5211 assessment;

5212 (b) for contempt of court, except to the extent permitted under Section 78A-6-353;

5213 (c) for a violation of probation;

5214 (d) for failure to pay a fine, fee, restitution, or other financial obligation;

5215 (e) for unfinished compensatory or community service hours;

5216 (f) for an infraction; or

5217 (g) for a status offense.

5218 (4) If the juvenile court commits a minor to the division, the juvenile court shall:

5219 (a) find whether the minor is being committed to the division for placement in a
5220 community-based program, secure detention under Section 80-6-704, or secure care under
5221 Section 80-6-705;

5222 (b) specify the criteria under Subsection (3) for which the juvenile court is committing
5223 the minor to the division; and

5224 (c) establish the period of time that the minor is committed to the division in
5225 accordance with Section 80-6-712.

5226 (5) (a) Except for an order for secure care under Section 80-6-705, if the juvenile court
5227 commits a minor to the division, or places the minor with an individual under this section, the
5228 juvenile court shall include in the order a date for a review and presumptive termination of the
5229 minor's case by the juvenile court in accordance with Section 80-6-712.

5230 (b) For each review of a minor's case under Subsection (5)(a), the juvenile court shall
5231 set a new date for a review and presumptive termination of the minor's case.

5232 (6) If a minor is adjudicated for an offense under Section 80-6-701, a juvenile court
5233 may not commit a minor to:

5234 (a) except as provided in Subsection (7), the Division of Child and Family Services; or

5235 (b) a correctional facility.

5236 (7) The juvenile court may not commit a minor to the Division of Child and Family
5237 Services to address the minor's ungovernable or other behavior, mental health, or disability,
5238 unless the Division of Child and Family Services:

5239 (a) engages other relevant divisions of the department in conducting an assessment of
5240 the minor and the minor's family's needs;

5241 (b) based on an assessment under Subsection (7)(a), determines that committing the
5242 minor to the Division of Child and Family Services is the least restrictive intervention for the
5243 minor that meets the minor's needs; and

5244 (c) consents to the minor being committed to the Division of Child and Family
5245 Services.

5246 (8) If a minor is committed to the division under this section, the division may not
5247 transfer custody of the minor to a correctional facility.

5248 Section 68. Section **80-6-705** is amended to read:

5249 **80-6-705. Secure care -- Limitations -- Order for therapy for parent with minor**
5250 **in secure care.**

5251 (1) If a minor is adjudicated for an offense under Section 80-6-701, the juvenile court
5252 may order the minor to secure care if the juvenile court finds that:

5253 (a) (i) the minor poses a risk of harm to others; or

5254 (ii) the minor's conduct resulted in the victim's death; and

5255 (b) the minor is adjudicated for:

5256 (i) a felony offense;

5257 (ii) a misdemeanor offense if the minor has five prior misdemeanor or felony
5258 adjudications arising from separate criminal episodes; or

5259 (iii) a misdemeanor offense involving use of a dangerous weapon as defined in Section
5260 ~~[76-1-601]~~ 76-1-101.5.

5261 (2) A juvenile court may not order a minor to secure care for:

5262 (a) contempt of court;

5263 (b) a violation of probation;

5264 (c) failure to pay a fine, fee, restitution, or other financial obligation;

5265 (d) unfinished compensatory or community service hours;

5266 (e) an infraction; or

5267 (f) a status offense.

5268 (3) The juvenile court may, on the recommendation of the division, order a parent of a
5269 minor in secure care to undergo group rehabilitation therapy under the direction of a therapist,

5270 who has supervision of the minor in secure care, or any other therapist for a period
5271 recommended by the division.

5272 Section 69. Section **80-6-712** is amended to read:

5273 **80-6-712. Time periods for supervision of probation or placement -- Termination**
5274 **of continuing jurisdiction.**

5275 (1) If the juvenile court places a minor on probation under Section 80-6-702, the
5276 juvenile court shall establish a period of time for supervision for the minor that is:

5277 (a) if the minor is placed on intake probation, no more than three months; or
5278 (b) if the minor is placed on formal probation, from four to six months, but may not
5279 exceed six months.

5280 (2) (a) If the juvenile court commits a minor to the division under Section 80-6-703,
5281 and the minor's case is under the jurisdiction of the court, the juvenile court shall establish:

5282 (i) for a minor placed out of the home, a period of custody from three to six months,
5283 but may not exceed six months; and

5284 (ii) for aftercare services if the minor was placed out of the home, a period of
5285 supervision from three to four months, but may not exceed four months.

5286 (b) A minor may be supervised for aftercare under Subsection (2)(a)(ii) in the home of
5287 a qualifying relative or guardian, or at an independent living program contracted or operated by
5288 the division.

5289 (3) If the juvenile court orders a minor to secure care, the authority shall:

5290 (a) have jurisdiction over the minor's case; and
5291 (b) apply the provisions of Part 8, Commitment and Parole.

5292 (4) (a) In accordance with Section 80-6-711 and Subsections (1) and (2), the juvenile
5293 court shall terminate continuing jurisdiction over a minor's case at the end of the time period
5294 described in Subsection (1) for probation, or Subsection (2) for commitment to the division,
5295 unless:

5296 (i) termination would interrupt the completion of the treatment program determined to
5297 be necessary by the results of a validated risk and needs assessment under Section 80-6-606;

5298 (ii) the minor commits a new misdemeanor or felony offense;

5299 (iii) community or compensatory service hours have not been completed;

5300 (iv) there is an outstanding fine; or

- 5301 (v) there is a failure to pay restitution in full.
- 5302 (b) The juvenile court shall determine whether a minor has completed a treatment
5303 program under Subsection (4)(a)(i) by considering:
- 5304 (i) the recommendations of the licensed service provider for the treatment program;
5305 (ii) the minor's record in the treatment program; and
5306 (iii) the minor's completion of the goals of the treatment program.
- 5307 (5) Subject to Subsection (8), if one of the circumstances under Subsection (4) exists
5308 the juvenile court may extend supervision for the time needed to address the specific
5309 circumstance.
- 5310 (6) If a circumstance under Subsection (4)(a)(iii), (iv), or (v) exists, the juvenile court
5311 may extend supervision for no more than three months.
- 5312 (7) If the juvenile court extends supervision under this section, the grounds for the
5313 extension and the length of any extension shall be recorded in the court records and tracked in
5314 the data system used by the Administrative Office of the Courts and the division.
- 5315 (8) For a minor who is under the continuing jurisdiction of the juvenile court and
5316 whose supervision is extended under Subsection (4)(a)(iii), (iv), or (v), supervision may only
5317 be extended as intake probation.
- 5318 (9) If a minor leaves supervision without authorization for more than 24 hours, the
5319 supervision period for the minor shall toll until the minor returns.
- 5320 (10) This section does not apply to any minor adjudicated under this chapter for:
- 5321 (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
5322 (b) Section 76-5-202, aggravated murder or attempted aggravated murder;
5323 (c) Section 76-5-203, murder or attempted murder;
5324 (d) Section 76-5-205, manslaughter;
5325 (e) Section 76-5-206, negligent homicide;
5326 (f) Section 76-5-207, automobile homicide;
5327 (g) Section 76-5-207.5, automobile homicide involving handheld wireless
5328 communication device;
- 5329 (h) Section 76-5-208, child abuse homicide;
5330 (i) Section 76-5-209, homicide by assault;
5331 (j) Section 76-5-302, aggravated kidnapping;

- 5332 (k) Section 76-5-405, aggravated sexual assault;
- 5333 (l) a felony violation of Section 76-6-103, aggravated arson;
- 5334 (m) Section 76-6-203, aggravated burglary;
- 5335 (n) Section 76-6-302, aggravated robbery;
- 5336 (o) Section 76-10-508.1, felony discharge of a firearm;
- 5337 (p) (i) an offense other than an offense listed in Subsections (10)(a) through (o)
- 5338 involving the use of a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5, that is a
- 5339 felony; and
- 5340 (ii) the minor has been previously adjudicated or convicted of an offense involving the
- 5341 use of a dangerous weapon; or
- 5342 (q) a felony offense other than an offense listed in Subsections (10)(a) through (p) and
- 5343 the minor has been previously committed to the division for secure care.
- 5344 Section 70. Section **80-6-804** is amended to read:
- 5345 **80-6-804. Review and termination of secure care.**
- 5346 (1) If a juvenile offender is ordered to secure care under Section 80-6-705, the juvenile
- 5347 offender shall appear before the authority within 45 days after the day on which the juvenile
- 5348 offender is ordered to secure care for review of a treatment plan and to establish parole release
- 5349 guidelines.
- 5350 (2) (a) If a juvenile offender is ordered to secure care under Section 80-6-705, the
- 5351 authority shall set a presumptive term of commitment for the juvenile offender from three to
- 5352 six months, but the presumptive term may not exceed six months.
- 5353 (b) The authority shall release the juvenile offender on parole at the end of the
- 5354 presumptive term of commitment unless:
- 5355 (i) termination would interrupt the completion of a treatment program determined to be
- 5356 necessary by the results of a validated risk and needs assessment under Section 80-6-606; or
- 5357 (ii) the juvenile offender commits a new misdemeanor or felony offense.
- 5358 (c) The authority shall determine whether a juvenile offender has completed a
- 5359 treatment program under Subsection (2)(b)(i) by considering:
- 5360 (i) the recommendations of the licensed service provider for the treatment program;
- 5361 (ii) the juvenile offender's record in the treatment program; and
- 5362 (iii) the juvenile offender's completion of the goals of the treatment program.

5363 (d) The authority may extend the length of commitment and delay parole release for the
5364 time needed to address the specific circumstance if one of the circumstances under Subsection
5365 (2)(b) exists.

5366 (e) The authority shall:

5367 (i) record the length of the extension and the grounds for the extension; and

5368 (ii) report annually the length and grounds of extension to the commission.

5369 (f) Records under Subsection (2)(e) shall be tracked in the data system used by the
5370 juvenile court and the division.

5371 (3) (a) If a juvenile offender is committed to secure care, the authority shall set a
5372 presumptive term of parole supervision, including aftercare services, from three to four months,
5373 but the presumptive term may not exceed four months.

5374 (b) If the authority determines that a juvenile offender is unable to return home
5375 immediately upon release, the juvenile offender may serve the term of parole in the home of a
5376 qualifying relative or guardian or at an independent living program contracted or operated by
5377 the division.

5378 (c) The authority shall release a juvenile offender from parole and terminate the
5379 authority's jurisdiction at the end of the presumptive term of parole, unless:

5380 (i) termination would interrupt the completion of a treatment program that is
5381 determined to be necessary by the results of a validated risk and needs assessment under
5382 Section 80-6-606;

5383 (ii) the juvenile offender commits a new misdemeanor or felony offense; or

5384 (iii) restitution has not been completed.

5385 (d) The authority shall determine whether a juvenile offender has completed a
5386 treatment program under Subsection (2)(c)(i) by considering:

5387 (i) the recommendations of the licensed service provider;

5388 (ii) the juvenile offender's record in the treatment program; and

5389 (iii) the juvenile offender's completion of the goals of the treatment program.

5390 (e) If one of the circumstances under Subsection (3)(c) exists, the authority may delay
5391 parole release only for the time needed to address the specific circumstance.

5392 (f) The authority shall:

5393 (i) record the grounds for extension of the presumptive length of parole and the length

5394 of the extension; and

5395 (ii) report annually the extension and the length of the extension to the commission.

5396 (g) Records under Subsection (3)(f) shall be tracked in the data system used by the

5397 juvenile court and the division.

5398 (h) If a juvenile offender leaves parole supervision without authorization for more than

5399 24 hours, the term of parole shall toll until the juvenile offender returns.

5400 (4) Subsections (2) and (3) do not apply to a juvenile offender committed to secure

5401 care for:

5402 (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

5403 (b) Section 76-5-202, aggravated murder or attempted aggravated murder;

5404 (c) Section 76-5-203, murder or attempted murder;

5405 (d) Section 76-5-205, manslaughter;

5406 (e) Section 76-5-206, negligent homicide;

5407 (f) Section 76-5-207, automobile homicide;

5408 (g) Section 76-5-207.5, automobile homicide involving a handheld wireless

5409 communication device;

5410 (h) Section 76-5-208, child abuse homicide;

5411 (i) Section 76-5-209, homicide by assault;

5412 (j) Section 76-5-302, aggravated kidnapping;

5413 (k) Section 76-5-405, aggravated sexual assault;

5414 (l) a felony violation of Section 76-6-103, aggravated arson;

5415 (m) Section 76-6-203, aggravated burglary;

5416 (n) Section 76-6-302, aggravated robbery;

5417 (o) Section 76-10-508.1, felony discharge of a firearm;

5418 (p) (i) an offense other than an offense listed in Subsections (4)(a) through (o)

5419 involving the use of a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5, that is a

5420 felony; and

5421 (ii) the juvenile offender has been previously adjudicated or convicted of an offense

5422 involving the use of a dangerous weapon, as defined in Section ~~[76-1-601]~~ 76-1-101.5; or

5423 (q) an offense other than an offense listed in Subsections (4)(a) through (p) and the

5424 juvenile offender has been previously committed to the division for secure care.

5425 (5) (a) The division may continue to have responsibility over a juvenile offender, who
5426 is discharged under this section from parole, to participate in a specific educational or
5427 rehabilitative program:

5428 (i) until the juvenile offender is:

5429 (A) if the juvenile offender is a youth offender, 21 years old; or

5430 (B) if the juvenile offender is a serious youth offender, 25 years old; and

5431 (ii) under an agreement by the division and the juvenile offender that the program has
5432 certain conditions.

5433 (b) The division and the juvenile offender may terminate participation in a program
5434 under Subsection (5)(a) at any time.

5435 (c) The division shall offer an educational or rehabilitative program before a juvenile
5436 offender's discharge date in accordance with this section.

5437 (d) A juvenile offender may request the services described in this Subsection (5), even
5438 if the offender has been previously declined services or services were terminated for
5439 noncompliance.

5440 (e) Notwithstanding Subsection (5)(c), the division:

5441 (i) shall consider a request by a juvenile offender under Subsection (5)(d) for the
5442 services described in this Subsection (5) for up to 365 days after the juvenile offender's
5443 effective date of discharge, even if the juvenile offender has previously declined services or
5444 services were terminated for noncompliance; and

5445 (ii) may reach an agreement with the juvenile offender to provide the services
5446 described in this Subsection (5) until the juvenile offender is:

5447 (A) if the juvenile offender is a youth offender, 21 years old; or

5448 (B) if the juvenile offender is a serious youth offender, 25 years old.

5449 (f) The division and the juvenile offender may terminate an agreement for services
5450 under this Subsection (5) at any time.

5451 Section 71. **Revisor instructions.**

5452 The Legislature intends that the Office of Legislative Research and General Counsel, in
5453 preparing the Utah Code database for publication, not enroll this bill if H.B. _____, Criminal
5454 Code Recodification, does not pass.