

Prostitution Offense Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill reorganizes and amends provisions concerning prostitution and related offenses.

Highlighted Provisions:

This bill:

- adds and modifies definitions;
- reorganizes provisions concerning prostitution and related offenses;
- for clarity, revises names of certain prostitution-related offenses;
- for clarity, provides that a child may not be prosecuted for engaging in sexual solicitation or prostitution;
- separates existing prostitution-related offenses into separate offenses based on the ages of the individuals involved;
- provides new penalties for child offenders of certain prostitution-related offenses that are based on the age of the child offender;
- for clarity, revises the offense of engaging in prostitution or sexual solicitation as an HIV positive offender;
- adds several prostitution-related offenses to the list of offenses for which a minor may not receive a nonjudicial adjustment;
- includes a coordination clause to explain that amendments to certain sections in this bill will supersede amendments to those sections in H.B. 21, Criminal Code Recodification and Cross References, if both bills pass and become law; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

28 This bill provides a coordination clause.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **10-8-41.5**, as last amended by Laws of Utah 2019, Chapter 303
32 **26B-2-120**, as last amended by Laws of Utah 2024, Chapter 234
33 **26B-7-205**, as renumbered and amended by Laws of Utah 2023, Chapter 308
34 **76-1-301**, as last amended by Laws of Utah 2024, Chapter 96
35 **76-2-304.5**, as last amended by Laws of Utah 2024, Chapter 140
36 **76-3-203.1**, as last amended by Laws of Utah 2024, Chapter 96
37 **76-3-203.5**, as last amended by Laws of Utah 2024, Chapters 96, 179
38 **76-10-1602**, as last amended by Laws of Utah 2024, Chapter 96
39 **77-23a-8**, as last amended by Laws of Utah 2024, Chapters 96, 301
40 **77-38-3**, as last amended by Laws of Utah 2024, Chapter 240
41 **77-41-102**, as last amended by Laws of Utah 2024, Chapter 234
42 **77-41-106**, as last amended by Laws of Utah 2024, Chapter 234
43 **78B-6-1101**, as last amended by Laws of Utah 2021, Chapter 207
44 **78B-6-1107**, as last amended by Laws of Utah 2021, Chapter 207
45 **78B-9-104**, as last amended by Laws of Utah 2023, Chapters 111, 448
46 **80-2-301**, as last amended by Laws of Utah 2024, Chapters 240, 307
47 **80-6-303.5**, as last amended by Laws of Utah 2024, Chapter 301
48 **80-6-1002**, as last amended by Laws of Utah 2023, Chapter 115

49 ENACTS:

50 **76-5d-201**, Utah Code Annotated 1953
51 **76-5d-204**, Utah Code Annotated 1953
52 **76-5d-205**, Utah Code Annotated 1953
53 **76-5d-210**, Utah Code Annotated 1953
54 **76-5d-211**, Utah Code Annotated 1953

55 RENUMBERS AND AMENDS:

56 **76-5d-101**, (Renumbered from 76-10-1301, as last amended by Laws of Utah 2022,
57 Chapter 124)
58 **76-5d-102**, (Renumbered from 76-10-1307, as enacted by Laws of Utah 1991,
59 Chapter 107)
60 **76-5d-103**, (Renumbered from 76-10-1311, as last amended by Laws of Utah 2023,
61 Chapters 184, 330)

62 **76-5d-104**, (Renumbered from 76-10-1312, as last amended by Laws of Utah 2023,
63 Chapter 330)

64 **76-5d-105**, (Renumbered from 76-10-1314, as enacted by Laws of Utah 1993,
65 Chapter 179)

66 **76-5d-106**, (Renumbered from 76-10-1315, as last amended by Laws of Utah 2022,
67 Chapters 124, 181 and 335)

68 **76-5d-202**, (Renumbered from 76-10-1302, as last amended by Laws of Utah 2023,
69 Chapter 111)

70 **76-5d-203**, (Renumbered from 76-10-1303, as last amended by Laws of Utah 2024,
71 Chapter 140)

72 **76-5d-206**, (Renumbered from 76-10-1304, as last amended by Laws of Utah 2018,
73 Chapter 308)

74 **76-5d-207**, (Renumbered from 76-10-1305, as last amended by Laws of Utah 2018,
75 Chapter 308)

76 **76-5d-208**, (Renumbered from 76-10-1306, as last amended by Laws of Utah 2022,
77 Chapter 181)

78 **76-5d-209**, (Renumbered from 76-10-1313, as last amended by Laws of Utah 2022,
79 Chapters 124, 181 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 124)

80 **76-5d-212**, (Renumbered from 76-10-1309, as last amended by Laws of Utah 2011,
81 Chapter 70)

82 **REPEALS:**

83 **76-10-1308**, as enacted by Laws of Utah 1991, Chapter 107

84 **76-10-1310**, as last amended by Laws of Utah 2011, Chapter 70

85 **Utah Code Sections affected by Coordination Clause:**

86 **26B-7-205**, as renumbered and amended by Laws of Utah 2023, Chapter 308

87 **76-2-304.5**, as last amended by Laws of Utah 2024, Chapter 140

88 **76-5d-201**, Utah Code Annotated 1953

89 **76-5d-204**, Utah Code Annotated 1953

90 **76-5d-210**, Utah Code Annotated 1953

91 **76-10-1301**, (Renumbered from 76-10-1301, as last amended by Laws of Utah 2022,
92 Chapter 124)

93 **76-10-1307**, (Renumbered from 76-10-1307, as enacted by Laws of Utah 1991,
94 Chapter 107)

95 **76-10-1309**, (Renumbered from 76-10-1309, as last amended by Laws of Utah 2011,

Chapter 70)

76-10-1311, (Renumbered from 76-10-1311, as last amended by Laws of Utah 2023,
Chapters 184, 330)

76-10-1312, (Renumbered from 76-10-1312, as last amended by Laws of Utah 2023,
Chapter 330)

76-10-1313, (Renumbered from 76-10-1313, as last amended by Laws of Utah 2022,
Chapters 124, 181 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 124)

76-10-1314, (Renumbered from 76-10-1314, as enacted by Laws of Utah 1993,
Chapter 179)

80-2-301, as last amended by Laws of Utah 2024, Chapters 240, 307

80-6-1002, as last amended by Laws of Utah 2023, Chapter 115

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

Section 1. Section **10-8-41.5** is amended to read:

10-8-41.5 . Regulation of sexually oriented business.

(1) As used in this section:

(a) "Adult service" means dancing, serving food or beverages, modeling, posing,
wrestling, singing, reading, talking, listening, or other performances or activities
conducted by a nude or partially denuded individual for compensation.

(b) "Compensation" means:

- (i) a salary;
- (ii) a fee;
- (iii) a commission;
- (iv) employment;
- (v) a profit; or
- (vi) other pecuniary gain.

(c)(i) "Escort" means a person who, for compensation, dates, socializes with, visits,
consorts with, or accompanies another, or offers to date, consort with, socialize
with, visit, or accompany another:

(A) to a social affair, entertainment, or a place of amusement; or

(B) within a place of public or private resort, a business or commercial
establishment, or a private quarter.

(ii) "Escort" does not mean a person who provides business or personal services,
including:

- 130 (A) a licensed private nurse;
- 131 (B) an aide for the elderly or a person with a disability;
- 132 (C) a social secretary or similar service personnel whose relationship with a patron
- 133 is characterized by a contractual relationship having a duration of 12 hours or
- 134 more and who provides a service not principally characterized as dating or
- 135 socializing; or
- 136 (D) a person who provides services such as singing telegrams, birthday greetings,
- 137 or similar activities that are characterized by an appearance in a public place,
- 138 contracted for by a party other than the person for whom the service is being
- 139 performed, and of a duration not to exceed one hour.
- 140 (d) "Escort service" means any person who furnishes or arranges for an escort to
- 141 accompany another individual for compensation.
- 142 (e) "Nude or partially denuded individual" means an individual with any of the
- 143 following less than completely and opaquely covered:
- 144 (i) genitals;
- 145 (ii) the pubic region; or
- 146 (iii) a female breast below a point immediately above the top of the areola.
- 147 (f)(i) "Sexually oriented business" means a business at which any nude or partially
- 148 denuded individual, regardless of whether the nude or partially denuded individual
- 149 is an employee of the sexually oriented business or an independent contractor,
- 150 performs any service for compensation.
- 151 (ii) "Sexually oriented business" includes:
- 152 (A) an escort service; or
- 153 (B) an adult service.
- 154 (2) A person employed in a sexually oriented business may not work in a municipality if:
- 155 (a) the municipality requires that a person employed in a sexually oriented business
- 156 obtain an individual license; and
- 157 (b) the person has not obtained an individual license from the municipality.
- 158 (3) A business entity that conducts a sexually oriented business may not conduct business
- 159 in a municipality if:
- 160 (a) the municipality requires that a sexually oriented business obtain a license; and
- 161 (b) the business entity has not obtained a license from the municipality.
- 162 (4)(a) A violation of this section by an individual who is at least 18 years old is a class A
- 163 misdemeanor.

(b) A person charged under this section may not also be charged under Section [76-10-1302] 76-5d-202, Engaging in prostitution.

Section 2. Section **26B-2-120** is amended to read:

26B-2-120 . Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a)(i) "Applicant" means an individual who is associated with a certification,

contract, or licensee with the department under this part and has direct access,

including:

(A) an adoptive parent or prospective adoptive parent, including an applicant for an adoption in accordance with Section 78B-6-128;

(B) a foster parent or prospective foster parent;

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

(D) an individual who transports a child for a youth transportation company;

(E) an individual who provides certified peer support, as defined in Section 26B-5-610;

(F) an individual who provides peer supports, has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder;

(G) an individual who has lived experience with the services provided by the department, and uses that lived experience to provide support, guidance, or services to promote resiliency and recovery;

(H) an individual who is identified as a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in the practice of mental health therapy, as defined in Section 58-60-102;

(I) an individual, other than the child or vulnerable adult receiving the service, who is 12 years old or older and resides in a home, that is licensed or certified by the division;

(J) an individual who is 12 years old or older and is associated with a certification, contract, or licensee with the department under this part and has or will likely have direct access;

(K) a foster home licensee that submits an application for an annual background screening as required by Subsection 26B-2-105(4)(d)(iii); or

(L) a short-term relief care provider.

(ii) "Applicant" does not include:

(A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services;

(B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services;

(C) a parent of a person receiving services from the Division of Services for People with Disabilities, if the parent provides direct care to and resides with the person, including if the parent provides direct care to and resides with the person pursuant to a court order; or

(D) an individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule adopted by the Department of Health and Human Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and who is not a program director or a member, as defined by Section 26B-2-105, of the program.

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

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

(d) "Criminal finding" means a record of:

(i) an arrest for a criminal offense;

(ii) a warrant for a criminal arrest;

(iii) charges for a criminal offense; or

(iv) a criminal conviction.

(e) "Direct access" means that an individual has, or likely will have:

(i) contact with or access to a child or vulnerable adult by which the individual will have the opportunity for personal communication or touch with the child or vulnerable adult; or

(ii) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parent or legal guardian, or the vulnerable adult.

(f)(i) "Direct access qualified" means that the applicant has an eligible determination by the office within the license and renewal time period; and

(ii) no more than 180 days have passed since the date on which the applicant's association with a certification, contract, or licensee with the department expires.

(g) "Incidental care" means occasional care, not in excess of five hours per week and

- 232 never overnight, for a foster child.
- 233 (h) "Licensee" means an individual or a human services program licensed by the
234 division.
- 235 (i) "Non-criminal finding" means a record maintained in:
- 236 (i) the Division of Child and Family Services' Management Information System
237 described in Section 80-2-1001;
- 238 (ii) the Division of Child and Family Services' Licensing Information System
239 described in Section 80-2-1002;
- 240 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
241 exploitation database described in Section 26B-6-210;
- 242 (iv) juvenile court arrest, adjudication, and disposition records;
- 243 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,
244 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
245 offender registry; or
- 246 (vi) a state child abuse or neglect registry.
- 247 (j) "Office" means the Office of Background Processing within the department.
- 248 (k) "Personal identifying information" means:
- 249 (i) current name, former names, nicknames, and aliases;
- 250 (ii) date of birth;
- 251 (iii) physical address and email address;
- 252 (iv) telephone number;
- 253 (v) driver license or other government-issued identification;
- 254 (vi) social security number;
- 255 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
256 specified by the office; and
- 257 (viii) other information specified by the office by rule made in accordance with Title
258 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 259 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
260 following to the office:
- 261 (a) personal identifying information;
- 262 (b) a fee established by the office under Section 63J-1-504;
- 263 (c) a disclosure form, specified by the office, for consent for:
- 264 (i) an initial background check upon association with a certification, contract, or
265 licensee with the department;

- 266 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
267 certification, contract, or licensee with the department for 180 days;
- 268 (iii) a background check when the office determines that reasonable cause exists; and
- 269 (iv) retention of personal identifying information, including fingerprints, for
270 monitoring and notification as described in Subsections (3)(c) and (4);
- 271 (d) if an applicant resided outside of the United States and its territories during the five
272 years immediately preceding the day on which the information described in
273 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
274 whether the applicant was convicted of a crime during the time that the applicant
275 resided outside of the United States or its territories; and
- 276 (e) an application showing an applicant's association with a certification, contract, or a
277 licensee with the department, for the purpose of the office tracking the direct access
278 qualified status of the applicant, which expires 180 days after the date on which the
279 applicant is no longer associated with a certification, contract, or a licensee with the
280 department.
- 281 (3) The office:
- 282 (a) shall perform the following duties as part of a background check of an applicant
283 before the office grants or denies direct access qualified status to an applicant:
- 284 (i) check state and regional criminal background databases for the applicant's
285 criminal history by:
- 286 (A) submitting personal identifying information to the bureau for a search; or
- 287 (B) using the applicant's personal identifying information to search state and
288 regional criminal background databases as authorized under Section 53-10-108;
- 289 (ii) submit the applicant's personal identifying information and fingerprints to the
290 bureau for a criminal history search of applicable national criminal background
291 databases;
- 292 (iii) search the Division of Child and Family Services' Licensing Information System
293 described in Section 80-2-1002;
- 294 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title
295 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national
296 sex offender registry for an applicant 18 years old or older;
- 297 (v) if the applicant is associated with a licensee for a prospective foster or adoptive
298 parent, search the Division of Child and Family Services' Management
299 Information System described in Section 80-2-1001;

- (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and
- (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;
- (b) may conduct all or portions of a background check in connection with determining whether an applicant is direct access qualified, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (i) for an annual renewal; or
- (ii) when the office determines that reasonable cause exists;
- (c) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
- (d) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant is associated with more than one certification, contract, or licensee with the department;
- (e) shall notify the bureau when a direct access qualified individual has not been associated with a certification, contract, or licensee with the department for a period of 180 days;
- (f) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);
- (g) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any applicant working in a congregate care program, shall:
- (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and
- (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the application is submitted to the office; and

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

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

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

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

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

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

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

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

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

(e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice that an individual who has direct access qualified status will no longer be associated with a certification, contract, or licensee with the department, the bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access

qualified status to an applicant who, within three years from the date on which the office conducts the background check, was convicted of:

- (i) a felony or misdemeanor involving conduct that constitutes any of the following:
 - (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
 - (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;
 - (C) sexual solicitation or prostitution;
 - (D) a violent offense committed in the presence of a child, as described in Section 76-3-203.10;
 - (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;
 - (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;
 - (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;
 - (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;
 - (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;
 - (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass Destruction;
 - (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
 - (L) aggravated arson, as described in Section 76-6-103;
 - (M) aggravated burglary, as described in Section 76-6-203;
 - (N) aggravated exploitation of prostitution, as described in Section ~~76-10-1306~~ 76-5d-208;
 - (O) aggravated robbery, as described in Section 76-6-302;
 - (P) endangering persons in a human services program, as described in Section 26B-2-113;
 - (Q) failure to report, as described in Section 80-2-609;
 - (R) identity fraud crime, as described in Section 76-6-1102;
 - (S) leaving a child unattended in a motor vehicle, as described in Section 76-10-2202;
 - (T) riot, as described in Section 76-9-101;
 - (U) sexual battery, as described in Section 76-9-702.1; or
 - (V) threatening with or using a dangerous weapon in a fight or quarrel, as described in Section 76-10-506; or

(ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).

(b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider or a mental health professional, if the applicant provides services in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

(ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in accordance with Subsection (7).

(c) The office shall deny direct access qualified status to an applicant if the office finds that a court order prohibits the applicant from having direct access to a child or vulnerable adult.

(6) The office shall conduct a comprehensive review of an applicant's background check if the applicant:

(a) has a felony or class A misdemeanor conviction that is more than three years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a);

(b) has a felony charge or conviction that is no more than 10 years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);

(c) has a felony charge or conviction that is more than 10 years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of the felony charge or conviction;

(d) has a class B misdemeanor or class C misdemeanor conviction that is more than three years and no more than 10 years from the date on which the office conducts the background check for an offense described in Subsection (5)(a);

(e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10 years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a), with criminal or non-criminal findings after the date of conviction;

(f) has a misdemeanor charge or conviction that is no more than three years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);

- (g) has a misdemeanor charge or conviction that is more than three years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of charge or conviction;
- (h) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5)(a);
- (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;
- (j) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
 - (i) under 28 years old; or
 - (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);
- (k) has a pending charge for an offense described in Subsection (5)(a);
- (l) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section ;
- (m) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002, with criminal or non-criminal findings after the date of the listing;
- (n) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (o) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- (p) has a substantiated finding that occurred no more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504[-]; or

(q) has a substantiated finding that occurred more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of the listing.

(7)(a) The comprehensive review shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical, mental, or financial harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;

(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and

(ix) if the background check of an applicant is being conducted for the purpose of giving direct access qualified status to an applicant seeking a position in a congregate care program or to become a prospective foster or adoptive parent, any listing in the Division of Child and Family Services' Management Information System described in Section 80-2-1001.

(b) At the conclusion of the comprehensive review, the office shall deny direct access qualified status to an applicant if the office finds the approval would likely create a risk of harm to a child or vulnerable adult.

(8) The office shall grant direct access qualified status to an applicant who is not denied under this section.

(9)(a) The office may conditionally grant direct access qualified status to an applicant, for a maximum of 60 days after the day on which the office sends written notice, without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal

- 504 background databases; and
- 505 (ii) would otherwise grant direct access qualified status to the applicant under this
- 506 section.
- 507 (b) The office may conditionally grant direct access qualified status to an applicant, for a
- 508 maximum of one year after the day on which the office sends written notice, without
- 509 requiring that the applicant be directly supervised if the office:
- 510 (i) is awaiting the results of an out-of-state registry for providers other than foster and
- 511 adoptive parents; and
- 512 (ii) would otherwise grant direct access qualified status to the applicant under this
- 513 section.
- 514 (c) Upon receiving the results of the criminal history search of a national criminal
- 515 background database, the office shall grant or deny direct access qualified status to
- 516 the applicant in accordance with this section.
- 517 (10)(a) Each time an applicant is associated with a licensee, the department shall review
- 518 the current status of the applicant's background check to ensure the applicant is still
- 519 eligible for direct access qualified status in accordance with this section.
- 520 (b) A licensee may not permit an individual to have direct access to a child or a
- 521 vulnerable adult without being directly supervised unless:
- 522 (i) the individual is the parent or guardian of the child, or the guardian of the
- 523 vulnerable adult;
- 524 (ii) the individual is approved by the parent or guardian of the child, or the guardian
- 525 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 526 (iii) the individual is only permitted to have direct access to a vulnerable adult who
- 527 voluntarily invites the individual to visit; or
- 528 (iv) the individual only provides incidental care for a foster child on behalf of a foster
- 529 parent who has used reasonable and prudent judgment to select the individual to
- 530 provide the incidental care for the foster child.
- 531 (c) Notwithstanding any other provision of this section, an applicant who is denied direct
- 532 access qualified status shall not have direct access to a child or vulnerable adult
- 533 unless the office grants direct access qualified status to the applicant through a
- 534 subsequent application in accordance with this section.
- 535 (11) If the office denies direct access qualified status to an applicant, the applicant may
- 536 request a hearing in the department's Office of Administrative Hearings to challenge the
- 537 office's decision.

- (12)(a) This Subsection (12) applies to an applicant associated with a certification, contract, or licensee serving adults only.
- (b) A program director or a member, as defined in Section 26B-2-105, of the licensee shall comply with this section.
- (c) The office shall conduct a comprehensive review for an applicant if:
- (i) the applicant is seeking a position:
 - (A) as a peer support provider;
 - (B) as a mental health professional; or
 - (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and
 - (ii) within three years from the date on which the office conducts the background check, the applicant has a felony or misdemeanor charge or conviction or a non-criminal finding.
- (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate care program, an applicant seeking to provide a prospective foster home, an applicant seeking to provide a prospective adoptive home, and each adult living in the home of the prospective foster or prospective adoptive home.
- (b) As federally required, the office shall:
- (i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
 - (ii) except for applicants seeking a position in a congregate care program, check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster or adoptive home resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.
- (c) The requirements described in Subsection (13)(b) do not apply to the extent that:
- (i) federal law or rule permits otherwise; or
 - (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
 - (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsections (5), (6), and (7).

(d) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status if the applicant has been convicted of:

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

(A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

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

(D) intentional aggravated abuse of a vulnerable adult, as described in Section 76-5-111;

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

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

(G) murder, as described in Section 76-5-203;

(H) manslaughter, as described in Section 76-5-205;

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

(J) homicide by assault, as described in Section 76-5-209;

(K) kidnapping, as described in Section 76-5-301;

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

(M) aggravated kidnapping, as described in Section 76-5-302;

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

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

(P) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual Exploitation Act;

(Q) aggravated exploitation of a minor, as described in Section 76-5b-201.1;

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

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

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

(U) lewdness involving a child, as described in Section 76-9-702.5;

(V) incest, as described in Section 76-7-102; or

(W) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would

- 606 constitute a violation of an offense described in Subsection (13)(d)(i).
- 607 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 608 qualified status to an applicant if, within the five years from the date on which the
- 609 office conducts the background check, the applicant was convicted of a felony
- 610 involving conduct that constitutes a violation of any of the following:
- 611 (i) aggravated assault, as described in Section 76-5-103;
- 612 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 613 (iii) mayhem, as described in Section 76-5-105;
- 614 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 615 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 616 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 617 Act;
- 618 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 619 Precursor Act; or
- 620 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 621 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
- 622 a comprehensive review of an applicant's background check under this section if the
- 623 applicant:
- 624 (i) has an offense described in Subsection (5)(a);
- 625 (ii) has an infraction conviction entered on a date that is no more than three years
- 626 before the date on which the office conducts the background check;
- 627 (iii) has a listing in the Division of Child and Family Services' Licensing Information
- 628 System described in Section 80-2-1002;
- 629 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
- 630 neglect, or exploitation database described in Section 26B-2-210;
- 631 (v) has a substantiated finding of severe child abuse or neglect under Section
- 632 80-3-404 or 80-3-504; or
- 633 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
- 634 substantiated or supported finding of a severe type of child abuse or neglect, as
- 635 defined in Section 80-1-102.
- 636 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 637 office may make rules, consistent with this part, to:
- 638 (a) establish procedures for, and information to be examined in, the comprehensive
- 639 review described in Subsections (6), (7), and (13); and

- (b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services for purposes of granting or denying direct access qualified status to an applicant.

The following section is affected by a coordination clause at the end of this bill.

Section 3. Section **26B-7-205** is amended to read:

26B-7-205 . Willful introduction of communicable disease a misdemeanor.

Any person who willfully or knowingly introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section ~~[76-10-1309]~~ 76-5d-212.

Section 4. Section **76-1-301** is amended to read:

76-1-301 . Offenses for which prosecution may be commenced at any time.

(1) As used in this section:

- (a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202(2)(a)(iv) or (v) or Subsection 76-5-202(2)(b).
- (b) "Predicate offense" means an offense described in Subsection 76-5-203(1)(a) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.

(2) Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:

- (a) an offense classified as a capital felony under Section 76-3-103;
- (b) aggravated murder under Section 76-5-202;
- (c) murder under Section 76-5-203;
- (d) manslaughter under Section 76-5-205;
- (e) child abuse homicide under Section 76-5-208;
- (f) aggravated kidnapping under Section 76-5-302;
- (g) child kidnapping under Section 76-5-301.1;
- (h) rape under Section 76-5-402;
- (i) rape of a child under Section 76-5-402.1;
- (j) object rape under Section 76-5-402.2;
- (k) object rape of a child under Section 76-5-402.3;
- (l) forcible sodomy under Section 76-5-403;

- (m) sodomy on a child under Section 76-5-403.1;
- (n) sexual abuse of a child under Section 76-5-404.1;
- (o) aggravated sexual abuse of a child under Section 76-5-404.3;
- (p) aggravated sexual assault under Section 76-5-405;
- (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
- (r) aggravated human trafficking under Section 76-5-310;
- (s) aggravated human smuggling under Section 76-5-310.1;
- (t) aggravated exploitation of prostitution involving a child under Section [76-10-1306]
76-5d-208; or
- (u) human trafficking of a child under Section 76-5-308.5.

The following section is affected by a coordination clause at the end of this bill.

Section 5. Section **76-2-304.5** is amended to read:

76-2-304.5 . Mistake as to victim's age not a defense.

- (1) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 14 years old or older at the time of the alleged offense or was unaware of the victim's true age:
 - (a) child kidnapping, Section 76-5-301.1;
 - (b) rape of a child, Section 76-5-402.1;
 - (c) object rape of a child, Section 76-5-402.3;
 - (d) sodomy on a child, Section 76-5-403.1;
 - (e) sexual abuse of a child, Section 76-5-404.1;
 - (f) aggravated sexual abuse of a child, Section 76-5-404.3;
 - (g) unlawful kissing of a child, Section 76-5-416.2; or
 - (h) an attempt to commit an offense listed in Subsections (1)(a) through (1)(g).
- (2) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 16 years old or older at the time of the alleged offense or was unaware of the victim's true age:
 - (a) unlawful sexual activity with a minor, Section 76-5-401;
 - (b) sexual abuse of a minor, Section 76-5-401.1; or
 - (c) an attempt to commit an offense listed in Subsection (2)(a) or (2)(b).
- (3) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 18 years old or older at the time of the alleged offense or was unaware of the victim's true age:
 - (a) human trafficking of a child, Section 76-5-308.5;

- (b) aggravated human trafficking, Section 76-5-310;
- (c) aggravated human smuggling, Section 76-5-310.1;
- (d) unlawful sexual conduct with a minor, Subsection 76-5-401.2(2)(a)(ii);
- (e) patronizing [~~a prostitute, Section 76-10-1303~~] a prostituted individual who is a child, Section 76-5d-204;
- (f) aggravated exploitation of prostitution, Section [~~76-10-1306~~] 76-5d-208; or
- (g) sexual solicitation[~~, Section 76-10-1313~~] by an actor offering compensation to a child in exchange for sexual activity, Section 76-5d-211.

Section 6. Section **76-3-203.1** is amended to read:

76-3-203.1 . Offenses committed in concert with three or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.

(1) As used in this section:

(a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.

(b) "In concert with three or more persons" means:

(i) the defendant was aided or encouraged by at least three other persons in committing the offense and was aware of this aid or encouragement; and

(ii) each of the other persons:

(A) was physically present; and

(B) participated as a party to any offense listed in Subsection (4), (5), or (6).

(c) "In concert with three or more persons" means, regarding intent:

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.

(2) A person who commits any offense in accordance with this section is subject to an enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a reasonable doubt that the person acted:

(a) in concert with three or more persons;

(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the

enhanced penalties provided under this section.

(4)(a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor; and

(ii) for a class A misdemeanor, as a third degree felony.

(b) The following offenses are subject to Subsection (4)(a):

(i) criminal mischief as described in Section 76-6-106;

(ii) property damage or destruction as described in Section 76-6-106.1; and

(iii) defacement by graffiti as described in Section 76-6-107.

(5)(a) For an offense listed in Subsection (5)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony; and

(iii) for a third degree felony, as a second degree felony.

(b) The following offenses are subject to Subsection (5)(a):

(i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(3)(b);

(ii) any offense of obstructing government operations under Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;

(iii) tampering with a witness under Section 76-8-508;

(iv) retaliation against a witness, victim, or informant, or other violation of Section 76-8-508.3;

(v) receiving or soliciting a bribe as a witness under Section 76-8-508.7;

(vi) extortion or bribery to dismiss a criminal proceeding as defined in Section 76-8-509;

(vii) any weapons offense under Chapter 10, Part 5, Weapons; and

(viii) any violation of Chapter 10, Part 16, Pattern of Unlawful Activity Act.

(6)(a) For an offense listed in Subsection (6)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony;

(iii) for a third degree felony, as a second degree felony; and

(iv) for a second degree felony, as a first degree felony.

(b) The following offenses are subject to Subsection (6)(a):

(i) assault and related offenses under Chapter 5, Part 1, Assault and Related Offenses;

(ii) any criminal homicide offense under Chapter 5, Part 2, Criminal Homicide;

(iii) kidnapping and related offenses under Chapter 5, Part 3, Kidnapping,

- 776 Trafficking, and Smuggling;
- 777 (iv) any felony sexual offense under Chapter 5, Part 4, Sexual Offenses;
- 778 (v) sexual exploitation of a minor as defined in Section 76-5b-201;
- 779 (vi) aggravated sexual exploitation of a minor as defined in Section 76-5b-201.1;
- 780 (vii) robbery and aggravated robbery under Chapter 6, Part 3, Robbery; and
- 781 (viii) aggravated exploitation of prostitution under Section ~~[76-10-1306]~~ 76-5d-208.
- 782 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the
- 783 individual placed on probation for the higher level of offense.
- 784 (8) It is not a bar to imposing the enhanced penalties under this section that the persons with
- 785 whom the actor is alleged to have acted in concert are not identified, apprehended,
- 786 charged, or convicted, or that any of those persons are charged with or convicted of a
- 787 different or lesser offense.
- 788 Section 7. Section **76-3-203.5** is amended to read:
- 789 **76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.**
- 790 (1) As used in this section:
- 791 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
- 792 United States, or any district, possession, or territory of the United States for which
- 793 the maximum punishment the offender may be subjected to exceeds one year in
- 794 prison.
- 795 (b) "Habitual violent offender" means a person convicted within the state of any violent
- 796 felony and who on at least two previous occasions has been convicted of a violent
- 797 felony and committed to either prison in Utah or an equivalent correctional institution
- 798 of another state or of the United States either at initial sentencing or after revocation
- 799 of probation.
- 800 (c) "Violent felony" means:
- 801 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to
- 802 commit any of the following offenses punishable as a felony:
- 803 (A) arson as described in Section 76-6-102;
- 804 (B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);
- 805 (C) criminal mischief as described in Section 76-6-106;
- 806 (D) aggravated arson as described in Section 76-6-103;
- 807 (E) assault by prisoner as described in Section 76-5-102.5;
- 808 (F) disarming a police officer as described in Section 76-5-102.8;
- 809 (G) aggravated assault as described in Section 76-5-103;

- 810 (H) aggravated assault by prisoner as described in Section 76-5-103.5;
- 811 (I) mayhem as described in Section 76-5-105;
- 812 (J) stalking as described in Subsection 76-5-106.5(2);
- 813 (K) threat of terrorism as described in Section 76-5-107.3;
- 814 (L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);
- 815 (M) commission of domestic violence in the presence of a child as described in
- 816 Section 76-5-114;
- 817 (N) abuse or neglect of a child with a disability as described in Section 76-5-110;
- 818 (O) abuse or exploitation of a vulnerable adult as described in Section 76-5-111,
- 819 76-5-111.2, 76-5-111.3, or 76-5-111.4;
- 820 (P) endangerment of a child or vulnerable adult as described in Section 76-5-112.5;
- 821 (Q) an offense described in Chapter 5, Part 2, Criminal Homicide;
- 822 (R) kidnapping as described in Section 76-5-301;
- 823 (S) child kidnapping as described in Section 76-5-301.1;
- 824 (T) aggravated kidnapping as described in Section 76-5-302;
- 825 (U) rape as described in Section 76-5-402;
- 826 (V) rape of a child as described in Section 76-5-402.1;
- 827 (W) object rape as described in Section 76-5-402.2;
- 828 (X) object rape of a child as described in Section 76-5-402.3;
- 829 (Y) forcible sodomy as described in Section 76-5-403;
- 830 (Z) sodomy on a child as described in Section 76-5-403.1;
- 831 (AA) forcible sexual abuse as described in Section 76-5-404;
- 832 (BB) sexual abuse of a child as described in Section 76-5-404.1;
- 833 (CC) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- 834 (DD) aggravated sexual assault as described in Section 76-5-405;
- 835 (EE) sexual exploitation of a minor as described in Section 76-5b-201;
- 836 (FF) aggravated sexual exploitation of a minor as described in Section 76-5b-201.1;
- 837 (GG) sexual exploitation of a vulnerable adult as described in Section 76-5b-202;
- 838 (HH) burglary as described in Subsection 76-6-202(3)(b);
- 839 (II) aggravated burglary as described in Section 76-6-203;
- 840 (JJ) robbery as described in Section 76-6-301;
- 841 (KK) aggravated robbery as described in Section 76-6-302;
- 842 (LL) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or (1)(a)(ii);
- 843 (MM) tampering with a witness as described in Section 76-8-508;

- (NN) retaliation against a witness, victim, or informant as described in Section 76-8-508.3;
- (OO) tampering or retaliating against a juror as described in Subsection 76-8-508.5 (2)(a)(iii);
- (PP) extortion to dismiss a criminal proceeding as described in Subsection 76-6-406(1)(a)(i), (ii), or (ix);
- (QQ) possession, use, or removal of explosive, chemical, or incendiary devices as described in Subsections 76-10-306(3) through (6);
- (RR) unlawful delivery of explosive, chemical, or incendiary devices as described in Section 76-10-307;
- (SS) purchase or possession of a dangerous weapon or handgun by a restricted person as described in Section 76-10-503;
- (TT) aggravated exploitation of prostitution as described in Subsection [~~76-10-1306(1)(a)~~ 76-5d-208(2)(a);
- (UU) bus hijacking as described in Section 76-10-1504; and
- (VV) discharging firearms and hurling missiles as described in Section 76-10-1505; or
- (ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.
- (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:
- (a) third degree felony is as if the conviction were for a first degree felony;
- (b) second degree felony is as if the conviction were for a first degree felony; or
- (c) first degree felony remains the penalty for a first degree penalty except:
- (i) the convicted person is not eligible for probation; and
- (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.
- (3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the

878 prosecution.

879 (b)(i) The defendant shall serve notice in writing upon the prosecutor if the defendant
880 intends to deny that:

881 (A) the defendant is the person who was convicted or committed;

882 (B) the defendant was represented by counsel or had waived counsel; or

883 (C) the defendant's plea was understandingly or voluntarily entered.

884 (ii) The notice of denial shall be served not later than five days prior to trial and shall
885 state in detail the defendant's contention regarding the previous conviction and
886 commitment.

887 (4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a
888 jury, the jury may not be told, until after it returns its verdict on the underlying felony
889 charge, of the:

890 (i) defendant's previous convictions for violent felonies, except as otherwise provided
891 in the Utah Rules of Evidence; or

892 (ii) allegation against the defendant of being a habitual violent offender.

893 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
894 being an habitual violent offender by the same jury, if practicable, unless the
895 defendant waives the jury, in which case the allegation shall be tried immediately to
896 the court.

897 (c)(i) Before or at the time of sentencing the trier of fact shall determine if this
898 section applies.

899 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
900 and the defendant shall be afforded an opportunity to present any necessary
901 additional evidence.

902 (iii) Before sentencing under this section, the trier of fact shall determine whether this
903 section is applicable beyond a reasonable doubt.

904 (d) If any previous conviction and commitment is based upon a plea of guilty or no
905 contest, there is a rebuttable presumption that the conviction and commitment were
906 regular and lawful in all respects if the conviction and commitment occurred after
907 January 1, 1970. If the conviction and commitment occurred prior to January 1,
908 1970, the burden is on the prosecution to establish by a preponderance of the
909 evidence that the defendant was then represented by counsel or had lawfully waived
910 the right to have counsel present, and that the defendant's plea was understandingly
911 and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5)(a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

The following section is affected by a coordination clause at the end of this bill.

Section 8. Section **76-5d-101**, which is renumbered from Section 76-10-1301 is renumbered and amended to read:

CHAPTER 5d. PROSTITUTION

Part 1. General Provisions

[76-10-1301] 76-5d-101 . Definitions.

As used in this [part] chapter:

(1) "Adult" is an individual who is 18 years old or older.

(2) "Child" is an individual younger than 18 years old.

~~[(2) "Place of prostitution" means a place or business where prostitution or promotion of prostitution is arranged, regularly carried on, or attempted by one or more individuals under the control, management, or supervision of another.]~~

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

(a) presence of antibodies to HIV, verified by a positive confirmatory test, such as

Western blot with an interpretation based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors or another confirmatory test approved by the Utah State Health Laboratory;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(4) "HIV positive individual" means an individual who has an HIV infection.

(5) "Local law enforcement agency" means an agency responsible for investigating violations of offenses in Part 2, General Offenses, the filing of charges that may lead to convictions, and the conducting of, or obtaining the results of, tests for HIV infection.

(6) "Positive" means an indication of HIV infection.

(7) ["Prostitute" or "prostituted"] "Prostituted individual" means an individual engaged in [an activity described in Subsection 76-10-1302(1) or 76-10-1313(1)(a), (c), (d), or (f)] prostitution or sexual solicitation.

(8) "Prostitution" means engaging in sexual activity with another individual in exchange for a fee or the functional equivalent of a fee.

[(4)] (9) "Public place" means a place to which the public or any substantial group of the public has access.

[(5)] (10) "Sexual activity" means, regardless of the gender of either participant:

(a) an act of masturbation, sexual intercourse, or any sexual act involving the genitals of one individual and the mouth or anus of another individual; or

(b) the touching of the genitals, female breast, or anus of one individual with any other body part of another individual with the intent to sexually arouse or gratify either individual.

(11) "Sexual solicitation" means the conduct described in Section 76-5d-209, sexual solicitation by an actor offering to engage in sexual activity for compensation.

(12) "Test" means a test for HIV infection in accordance with standards recommended by the Department of Health and Human Services.

The following section is affected by a coordination clause at the end of this bill.

Section 9. Section **76-5d-102**, which is renumbered from Section 76-10-1307 is renumbered and amended to read:

[76-10-1307] 76-5d-102 . Local ordinance consistent with code provisions.

An ordinance adopted by a local authority governing [~~prostitution or aiding prostitution~~ shall] the matters covered by this chapter is required to be consistent with the provisions of this [

part which govern those matters] chapter.

The following section is affected by a coordination clause at the end of this bill.

Section 10. Section **76-5d-103**, which is renumbered from Section 76-10-1311 is renumbered and amended to read:

[76-10-1311] 76-5d-103 . Mandatory testing -- Retention of medical file -- Civil liability.

(1) ~~[A person]~~ An individual who has entered a plea of guilty, a plea of no contest, a plea of guilty with a mental condition, or been found guilty ~~[for]~~ of a violation of Section [76-10-1302, 76-10-1303, or 76-10-1313 shall be] 76-5d-202, 76-5d-203, 76-5d-204, 76-5d-205, 76-5d-209, 76-5d-210, or 76-5d-211 is required to submit before sentencing to a mandatory test to determine if the ~~[offender]~~ individual is an HIV positive individual.
~~The mandatory test shall be required and conducted prior to sentencing.]~~

(2)(a) If the mandatory test described in Subsection (1) has not been conducted ~~[prior to]~~ before sentencing, and the convicted ~~[offender]~~ individual is already confined in a county jail or state prison, ~~[such person shall]~~ the individual is required to be tested while in confinement.

~~[(3) The]~~

(b) For an individual described in Subsection (1) who is confined in a county jail, the local law enforcement agency shall cause the individual's blood specimen ~~[of the offender as defined in Subsection (1) confined in county jail]~~ to be taken and tested.

~~[(4) The]~~

(c) For an individual described in Subsection (1) who is confined in a state prison, the Department of Corrections shall cause the individual's blood specimen ~~[of the offender defined in Subsection (1) confined in any state prison]~~ to be taken and tested.

~~[(5)]~~ (3)(a) The local law enforcement agency shall collect and retain in the ~~[offender's]~~ individual's medical file the following data:

~~[(a)]~~ (i) the HIV infection test results;

~~[(b)]~~ (ii) a copy of the written notice as provided in Section ~~[76-10-1312]~~ 76-5d-104;

~~[(c)]~~ (iii) photographic identification; and

~~[(d)]~~ (iv) fingerprint identification.

~~[(6)]~~ (b) The local law enforcement agency shall classify the medical file described in Subsection (3)(a) as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.

~~[(7) The person tested shall be]~~

- 1013 (4)(a) An individual required to be tested under this section is responsible for the costs
1014 of testing, unless the [person] individual is indigent.[-]
- 1015 (b) [The costs will then] If an individual is indigent, the costs for the testing will be paid
1016 by the local law enforcement agency or the Department of Corrections from the
1017 General Fund.
- 1018 ~~[(8)]~~ (5)(a) The laboratory performing testing shall report test results to only designated
1019 officials in the Department of Corrections, the Department of Health and Human
1020 Services, and the local law enforcement agency submitting the blood specimen.
- 1021 (b) Each department or agency shall designate [those] the officials described in
1022 Subsection (5)(a) by written policy.
- 1023 (c) Designated officials may release information identifying an [offender] individual
1024 under Section [76-10-1302, 76-10-1303, or 76-10-1313] 76-5d-202, 76-5d-203,
1025 76-5d-204, 76-5d-205, 76-5d-209, 76-5d-210, or 76-5d-211 who has tested HIV
1026 positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution
1027 pursuant to Section [76-10-1309] 76-5d-212.
- 1028 ~~[(9)]~~ (6)(a) An employee of the local law enforcement agency, the Department of
1029 Corrections, or the Department of Health and Human Services who discloses the HIV
1030 test results under this section is not civilly liable except when disclosure constitutes
1031 fraud or willful misconduct [as provided in] under Section 63G-7-202.
- 1032 (b) An employee of the local law enforcement agency, the Department of Corrections, or
1033 the Department of Health and Human Services who discloses the HIV test results
1034 under this section is not civilly or criminally liable, except when disclosure
1035 constitutes a knowing violation of Section 63G-2-801.
- 1036 ~~[(10)]~~ (7) When [the] a medical file is released as provided in Section 63G-2-803, the local
1037 law enforcement agency, the Department of Corrections, or the Department of Health
1038 and Human Services, or [its officers or employees are] an officer or employee of the
1039 local law enforcement agency, the Department of Corrections, or the Department of
1040 Health and Human Services, is not liable for damages for release of the medical file.
- 1041 *The following section is affected by a coordination clause at the end of this bill.*
- 1042 Section 11. Section **76-5d-104**, which is renumbered from Section 76-10-1312 is renumbered
1043 and amended to read:
- 1044 **[76-10-1312] 76-5d-104 . Notice to a convicted individual of HIV positive test**
1045 **results.**
- 1046 (1) [A person] An individual convicted under Section [76-10-1302, 76-10-1303, or

~~76-10-1313]~~ 76-5d-202, 76-5d-203, 76-5d-204, 76-5d-205, 76-5d-209, 76-5d-210, or
76-5d-211 who has tested positive for the HIV infection shall be notified of the test
results in person by:

(a) the local law enforcement agency;

(b) the Department of Corrections, for ~~[offenders]~~ an individual confined in ~~[any]~~ a state
prison;

(c) the ~~[state-]~~Department of Health and Human Services; or

(d) an authorized representative of ~~[any of the agencies]~~ an agency listed in ~~[this~~
~~Subsection (1)]~~ Subsections (1)(a) through (c).

(2) The notice ~~[under]~~ described in Subsection (1) shall contain the signature of the HIV
positive ~~[person]~~ individual, indicating the ~~[person's]~~ individual's receipt of the notice, the
name and signature of the ~~[person]~~ individual providing the notice, and:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

~~["A person]~~ "An individual who has been convicted of engaging in prostitution under
Section ~~[76-10-1302]~~ 76-5d-202, patronizing a ~~[prostitute]~~ prostituted individual who is an adult
under Section ~~[76-10-1303, or]~~ 76-5d-203, patronizing a prostituted individual who is a child
under Section 76-5d-204, entering or remaining in a place of prostitution under Section
76-5d-205, sexual solicitation by an actor offering to engage in sexual activity for
compensation under Section ~~[76-10-1313]~~ 76-5d-209, sexual solicitation by an actor offering
compensation to an adult in exchange for sexual activity under Section 76-5d-210, or sexual
solicitation by an actor offering compensation to a child in exchange for sexual activity under
Section 76-5d-211, after being tested and diagnosed as an HIV positive individual and either
had actual knowledge that the ~~[person]~~ individual is an HIV positive individual or the ~~[person]~~
individual has previously been convicted of any of the criminal offenses listed above is guilty
of a third degree felony under Section ~~[76-10-1309]~~ 76-5d-212."

(3) Failure to provide ~~[this notice]~~ the notice described in Subsection (1), or to provide the
notice in the manner or form prescribed under this section, does not:

(a) ~~[-]create any civil liability[- and does not]~~ ; or

(b) ~~[-]create a defense to [any] a prosecution under this [part] chapter.~~

~~[(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the~~
~~offender shall receive treatment and counseling for HIV infection and drug abuse as~~

provided in Title 26B, Chapter 5, Health Care – Substance Use and Mental Health.]

The following section is affected by a coordination clause at the end of this bill.

Section 12. Section **76-5d-105**, which is renumbered from Section 76-10-1314 is renumbered and amended to read:

[76-10-1314] 76-5d-105 . Examination of testing procedures and results in legal proceedings.

(1) Employees of [the] a laboratory who conduct laboratory analysis of blood samples for presence of antibody to HIV provided pursuant to a request by a law enforcement agency or the Department of Corrections under Section [76-10-1314] 76-5d-103, may be examined in a legal proceeding of any kind or character as to:

- (a) the nature of the testing;
- (b) the validity of the testing;
- (c) the results of the test;
- (d) the HIV positivity or negativity of the [person] individual tested;
- (e) the evidentiary chain of custody; and
- (f) other factors relevant to the prosecution, subject to the court's ruling.

(2) This section applies only to the criminal investigation and prosecution under Section [76-10-1309 which permits enhanced penalties upon a subsequent conviction for:] 76-5d-212, engaging in prostitution or sexual solicitation as an HIV positive offender.

[~~(a) prostitution, Section 76-10-1302;~~]

[~~(b) patronizing a prostitute, Section 76-10-1303; or~~]

[~~(c) sexual solicitation, Section 76-10-1313.~~]

Section 13. Section **76-5d-106**, which is renumbered from Section 76-10-1315 is renumbered and amended to read:

[76-10-1315] 76-5d-106 . Safe harbor for children as victims in commercial sex or sexual solicitation.

(1) As used in this section:

- (a) "Child engaged in commercial sex or sexual solicitation" means a child who:
 - (i) engages, offers, or agrees to engage in any sexual activity with another individual in exchange for receiving a fee, or the functional equivalent of a fee;
 - (ii) takes steps in arranging a meeting through any form of advertising, agreeing to meet, and meeting at an arranged place for the purpose of sexual activity in exchange for receiving a fee or the functional equivalent of a fee;~~or~~
 - (iii) loiters in or within view of any public place for the purpose of being hired to

engage in sexual activity[-] ; or

(iv) engages in sexual solicitation.

~~[(b) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee, or the functional equivalent of a fee, under Subsection 76-10-1313(1)(a), (c), (d), or (f).]~~

~~[(e)]~~ (b) "Division" means the Division of Child and Family Services created in Section 80-2-201.

~~[(d)]~~ (c) "Juvenile receiving center" means the same as that term is defined in Section 80-1-102.

(2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall:

(a) conduct an investigation regarding possible human trafficking of the child pursuant to Sections 76-5-308, 76-5-308.1, and 76-5-308.5;

(b) refer the child to the division;

(c) bring the child to a juvenile receiving center, if available; and

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

(3) When law enforcement refers a child to the division under Subsection (2)(b), the division shall provide services to the child under Title 80, Chapter 2, Child Welfare Services, and Title 80, Chapter 2a, Removal and Protective Custody of a Child.

~~[(4) A child may not be subjected to delinquency proceedings for prostitution under Section 76-10-1302, or sexual solicitation under Section 76-10-1313.]~~

The following section is affected by a coordination clause at the end of this bill.

Section 14. Section **76-5d-201** is enacted to read:

Part 2. General Offenses

76-5d-201 . Definitions.

As used in this part, "place of prostitution" means a place or business where prostitution or promotion of prostitution is arranged, regularly carried on, or attempted by one or more individuals under the control, management, or supervision of another individual.

Section 15. Section **76-5d-202**, which is renumbered from Section 76-10-1302 is renumbered and amended to read:

[76-10-1302] 76-5d-202 . Engaging in prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

~~[(1)]~~ (2) An actor~~[-, except for a child under Section 76-10-1315, is guilty of]~~ commits the offense of engaging in prostitution if the actor:

- 1149 (a) [-] is 18 years old or older; and
 1150 (b) engages in sexual activity with another individual in exchange for receiving a fee, or
 1151 the functional equivalent of a fee.
- 1152 ~~[(2)]~~ (3)(a) Except as provided in Subsection ~~[(2)(b) and Section 76-10-1309]~~ (3)(b), a
 1153 violation of Subsection ~~[(+)]~~ (2) is a class B misdemeanor.
- 1154 (b) ~~[Except as provided in Section 76-10-1309, an actor who is convicted a second time,~~
 1155 ~~and on all subsequent convictions, of a subsequent offense of prostitution under this~~
 1156 ~~section or]~~ A violation of Subsection (2) is a class A misdemeanor if the actor has
 1157 previously been convicted of:
- 1158 (i) a violation of Subsection (2); or
 1159 (ii) ~~[-under]~~ a local ordinance adopted [under] in accordance with Section [76-10-1307,
 1160 is guilty of a class A misdemeanor] 76-5d-102 addressing the same or similar type
 1161 of violation to the violation described in Subsection (2).
- 1162 ~~[(3)]~~ (4) A prosecutor may not prosecute an actor for a violation of Subsection ~~[(+)]~~ (2) if the
 1163 actor engages in a violation of Subsection ~~[(+)]~~ (2) at or near the time the actor witnesses
 1164 or is a victim of any of the following offenses, or an attempt to commit any of the
 1165 following offenses, and the actor reports the offense or attempt to law enforcement in
 1166 good faith:
- 1167 (a) assault[;] as described in Section 76-5-102;
 1168 (b) aggravated assault[;] as described in Section 76-5-103;
 1169 (c) mayhem[;] as described in Section 76-5-105;
 1170 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
 1171 homicide, or homicide by assault [under] as described in Chapter 5, Part 2, Criminal
 1172 Homicide;
- 1173 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
 1174 aggravated human trafficking, human smuggling or aggravated human smuggling, or
 1175 human trafficking of a child [under] as described in Chapter 5, Part 3, Kidnapping,
 1176 Trafficking, and Smuggling;
- 1177 (f) rape[;] as described in Section 76-5-402;
 1178 (g) rape of a child[;] as described in Section 76-5-402.1;
 1179 (h) object rape[;] as described in Section 76-5-402.2;
 1180 (i) object rape of a child[;] as described in Section 76-5-402.3;
 1181 (j) forcible sodomy[;] as described in Section 76-5-403;
 1182 (k) sodomy on a child[;] as described in Section 76-5-403.1;

- 1183 (l) forcible sexual abuse[;] as described in Section 76-5-404;
 1184 (m) sexual abuse of a child[;] as described in Section 76-5-404.1, or aggravated sexual
 1185 abuse of a child, Section 76-5-404.3;
 1186 (n) aggravated sexual assault[;] as described in Section 76-5-405;
 1187 (o) sexual exploitation of a minor[;] as described in Section 76-5b-201;
 1188 (p) aggravated sexual exploitation of a minor[;] as described in Section 76-5b-201.1;
 1189 (q) sexual exploitation of a vulnerable adult[;] as described in Section 76-5b-202;
 1190 (r) ~~[aggravated burglary or]~~ burglary of a dwelling ~~[under Chapter 6, Part 2, Burglary~~
 1191 ~~and Criminal Trespass]~~ as described in Subsection 76-6-202(3)(b);
 1192 (s) aggravated burglary as described in Section 76-6-203;
 1193 ~~[(s) aggravated robbery or]~~
 1194 (t) robbery ~~[under Chapter 6, Part 3, Robbery]~~ as described in Section 76-6-301;
 1195 (u) aggravated robbery as described in Section 76-6-302; or
 1196 ~~[(t)]~~ (v) theft by extortion ~~[under]~~ as described in Section 76-6-406 under the
 1197 circumstances described in Subsection 76-6-406(1)(a)(i) or (ii).
 1198 (5) A violation under this section that is a class A misdemeanor may be prosecuted by an
 1199 attorney of a city or a town as well as by prosecutors authorized in the code to prosecute
 1200 a violation under this section.
 1201 Section 16. Section **76-5d-203**, which is renumbered from Section 76-10-1303 is renumbered
 1202 and amended to read:
 1203 **[76-10-1303] 76-5d-203 . Patronizing a prostituted individual who is an adult.**
 1204 (1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.
 1205 ~~[(4)]~~ (2) An actor [is guilty of] commits the offense of patronizing [a prostitute if the actor] a
 1206 prostituted individual who is an adult if:
 1207 (a) the actor pays[or] , offers to pay, or agrees to pay [a] an adult prostituted individual,
 1208 or an adult individual the actor believes to be a prostituted individual, a fee, or the
 1209 functional equivalent of a fee[;] ; and
 1210 (b) the payment, offer of payment, or agreement for payment described in Subsection
 1211 (2)(a) is for the purpose of engaging in an act of sexual activity[;or] .
 1212 ~~[(b) enters or remains in a place of prostitution for the purpose of engaging in sexual~~
 1213 ~~activity.]~~
 1214 ~~[(2) Patronizing a prostitute is a class A misdemeanor, except as provided in Subsection (3),~~
 1215 ~~(4), or (5) or Section 76-10-1309.]~~
 1216 ~~[(3) A violation of this section that is preceded by a conviction under this section or a~~

conviction under a local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.]

~~[(4) A third violation of this section or a local ordinance adopted under Section 76-10-1307 is a third degree felony.]~~

~~[(5)(a) Except as provided in Subsection (5)(d), if the patronizing of a prostitute under Subsection (1)(a) involves a child as the other individual, a violation of Subsection (1)(a) is a second degree felony.]~~

~~[(b) In accordance with Section 76-2-304.5, it is not a defense to a prosecution under Subsection (5)(a) that the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age.]~~

~~[(c) An actor's belief that the individual was under 18 years old at the time of the offense, even if the individual was 18 years old or older, is a violation of Subsection (5)(a).]~~

~~[(d) If the act committed under Subsection (5)(a) amounts to an offense that is subject to a greater penalty under another provision of state law than is provided under Subsection (5)(a), this Subsection (5) does not prohibit prosecution and sentencing for the more serious offense.]~~

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if the actor has previously been convicted two or more times of:

(i) a violation of Subsection (2); or

(ii) a local ordinance adopted in accordance with Section 76-5d-102 addressing the same or similar type of violation to the violation described in Subsection (2).

~~[(6)] (4) Upon a conviction for a violation of this section, the court shall order:~~

~~(a) the maximum fine amount and may not waive or suspend the fine; and~~

~~(b) the [defendant] actor to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.~~

The following section is affected by a coordination clause at the end of this bill.

Section 17. Section **76-5d-204** is enacted to read:

76-5d-204 . Patronizing a prostituted individual who is a child.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

(2) An actor commits patronizing a prostituted individual who is a child if:

- 1251 (a) the actor is 12 years old or older;
1252 (b) the actor pays, offers to pay, or agrees to pay a prostituted individual, or an
1253 individual the actor believes to be a prostituted individual, a fee, or the functional
1254 equivalent of a fee;
1255 (c) the payment, offer of payment, or agreement for payment described in Subsection
1256 (2)(b) is for the purpose of engaging in an act of sexual activity; and
1257 (d) the prostituted individual, or the individual the actor believes to be a prostituted
1258 individual, described in Subsection (2)(b) is:
1259 (i) a child; or
1260 (ii) believed by the actor to be a child.
1261 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a second
1262 degree felony.
1263 (b) If the actor is under 18 years old at the time of the offense, a violation of Subsection
1264 (2) is:
1265 (i) a third degree felony if:
1266 (A) the actor is 17 years old and the prostituted individual is 13 years old or
1267 younger; or
1268 (B) the actor is 16 years old and the prostituted individual is 12 years old or
1269 younger;
1270 (ii) a class A misdemeanor if:
1271 (A) the actor is 17 years old and the prostituted individual is 14 years old;
1272 (B) the actor is 16 years old and the prostituted individual is 13 years old;
1273 (C) the actor is 15 years old and the prostituted individual is 12 years old or
1274 younger; or
1275 (D) the actor is 14 years old and the prostituted individual is 11 years old or
1276 younger;
1277 (iii) a class B misdemeanor if:
1278 (A) the actor is 17 years old and the prostituted individual is 15 years old;
1279 (B) the actor is 16 years old and the prostituted individual is 14 years old;
1280 (C) the actor is 15 years old and the prostituted individual is 13 years old;
1281 (D) the actor is 14 years old and the prostituted individual is 12 years old;
1282 (E) the actor is 13 years old and the prostituted individual is 11 years old or
1283 younger; or
1284 (F) the actor is 12 years old and the prostituted individual is 10 years old or

younger; or

(iv) a class C misdemeanor if:

(A) the actor is 17 years old and the prostituted individual is 16 or 17 years old;

(B) the actor is 16 years old and the prostituted individual is 15 years old or older;

(C) the actor is 15 years old and the prostituted individual is 14 years old or older;

(D) the actor is 14 years old and the prostituted individual is 13 years old or older;

(E) the actor is 13 years old and the prostituted individual is 12 years old or older;

or

(F) the actor is 12 years old and the prostituted individual is 11 years old or older.

(4) In accordance with Section 76-2-304.5, it is not a defense to a prosecution under this section that the actor mistakenly believed the individual described in Subsection (2) to be 18 years old or older at the time of the offense or was unaware of the individual's true age.

(5) If the violation of Subsection (2) amounts to an offense that is subject to a greater penalty under another provision of law, this section does not prohibit prosecution and sentencing for the more serious offense.

(6) Upon a conviction for a violation of this section, the court shall order:

(a) the maximum fine amount and may not waive or suspend the fine; and

(b) the actor to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.

Section 18. Section **76-5d-205** is enacted to read:

76-5d-205 . Entering or remaining in a place of prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

(2) An actor commits entering or remaining in a place of prostitution if the actor enters or remains in a place of prostitution for the purpose of engaging in sexual activity.

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if the actor has previously been convicted two or more times of:

(i) a violation of Subsection (2); or

(ii) a local ordinance adopted in accordance with Section 76-5d-102 addressing the same or similar type of violation to the violation described in Subsection (2).

(4) Upon a conviction for a violation of this section, the court shall order:

(a) the maximum fine amount and may not waive or suspend the fine; and

(b) the actor to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.

Section 19. Section **76-5d-206**, which is renumbered from Section 76-10-1304 is renumbered and amended to read:

[76-10-1304] 76-5d-206 . Aiding prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

~~[(1)]~~ (2) An [individual-is-guilty-of] actor commits aiding prostitution if the [individual] actor:

- (a)(i) solicits an individual to patronize a [prostitute] prostituted individual, or to patronize an individual the actor believes to be a [prostitute] prostituted individual;
- (ii) procures or attempts to procure a [prostitute] prostituted individual, or an individual the actor believes to be a [prostitute] prostituted individual, for a patron;
- (iii) leases, operates, or otherwise permits a place controlled by the actor, alone or in association with another individual, to be used for prostitution or the promotion of prostitution; or
- (iv) provides [any] a service or commits [any] an act that enables another individual to commit a violation of [this Subsection-(1)(a)] this Subsection (2) or facilitates another individual's ability to commit [any] a violation of [this Subsection-(1)(a)] this Subsection (2); or

(b) solicits, receives, or agrees to receive [any] a benefit for committing any of the acts prohibited by Subsection ~~[(1)(a)]~~ (2)(a).

~~[(2) Aiding prostitution is a class A misdemeanor, except as provided in Subsection (3).]~~

~~[(3) An individual who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.]~~

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if the actor has previously been convicted of:

- (i) a violation of Subsection (2); or
- (ii) a local ordinance adopted in accordance with Section 76-5d-102 addressing the same or similar type of violation to the violation described in Subsection (2).

(4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

(5) A violation under this section that is a class A misdemeanor may be prosecuted by an

attorney of a city or a town as well as by a prosecutor authorized in the code to prosecute a violation under this section.

Section 20. Section **76-5d-207**, which is renumbered from Section 76-10-1305 is renumbered and amended to read:

[76-10-1305] 76-5d-207 . Exploitation of prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

~~[(1)] (2)~~ An ~~[individual is guilty of exploiting]~~ actor commits exploitation of prostitution if the ~~[individual]~~ actor:

(a) procures an individual for a place of prostitution;

(b) encourages, induces, or otherwise purposely causes another individual to become or remain a ~~[prostitute]~~ prostituted individual;

(c) transports an individual into or within this state with ~~[a]~~ the purpose to promote ~~[that]~~ the individual's ~~[engaging]~~ engagement in prostitution;

~~(d)~~ ~~[-or procuring or paying for]~~ procures or pays for an individual's transportation with ~~[that]~~ the purpose of promoting the individual's engagement in prostitution;

~~[(d)] (e)~~ not being a child or legal dependent of a ~~[prostitute]~~ prostituted individual, shares the proceeds of prostitution with a ~~[prostitute]~~ prostituted individual, or an individual the actor believes to be a ~~[prostitute]~~ prostituted individual, pursuant to ~~[their]~~ the actor's and prostituted individual's understanding that the actor is to share ~~[therein]~~ in the proceeds of the prostitution; or

~~[(e)] (f)~~ owns, controls, manages, supervises, or otherwise keeps, alone or in association with another individual, a place of prostitution or a business where prostitution occurs or is arranged, encouraged, supported, or promoted.

~~[(2)] (3)~~ ~~[Exploiting prostitution is a felony of the]~~ A violation of Subsection (2) is a third degree felony.

~~[(3)] (4)~~ Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 21. Section **76-5d-208**, which is renumbered from Section 76-10-1306 is renumbered and amended to read:

[76-10-1306] 76-5d-208 . Aggravated exploitation of prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

~~[(1)] (2)~~ ~~[A person is guilty of]~~ An actor commits aggravated exploitation of prostitution if:

(a) in committing an act of ~~[exploiting]~~ exploitation of prostitution~~[-as defined in]~~ as described in Section ~~[76-10-1305]~~ 76-5d-207, the ~~[person]~~ actor uses any force, threat,

or fear against any ~~[person]~~ individual;

(b) the ~~[person]~~ individual whom the actor procured, transported, or persuaded or with whom the ~~[person]~~ actor shares the proceeds of prostitution is a child or is the spouse of the actor; or

(c) in the course of committing an act of exploitation of prostitution~~[-a violation of Section 76-10-1305]~~ as described in Section 76-5d-207, the ~~[person]~~ actor commits human trafficking or human smuggling~~[-a]~~ in violation of Section 76-5-308, 76-5-308.1, 76-5-308.3, or 76-5-308.5.

~~[(2)] (3)(a) [Aggravated exploitation of prostitution] Except as provided in Subsection (3)(b), a violation of Subsection (2) is a second degree felony[-except under Subsection (3)].~~

~~[(3)] (b) [Aggravated exploitation of prostitution involving a child] A violation of Subsection (2) is a first degree felony if the violation involves a child.~~

(4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

The following section is affected by a coordination clause at the end of this bill.

Section 22. Section **76-5d-209**, which is renumbered from Section 76-10-1313 is renumbered and amended to read:

[76-10-1313] 76-5d-209 . Sexual solicitation by an actor offering to engage in sexual activity for compensation.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

~~[(1)] (2)~~ An ~~[individual except for a child under Section 76-10-1315 is guilty of]~~ actor commits the offense of sexual solicitation by an actor offering to engage in sexual activity for compensation if the [individual] actor:

(a) is 18 years old or older; and

~~[(a)] (b)(i)~~ offers or agrees to commit any sexual activity with another individual ~~[for]~~ in exchange for receiving a fee, or the functional equivalent of a fee;

~~[(e)] (ii)(A)~~ takes steps to arrange a meeting with another individual through any form of advertising or agreement to meet~~[-and]~~ ;

(B) [-]meets the individual at an arranged place; and

(C) [-] arranged and met the individual for the purpose of being hired to engage in sexual activity in exchange for receiving a fee, or the functional equivalent of a fee;

~~[(d)] (iii)~~ loiters in, or within view of, a public place for the purpose of being hired to

engage in sexual activity in exchange for receiving a fee, or the functional equivalent of a fee; or

~~[(f)]~~ (iv) with intent to be hired to engage in sexual activity in exchange for receiving a fee, or the functional equivalent of a fee, engages in, or offers or agrees to engage in ~~an act described in Subsection (1)(e)(i) through (iv).~~ , any of the following acts:

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

(B) masturbation; or

(C) any act of lewdness.

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

~~[(e) with intent to pay another individual to commit any sexual activity for a fee or the functional equivalent of a fee, requests or directs the other individual to engage in any of the following acts:]~~

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

~~[(ii) masturbation;]~~

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

~~[(iv) any act of lewdness; or]~~

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

(3) ~~[Except as provided in Section 76-10-1309 and Subsections (4) and (5), a]~~ A violation of Subsection ~~[(1)(a), (e), (d), or (f)]~~ (2) or under a local ordinance adopted in compliance with Section ~~[76-10-1307]~~ 76-5d-102 is:

(a) a class B misdemeanor on a first or second violation; ~~[and]~~ or

(b) a class A misdemeanor on a third or subsequent violation.

~~[(4) Except as provided in Section 76-10-1309 and Subsections (5) and (8), a violation of Subsection (1)(b) or (e) or a local ordinance adopted under Section 76-10-1307 is:]~~

~~[(a) a class A misdemeanor on the first or second violation; and]~~

~~[(b) a third degree felony on a third or subsequent violation.]~~

1455 [(5) If an individual commits an act of sexual solicitation in violation of Subsection (1) and
 1456 the individual solicited is a child, the offense is a second degree felony if the solicitation
 1457 does not amount to a violation of:]

1458 [(a) Section 76-5-308, 76-5-308.1, or 76-5-308.5, human trafficking or Section 76-5-308
 1459 .3, human smuggling; or]

1460 [(b) Section 76-5-310, aggravated human trafficking or Section 76-5-310.1, aggravated
 1461 human smuggling.]

1462 (4) An intent to be hired to engage in sexual activity for a fee may be inferred from an actor
 1463 engaging in, offering or agreeing to engage in, or requesting or directing another to
 1464 engage in any of the acts described in Subsection (2)(b)(iv) under the totality of the
 1465 existing circumstances.

1466 [(6)] (5)(a) Upon encountering a child engaged in commercial sex or sexual solicitation,
 1467 a law enforcement officer shall follow the procedure described in Subsection [
 1468 76-10-1315(2)] 76-5d-106(2).

1469 (b) A child engaged in commercial sex or sexual solicitation shall be referred to the
 1470 Division of Child and Family Services for services and may not be subjected to
 1471 delinquency proceedings.

1472 [(7)] (6) A prosecutor may not prosecute an [individual] actor for a violation of Subsection [
 1473 (1)] (2) if the [individual] actor engages in a violation of Subsection [(1)] (2) at or near the
 1474 time the [individual] actor witnesses or is a victim of any of the offenses, or an attempt to
 1475 commit any of the offenses, described in Subsection [76-10-1302(3)] 76-5d-202(4), and
 1476 the [individual] actor reports the offense or attempt to law enforcement in good faith.

1477 [(8)] (7)[(a)] As part of a sentence imposed under Subsection (3), the court may lower,
 1478 waive, or suspend a fine if the [defendant] actor completes a court-approved program
 1479 that provides information or services intended to help an individual no longer engage
 1480 in prostitution.

1481 [(b) As part of a sentence imposed under Subsection (4), the court shall order the
 1482 defendant to pay for and complete a court-approved educational program about the
 1483 negative effects on an individual involved with prostitution or human trafficking.]

1484 *The following section is affected by a coordination clause at the end of this bill.*

1485 Section 23. Section **76-5d-210** is enacted to read:

1486 **76-5d-210 . Sexual solicitation by an actor offering compensation to an adult in**
 1487 **exchange for sexual activity.**

1488 (1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

- (2) An actor commits the offense of sexual solicitation by an actor offering compensation in exchange for sexual activity if the actor:
- (a) pays, offers to pay, or agrees to pay a fee or the functional equivalent of a fee to an adult to hire the adult to commit any sexual activity; or
- (b) with intent to pay an adult to be hired to commit any sexual activity for a fee or the functional equivalent of a fee, requests or directs the adult to engage in any of the following acts:
- (i) exposure or touching of an adult's genitals, buttocks, anus, pubic area, or female breast below the top of the areola;
- (ii) masturbation; or
- (iii) any act of lewdness.
- (3) A violation of Subsection (2) or under a local ordinance adopted in compliance with Section 76-5d-102 is:
- (a) a class A misdemeanor on a first or second violation; or
- (b) a third degree felony on a third or subsequent violation.
- (4) As part of a sentence imposed under Subsection (3), the court shall order the actor to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.
- (5) The actor's intent to hire an adult to engage in sexual activity for a fee may be inferred from an actor engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (2)(b) under the totality of the existing circumstances.
- (6) A prosecutor may not prosecute an actor for a violation of Subsection (2) if the actor engages in a violation of Subsection (2) at or near the time the actor witnesses or is a victim of any of the offenses, or an attempt to commit any of the offenses, described in Subsection 76-5d-202(4), and the actor reports the offense or attempt to law enforcement in good faith.

Section 24. Section **76-5d-211** is enacted to read:

76-5d-211 . Sexual solicitation by an actor offering compensation to a child in exchange for sexual activity.

- (1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.
- (2) Under circumstances not amounting to an offense described in Subsection (4), an actor commits the offense of sexual solicitation by an actor offering compensation to a child in exchange for sexual activity if the actor:

- 1523 (a) is 12 years old or older; and
- 1524 (b)(i) pays, offers to pay, or agrees to pay a fee, or the functional equivalent of a fee,
- 1525 to a child to hire the child to commit any sexual activity; or
- 1526 (ii) with intent to pay a child to be hired to commit any sexual activity for a fee, or
- 1527 the functional equivalent of a fee, requests or directs the child to engage in any of
- 1528 the following acts:
- 1529 (A) exposure or touching of the child's genitals, the buttocks, the anus, the pubic
- 1530 area, or the female breast below the top of the areola;
- 1531 (B) masturbation; or
- 1532 (C) any act of lewdness.
- 1533 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a second
- 1534 degree felony.
- 1535 (b) If the actor is under 18 years old at the time of the offense, a violation of Subsection
- 1536 (2) is:
- 1537 (i) a third degree felony if:
- 1538 (A) the actor is 17 years old and the child is 13 years old or younger; or
- 1539 (B) the actor is 16 years old and the child is 12 years old or younger;
- 1540 (ii) a class A misdemeanor if:
- 1541 (A) the actor is 17 years old and the child is 14 years old;
- 1542 (B) the actor is 16 years old and the child is 13 years old;
- 1543 (C) the actor is 15 years old and the child is 12 years old or younger; or
- 1544 (D) the actor is 14 years old and the child is 11 years old or younger;
- 1545 (iii) a class B misdemeanor if:
- 1546 (A) the actor is 17 years old and the child is 15 years old;
- 1547 (B) the actor is 16 years old and the child is 14 years old;
- 1548 (C) the actor is 15 years old and the child is 13 years old;
- 1549 (D) the actor is 14 years old and the child is 12 years old;
- 1550 (E) the actor is 13 years old and the child is 11 years old or younger; or
- 1551 (F) the actor is 12 years old and the child is 10 years old or younger; or
- 1552 (iv) a class C misdemeanor if:
- 1553 (A) the actor is 17 years old and the child is 16 or 17 years old;
- 1554 (B) the actor is 16 years old and the child is 15 years old or older;
- 1555 (C) the actor is 15 years old and the child is 14 years old or older;
- 1556 (D) the actor is 14 years old and the child is 13 years old or older;

(E) the actor is 13 years old and the child is 12 years old or older; or

(F) the actor is 12 years old and the child is 11 years old or older.

(4) The offenses referred to in Subsection (2) are:

(a) human trafficking for labor as described in Section 76-5-308;

(b) human trafficking for sexual exploitation as described in Section 76-5-308.1;

(c) human smuggling as described in Section 76-5-308.3;

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

(e) aggravated human trafficking as described in Section 76-5-310; and

(f) aggravated human smuggling as described in Section 76-5-310.1.

(5) The actor's intent to hire a child to engage in sexual activity for a fee may be inferred from an actor engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (2)(b) under the totality of the existing circumstances.

(6) A prosecutor may not prosecute an actor for a violation of Subsection (2) if the actor engages in a violation of Subsection (2) at or near the time the actor witnesses or is a victim of any of the offenses, or an attempt to commit any of the offenses, described in Subsection 76-5d-202(4), and the actor reports the offense or attempt to law enforcement in good faith.

(7)(a) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall follow the procedure described in Subsection 76-5d-106(2).

(b) A child engaged in commercial sex or sexual solicitation shall be referred to the Division of Child and Family Services for services and may not be subjected to delinquency proceedings.

The following section is affected by a coordination clause at the end of this bill.

Section 25. Section **76-5d-212**, which is renumbered from Section 76-10-1309 is renumbered and amended to read:

[76-10-1309] 76-5d-212 . Engaging in prostitution or sexual solicitation as an HIV positive offender.

[A person]

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

(2) [who is convicted of prostitution under] An actor commits engaging in prostitution or sexual solicitation as an HIV positive offender if the actor:

(a) is an HIV positive individual;

(b) is convicted of:

- (i) engaging in prostitution under Section [76-10-1302,] 76-5d-202;
(ii) patronizing a [prostitute under] prostituted individual who is an adult under
Section [76-10-1303, or] 76-5d-203;
(iii) patronizing a prostituted individual who is a child under Section 76-5d-204;
(iv) entering or remaining in a place of prostitution under Section 76-5d-205;
(v) sexual solicitation [under] by an actor offering to engage in sexual activity for
compensation under Section [76-10-1313] 76-5d-209;
(vi) [is guilty of a third degree felony if at the time of the offense the person is an
HIV positive individual, and the person:] sexual solicitation by an actor offering
compensation to an adult in exchange for sexual activity under Section 76-5d-210;
or
(vii) sexual solicitation by an actor offering compensation to a child in exchange for
sexual activity under Section 76-5d-211; and
~~(1)~~ (c)(i) has actual knowledge [of the fact] that the actor is an HIV positive
individual; or
~~(2)~~ (ii) has previously been convicted [under Section 76-10-1302, 76-10-1303, or
76-10-1313] of a violation of Section 76-5d-202, 76-5d-203, 76-5d-204, 76-5d-205,
76-5d-209, 76-5d-210, or 76-5d-211.

(3) A violation of Subsection (2) is a third degree felony.

(4) Upon conviction under this section, and as a condition of probation, the actor shall
receive treatment and counseling for HIV infection and drug abuse as provided in Title
26B, Chapter 5, Health Care - Substance Use and Mental Health.

Section 26. Section **76-10-1602** is amended to read:

76-10-1602 . Definitions.

As used in this part:

- (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.
- (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a

pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

- (3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.
- (4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:
- (a) an act prohibited by the criminal provisions under Title 13, Chapter 10, Unauthorized Recording Practices Act;
 - (b) an act prohibited by the criminal provisions under Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;
 - (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain under Title 23A, Wildlife Resources Act, or Section 23A-5-311;
 - (d) false claims for medical benefits, kickbacks, or other acts prohibited under Title 26B, Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;
 - (e) an act prohibited by the criminal provisions under Title 32B, Chapter 4, Criminal Offenses and Procedure Act;
 - (f) an act prohibited by the criminal provisions under Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
 - (g) an act prohibited by the criminal provisions under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;
 - (h) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform Securities Act;
 - (i) an act prohibited by the criminal provisions under Title 63G, Chapter 6a, Utah Procurement Code;
 - (j) assault under Section 76-5-102;

- 1659 (k) aggravated assault under Section 76-5-103;
- 1660 (l) a threat of terrorism under Section 76-5-107.3;
- 1661 (m) a criminal homicide offense under Section 76-5-201;
- 1662 (n) kidnapping under Section_76-5-301;
- 1663 (o) aggravated kidnapping under Section_76-5-302;
- 1664 (p) human trafficking for labor under Section 76-5-308;
- 1665 (q) human trafficking for sexual exploitation under Section 76-5-308.1;
- 1666 (r) human smuggling under Section 76-5-308.3;
- 1667 (s) human trafficking of a child under Section_76-5-308.5;
- 1668 (t) benefiting from trafficking and human smuggling under Section_76-5-309;
- 1669 (u) aggravated human trafficking under Section_76-5-310;
- 1670 (v) sexual exploitation of a minor under Section 76-5b-201;
- 1671 (w) aggravated sexual exploitation of a minor under Section_76-5b-201.1;
- 1672 (x) arson under Section 76-6-102;
- 1673 (y) aggravated arson under Section_76-6-103;
- 1674 (z) causing a catastrophe under Section 76-6-105;
- 1675 (aa) burglary under Section 76-6-202;
- 1676 (bb) aggravated burglary under Section_76-6-203;
- 1677 (cc) burglary of a vehicle under Section 76-6-204;
- 1678 (dd) manufacture or possession of an instrument for burglary or theft under Section
- 1679 76-6-205;
- 1680 (ee) robbery under Section 76-6-301;
- 1681 (ff) aggravated robbery under Section_76-6-302;
- 1682 (gg) theft under Section 76-6-404;
- 1683 (hh) theft by deception under Section 76-6-405;
- 1684 (ii) theft by extortion under Section 76-6-406;
- 1685 (jj) receiving stolen property under Section 76-6-408;
- 1686 (kk) theft of services under Section 76-6-409;
- 1687 (ll) forgery under Section 76-6-501;
- 1688 (mm) unlawful use of financial transaction card under Section_76-6-506.2;
- 1689 (nn) unlawful acquisition, possession, or transfer of financial transaction card under
- 1690 Section_76-6-506.3;
- 1691 (oo) financial transaction card offenses under Section_76-6-506.6;
- 1692 (pp) deceptive business practices under Section 76-6-507;

1693 (qq) bribery or receiving bribe by person in the business of selection, appraisal, or
1694 criticism of goods under Section 76-6-508;
1695 (rr) bribery of a labor official under Section 76-6-509;
1696 (ss) defrauding creditors under Section 76-6-511;
1697 (tt) acceptance of deposit by insolvent financial institution under Section 76-6-512;
1698 (uu) unlawful dealing with property by fiduciary under Section 76-6-513;
1699 (vv) bribery or threat to influence contest under Section 76-6-514;
1700 (ww) making a false credit report under Section 76-6-517;
1701 (xx) criminal simulation under Section 76-6-518;
1702 (yy) criminal usury under Section 76-6-520;
1703 (zz) insurance fraud under Section 76-6-521;
1704 (aaa) retail theft under Section 76-6-602;
1705 (bbb) computer crimes under Section 76-6-703;
1706 (ccc) identity fraud under Section 76-6-1102;
1707 (ddd) mortgage fraud under Section 76-6-1203;
1708 (eee) sale of a child under Section 76-7-203;
1709 (fff) bribery to influence official or political actions under Section 76-8-103;
1710 (ggg) threat to influence official or political action under Section 76-8-104;
1711 (hhh) receiving bribe or bribery by public servant under Section 76-8-105;
1712 (iii) receiving bribe for endorsement of person as a public servant under Section
1713 76-8-106;
1714 (jjj) bribery for endorsement of person as public servant under Section 76-8-106.1;
1715 (kkk) official misconduct based on unauthorized act or failure of duty under Section
1716 76-8-201;
1717 (lll) official misconduct concerning inside information under Section 76-8-202;
1718 (mmm) obstruction of justice in a criminal investigation or proceeding under Section
1719 76-8-306;
1720 (nnn) acceptance of bribe or bribery to prevent criminal prosecution under Section
1721 76-8-308;
1722 (ooo) harboring or concealing offender who has escaped from official custody under
1723 Section 76-8-309.2;
1724 (ppp) making a false or inconsistent material statement under Section 76-8-502;
1725 (qqq) making a false or inconsistent statement under Section 76-8-503;
1726 (rrr) making a written false statement under Section 76-8-504;

1727 (sss) tampering with a witness under Section 76-8-508;
1728 (ttt) retaliation against a witness, victim, or informant under Section 76-8-508.3;
1729 (uuu) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
1730 (vvv) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;
1731 (www) tampering with evidence under Section 76-8-510.5;
1732 (xxx) falsification or alteration of a government record under Section 76-8-511, if the
1733 record is a record described in Title 20A, Election Code, or Title 36, Chapter 11,
1734 Lobbyist Disclosure and Regulation Act;
1735 (yyy) public assistance fraud by an applicant for public assistance under Section
1736 76-8-1203.1;
1737 (zzz) public assistance fraud by a recipient of public assistance under Section
1738 76-8-1203.3;
1739 (aaaa) public assistance fraud by a provider under Section 76-8-1203.5;
1740 (bbbb) fraudulently misappropriating public assistance funds under Section 76-8-1203.7;
1741 (cccc) false statement to obtain or increase unemployment compensation under Section
1742 76-8-1301;
1743 (dddd) false statement to prevent or reduce unemployment compensation or liability
1744 under Section 76-8-1302;
1745 (eeee) unlawful failure to comply with Employment Security Act requirements under
1746 Section 76-8-1303;
1747 (ffff) unlawful use or disclosure of employment information under Section 76-8-1304;
1748 (gggg) intentionally or knowingly causing one animal to fight with another under
1749 Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
1750 (hhhh) possession, use, or removal of explosives, chemical, or incendiary devices or
1751 parts under Section 76-10-306;
1752 (iiii) delivery to common carrier, mailing, or placement on premises of an incendiary
1753 device under Section 76-10-307;
1754 (jjjj) possession of a deadly weapon with intent to assault under Section 76-10-507;
1755 (kkkk) unlawful marking of pistol or revolver under Section 76-10-521;
1756 (llll) alteration of number or mark on pistol or revolver under Section 76-10-522;
1757 (mmmm) forging or counterfeiting trademarks, trade name, or trade device under
1758 Section 76-10-1002;
1759 (nnnn) selling goods under counterfeited trademark, trade name, or trade devices under
1760 Section 76-10-1003;

(oooo) sales in containers bearing registered trademark of substituted articles under Section 76-10-1004;

(pppp) selling or dealing with article bearing registered trademark or service mark with intent to defraud under Section 76-10-1006;

(qqqq) gambling under Section 76-10-1102;

(rrrr) gambling fraud under Section 76-10-1103;

(ssss) gambling promotion under Section 76-10-1104;

(tttt) possessing a gambling device or record under Section 76-10-1105;

(uuuu) confidence game under Section 76-10-1109;

(vvvv) distributing pornographic material under Section 76-10-1204;

(www) inducing acceptance of pornographic material under Section 76-10-1205;

(xxxx) dealing in harmful material to a minor under Section 76-10-1206;

(yyyy) distribution of pornographic films under Section 76-10-1222;

(zzzz) indecent public displays under Section 76-10-1228;

(aaaa) engaging in prostitution under Section ~~[76-10-1302]~~ 76-5d-202;

(bbbb) aiding prostitution under Section ~~[76-10-1304]~~ 76-5d-206;

(cccc) exploiting prostitution under Section ~~[76-10-1305]~~ 76-5d-207;

(dddd) aggravated exploitation of prostitution under Section ~~[76-10-1306]~~ 76-5d-208;

(eeee) communications fraud under Section 76-10-1801;

(ffff) an act prohibited by the criminal provisions of Part 19, Money Laundering and Currency Transaction Reporting Act;

(ggggg) vehicle compartment for contraband under Section 76-10-2801;

(hhhhh) an act prohibited by the criminal provisions of the laws governing taxation in this state; or

(iiii) an act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961(1)(B), (C), and (D).

Section 27. Section **77-23a-8** is amended to read:

77-23a-8 . Court order to authorize or approve interception -- Procedure.

- (1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state

1795 that is responsible for investigating the type of offense for which the application is made.

1796 (2) The judge may grant the order in conformity with the required procedures when the
1797 interception sought may provide or has provided evidence of the commission of:

1798 (a) an act:

1799 (i) prohibited by the criminal provisions of:

1800 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

1801 (B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

1802 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

1803 (ii) punishable by a term of imprisonment of more than one year;

1804 (b) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform
1805 Securities Act, and punishable by a term of imprisonment of more than one year;

1806 (c) an offense:

1807 (i) of:

1808 (A) attempt under Section 76-4-101;

1809 (B) conspiracy under Section 76-4-201;

1810 (C) criminal solicitation of an adult, Section 76-4-203; or

1811 (D) criminal solicitation of a minor, Section 76-4-205; and

1812 (ii) punishable by a term of imprisonment of more than one year;

1813 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of
1814 more than one year under Section 76-5-107.3;

1815 (e)(i) aggravated murder under Section 76-5-202;

1816 (ii) murder under Section 76-5-203; or

1817 (iii) manslaughter under Section 76-5-205;

1818 (f)(i) kidnapping under Section 76-5-301;

1819 (ii) child kidnapping under Section 76-5-301.1;

1820 (iii) aggravated kidnapping under Section 76-5-302;

1821 (iv) human trafficking for labor under Section 76-5-308;

1822 (v) human trafficking for sexual exploitation under Section 76-5-308.1;

1823 (vi) human trafficking of a child under Section 76-5-308.5;

1824 (vii) human smuggling under Section 76-5-308.3;

1825 (viii) aggravated human trafficking under Section 76-5-310; or

1826 (ix) aggravated human smuggling under Section 76-5-310.1;

1827 (g)(i) arson under Section 76-6-102; or

1828 (ii) aggravated arson under Section 76-6-103;

- 1829 (h)(i) burglary under Section 76-6-202; or
1830 (ii) aggravated burglary under Section 76-6-203;
1831 (i)(i) robbery under Section 76-6-301; or
1832 (ii) aggravated robbery under Section 76-6-302;
1833 (j) an offense:
1834 (i) of:
1835 (A) theft under Section 76-6-404;
1836 (B) theft by deception under Section 76-6-405; or
1837 (C) theft by extortion under Section 76-6-406; and
1838 (ii) punishable by a maximum term of imprisonment of more than one year;
1839 (k) an offense of receiving stolen property that is punishable by a maximum term of
1840 imprisonment of more than one year under Section 76-6-408;
1841 (l) a financial card transaction offense punishable by a maximum term of imprisonment
1842 of more than one year under Section 76-6-506.2, 76-6-506.3, or 76-6-506.6;
1843 (m) bribery of a labor official under Section 76-6-509;
1844 (n) bribery or threat to influence a publicly exhibited contest under Section 76-6-514;
1845 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
1846 more than one year under Section 76-6-518;
1847 (p) criminal usury under Section 76-6-520;
1848 (q) insurance fraud punishable by a maximum term of imprisonment of more than one
1849 year under Section 76-6-521;
1850 (r) a violation under Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable
1851 by a maximum term of imprisonment of more than one year under Section 76-6-703;
1852 (s) bribery to influence official or political actions under Section 76-8-103;
1853 (t) misusing public money or public property under Section 76-8-402;
1854 (u) tampering with a witness under Section 76-8-508;
1855 (v) retaliation against a witness, victim, or informant under Section 76-8-508.3;
1856 (w) tampering or retaliating against a juror under Section 76-8-508.5;
1857 (x) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
1858 (y) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;
1859 (z) obstruction of justice in a criminal investigation or proceeding under Section
1860 76-8-306;
1861 (aa) harboring or concealing offender who has escaped from official custody under
1862 Section 76-8-309.2;

- (bb) destruction of property to interfere with preparations for defense or war under Section 76-8-802;
- (cc) an attempt to commit crimes of sabotage under Section 76-8-804;
- (dd) conspiracy to commit crimes of sabotage under Section 76-8-805;
- (ee) advocating criminal syndicalism or sabotage under Section 76-8-902;
- (ff) assembling for advocating criminal syndicalism or sabotage under Section 76-8-903;
- (gg) riot punishable by a maximum term of imprisonment of more than one year under Section 76-9-101;
- (hh) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year under Section 76-9-301.1;
- (ii) possession, use, or removal of an explosive, chemical, or incendiary device and parts under Section 76-10-306;
- (jj) delivery to a common carrier or mailing of an explosive, chemical, or incendiary device under Section 76-10-307;
- (kk) exploiting prostitution under Section ~~[76-10-1305]~~ 76-5d-207;
- (ll) aggravated exploitation of prostitution under Section ~~[76-10-1306]~~ 76-5d-208;
- (mm) bus hijacking or assault with intent to commit hijacking under Section 76-10-1504;
- (nn) discharging firearms and hurling missiles under Section 76-10-1505;
- (oo) violations under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act under Section 76-10-1602;
- (pp) communications fraud under Section 76-10-1801;
- (qq) money laundering under Sections 76-10-1903 and 76-10-1904; or
- (rr) reporting by a person engaged in a trade or business when the offense is punishable by a maximum term of imprisonment of more than one year under Section 76-10-1906.

Section 28. Section **77-38-3** is amended to read:

77-38-3 . Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.

- (1) Within seven days after the day on which felony criminal charges are filed against a defendant, the prosecuting agency shall provide an initial notice to reasonably

1897 identifiable and locatable victims of the crime contained in the charges, except as
1898 otherwise provided in this chapter.

1899 (2) The initial notice to the victim of a crime shall provide information about electing to
1900 receive notice of subsequent important criminal justice hearings listed in Subsections
1901 77-38-2(5)(a) through (g) and rights under this chapter.

1902 (3) The prosecuting agency shall provide notice to a victim of a crime:

1903 (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a)
1904 through (g), which the victim has requested; and

1905 (b) for a restitution request to be submitted in accordance with Section 77-38b-202.

1906 (4)(a) The responsible prosecuting agency may provide initial and subsequent notices in
1907 any reasonable manner, including telephonically, electronically, orally, or by means
1908 of a letter or form prepared for this purpose.

1909 (b) In the event of an unforeseen important criminal justice hearing, described in
1910 Subsections 77-38-2(5)(a) through (g) for which a victim has requested notice, a
1911 good faith attempt to contact the victim by telephone shall be considered sufficient
1912 notice, provided that the prosecuting agency subsequently notifies the victim of the
1913 result of the proceeding.

1914 (5)(a) The court shall take reasonable measures to ensure that its scheduling practices for
1915 the proceedings provided in Subsections 77-38-2(5)(a) through (g) permit an
1916 opportunity for victims of crimes to be notified.

1917 (b) The court shall consider whether any notification system that the court might use to
1918 provide notice of judicial proceedings to defendants could be used to provide notice
1919 of judicial proceedings to victims of crimes.

1920 (6) A defendant or, if it is the moving party, the Division of Adult Probation and Parole,
1921 shall give notice to the responsible prosecuting agency of any motion for modification of
1922 any determination made at any of the important criminal justice hearings provided in
1923 Subsections 77-38-2(5)(a) through (g) in advance of any requested court hearing or
1924 action so that the prosecuting agency may comply with the prosecuting agency's
1925 notification obligation.

1926 (7)(a) Notice to a victim of a crime shall be provided by the Board of Pardons and
1927 Parole for the important criminal justice hearing under Subsection 77-38-2(5)(h).

1928 (b) The board may provide notice in any reasonable manner, including telephonically,
1929 electronically, orally, or by means of a letter or form prepared for this purpose.

1930 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to

a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (g) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) To facilitate the payment of restitution and the notice of hearings regarding restitution, a victim who seeks restitution and notice of restitution hearings shall provide the court with the victim's current address and telephone number.

(10)(a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice the prosecuting agency has received from a victim to the Board of Pardons and Parole.

(11) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in the prosecuting agency's discretion to a representative sample of the victims.

(12)(a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice and Youth Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for purposes of providing notice under this section, are classified as protected under Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) the Utah Office for Victims of Crime;
- (vi) the Commission on Criminal and Juvenile Justice;
- (vii) the Utah State Courts; and
- (viii) the Board of Pardons and Parole.

(13) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

(14)(a) When a defendant is charged with a felony crime under Sections 76-5-301

through 76-5-310.1 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413.2 regarding sexual offenses; or Section [~~76-10-1306~~] 76-5d-208 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:

- (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
- (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
- (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.

(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.

(c)(i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

(15)(a) When a case involving a victim may resolve before trial with a plea deal, the prosecutor shall notify the victim of that possibility as soon as practicable.

(b) Upon the request of a victim described in Subsection (15)(a), the prosecutor shall explain the available details of an anticipated plea deal.

Section 29. Section **77-41-102** is amended to read:

77-41-102 . Definitions.

As used in this chapter:

(1) "Child abuse offender" means an individual:

(a) who has been convicted in this state of a violation of:

(i) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b); or

(ii) attempting, soliciting, or conspiring to commit aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);

(b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to

- 1999 commit a crime in another jurisdiction, including a state, federal, or military court,
2000 that is substantially equivalent to the offense listed in Subsection (1)(a); and
2001 (ii)(A) who is a Utah resident; or
2002 (B) who is not a Utah resident but is in this state for a total of 10 days in a
2003 12-month period, regardless of whether the offender intends to permanently
2004 reside in this state;
2005 (c)(i)(A) who is required to register as a child abuse offender in another
2006 jurisdiction of original conviction;
2007 (B) who is required to register as a child abuse offender by a state, a federal, or a
2008 military court; or
2009 (C) who would be required to register as a child abuse offender if residing in the
2010 jurisdiction of the conviction regardless of the date of the conviction or a
2011 previous registration requirement; and
2012 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of
2013 whether the offender intends to permanently reside in this state;
2014 (d)(i)(A) who is a nonresident regularly employed or working in this state; or
2015 (B) who is a student in this state; and
2016 (ii)(A) who was convicted of the offense listed in Subsection (1)(a) or a
2017 substantially equivalent offense in another jurisdiction; or
2018 (B) who is required to register in the individual's state of residence based on a
2019 conviction for an offense that is not substantially equivalent to an offense listed
2020 in Subsection (1)(a);
2021 (e) who is found not guilty by reason of insanity in this state or in another jurisdiction of
2022 the offense listed in Subsection (1)(a); or
2023 (f)(i) who is adjudicated under Section 80-6-701 for the offense listed in Subsection
2024 (1)(a); and
2025 (ii) who has been committed to the division for secure care, as defined in Section
2026 80-1-102, for that offense if:
2027 (A) the individual remains in the division's custody until 30 days before the
2028 individual's 21st birthday;
2029 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
2030 under Section 80-6-605 and the individual remains in the division's custody
2031 until 30 days before the individual's 25th birthday; or
2032 (C) the individual is moved from the division's custody to the custody of the

2033 department before expiration of the division's jurisdiction over the individual.

2034 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
2035 Safety established in ~~[section]~~ Section 53-10-201.

2036 (3) "Business day" means a day on which state offices are open for regular business.

2037 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal
2038 Identification showing that the offender has met the requirements of Section 77-41-112.

2039 (5)(a) "Convicted" means a plea or conviction of:

2040 (i) guilty;

2041 (ii) guilty with a mental illness; or

2042 (iii) no contest.

2043 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in
2044 abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.

2045 (c) "Convicted" does not include:

2046 (i) a withdrawn or dismissed plea in abeyance;

2047 (ii) a diversion agreement; or

2048 (iii) an adjudication of a minor for an offense under Section 80-6-701.

2049 (6) "Department" means the Department of Public Safety.

2050 (7) "Division" means the Division of Juvenile Justice and Youth Services.

2051 (8) "Employed" or "carries on a vocation" includes employment that is full time or part
2052 time, whether financially compensated, volunteered, or for the purpose of government or
2053 educational benefit.

2054 (9) "Indian Country" means:

2055 (a) all land within the limits of any Indian reservation under the jurisdiction of the
2056 United States government, regardless of the issuance of any patent, and includes
2057 rights-of-way running through the reservation;

2058 (b) all dependent Indian communities within the borders of the United States whether
2059 within the original or subsequently acquired territory, and whether or not within the
2060 limits of a state; and

2061 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
2062 not been extinguished, including rights-of-way running through the allotments.

2063 (10) "Jurisdiction" means any state, Indian Country, United States Territory, or property
2064 under the jurisdiction of the United States military, Canada, the United Kingdom,
2065 Australia, or New Zealand.

2066 (11) "Kidnap offender" means an individual, other than a natural parent of the victim:

- (a) who has been convicted in this state of a violation of:
- (i) kidnapping under Subsection 76-5-301(2)(c) or (d);
 - (ii) child kidnapping under Section 76-5-301.1;
 - (iii) aggravated kidnapping under Section 76-5-302;
 - (iv) human trafficking for labor under Section 76-5-308;
 - (v) human smuggling under Section 76-5-308.3;
 - (vi) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);
 - (vii) aggravated human trafficking under Section 76-5-310;
 - (viii) aggravated human smuggling under Section 76-5-310.1;
 - (ix) human trafficking of a vulnerable adult for labor under Section 76-5-311; or
 - (x) attempting, soliciting, or conspiring to commit a felony offense listed in Subsections (11)(a)(i) through (ix);
- (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (11)(a); and
- (ii)(A) who is a Utah resident; or
- (B) who is not a Utah resident but is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;
- (c)(i)(A) who is required to register as a kidnap offender in another jurisdiction of original conviction;
- (B) who is required to register as a kidnap offender by a state, federal, or military court; or
- (C) who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and
- (ii) who is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;
- (d)(i)(A) who is a nonresident regularly employed or working in this state; or
- (B) who is a student in this state; and
- (ii)(A) who was convicted of one or more offenses listed in Subsection (11)(a) or any substantially equivalent offense in another jurisdiction; or
- (B) who is required to register in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed

2101 in Subsection (11)(a);

2102 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction
2103 of one or more offenses listed in Subsection (11)(a); or

2104 (f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
2105 Subsection (11)(a); and

2106 (ii) who has been committed to the division for secure care, as defined in Section
2107 80-1-102, for that offense if:

2108 (A) the individual remains in the division's custody until 30 days before the
2109 individual's 21st birthday;

2110 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
2111 under Section 80-6-605 and the individual remains in the division's custody
2112 until 30 days before the individual's 25th birthday; or

2113 (C) the individual is moved from the division's custody to the custody of the
2114 department before expiration of the division's jurisdiction over the individual.

2115 (12) "Natural parent" means a minor's biological or adoptive parent, including the minor's
2116 noncustodial parent.

2117 (13) "Offender" means a child abuse offender, kidnap offender, or sex offender.

2118 (14) "Online identifier" or "Internet identifier":

2119 (a) means any electronic mail, chat, instant messenger, social networking, or similar
2120 name used for Internet communication; and

2121 (b) does not include date of birth, social security number, PIN number, or Internet
2122 passwords.

2123 (15) "Primary residence" means the location where the offender regularly resides, even if
2124 the offender intends to move to another location or return to another location at a future
2125 date.

2126 (16) "Register" means to comply with the requirements of this chapter and administrative
2127 rules of the department made under this chapter.

2128 (17) "Registration website" means the Sex, Kidnap, and Child Abuse Offender Notification
2129 and Registration website described in Section 77-41-110 and the information on the
2130 website.

2131 (18) "Secondary residence" means real property that the offender owns or has a financial
2132 interest in, or a location where the offender stays overnight a total of 10 or more nights
2133 in a 12-month period when not staying at the offender's primary residence.

2134 (19) "Sex offender" means an individual:

- 2135 (a) convicted in this state of:
- 2136 (i) a felony or class A misdemeanor violation of enticing a minor under Section
- 2137 76-4-401;
- 2138 (ii) sexual exploitation of a vulnerable adult under Section 76-5b-202;
- 2139 (iii) human trafficking for sexual exploitation under Section 76-5-308.1;
- 2140 (iv) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5
- 2141 (4)(b);
- 2142 (v) aggravated human trafficking for sexual exploitation under Section 76-5-310;
- 2143 (vi) human trafficking of a vulnerable adult for sexual exploitation under Section
- 2144 76-5-311;
- 2145 (vii) unlawful sexual activity with a minor under Section 76-5-401, except as
- 2146 provided in Subsection 76-5-401(3)(b) or (c);
- 2147 (viii) sexual abuse of a minor under Section 76-5-401.1, except as provided in
- 2148 Subsection 76-5-401.1(3);
- 2149 (ix) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- 2150 (x) rape under Section 76-5-402;
- 2151 (xi) rape of a child under Section 76-5-402.1;
- 2152 (xii) object rape under Section 76-5-402.2;
- 2153 (xiii) object rape of a child under Section 76-5-402.3;
- 2154 (xiv) a felony violation of forcible sodomy under Section 76-5-403;
- 2155 (xv) sodomy on a child under Section 76-5-403.1;
- 2156 (xvi) forcible sexual abuse under Section 76-5-404;
- 2157 (xvii) sexual abuse of a child under Section 76-5-404.1;
- 2158 (xviii) aggravated sexual abuse of a child under Section 76-5-404.3;
- 2159 (xix) aggravated sexual assault under Section 76-5-405;
- 2160 (xx) custodial sexual relations under Section 76-5-412, when the individual in
- 2161 custody is younger than 18 years old, if the offense is committed on or after May
- 2162 10, 2011;
- 2163 (xxi) sexual exploitation of a minor under Section 76-5b-201;
- 2164 (xxii) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 2165 (xxiii) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- 2166 (xxiv) incest under Section 76-7-102;
- 2167 (xxv) lewdness under Section 76-9-702, if the individual has been convicted of the
- 2168 offense four or more times;

- (xxvi) sexual battery under Section 76-9-702.1, if the individual has been convicted of the offense four or more times;
- (xxvii) any combination of convictions of lewdness under Section 76-9-702, and of sexual battery under Section 76-9-702.1, that total four or more convictions;
- (xxviii) lewdness involving a child under Section 76-9-702.5;
- (xxix) a felony or class A misdemeanor violation of voyeurism under Section 76-9-702.7;
- (xxx) aggravated exploitation of prostitution under Section ~~[76-10-1306]~~ 76-5d-208;
- or
- (xxxi) attempting, soliciting, or conspiring to commit a felony offense listed in this Subsection (19)(a);
- (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (19)(a); and
- (ii)(A) who is a Utah resident; or
- (B) who is not a Utah resident but is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;
- (c)(i)(A) who is required to register as a sex offender in another jurisdiction of original conviction;
- (B) who is required to register as a sex offender by a state, federal, or military court; or
- (C) who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or a previous registration requirement; and
- (ii) who is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;
- (d)(i)(A) who is a nonresident regularly employed or working in this state; or
- (B) who is a student in this state; and
- (ii)(A) who was convicted of one or more offenses listed in Subsection (19)(a) or a substantially equivalent offense in another jurisdiction; or
- (B) who is required to register in the individual's jurisdiction of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (19)(a);

(e) who is found not guilty by reason of insanity in this state, or in another jurisdiction of one or more offenses listed in Subsection (19)(a); or

(f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (19)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

(B) the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

(20) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(21) "Vehicle" means a motor vehicle, an aircraft, or a watercraft subject to registration in any jurisdiction.

Section 30. Section **77-41-106** is amended to read:

77-41-106 . Offenses requiring lifetime registration.

Offenses referred to in Subsection 77-41-105(3)(c)(i) requiring lifetime registration are:

(1) an offense listed in Subsection 77-41-102(1), (11), or (19) if, at the time of the conviction for the offense, the offender has previously been convicted of an offense listed in Subsection 77-41-102(1), (11), or (19) or has previously been required to register as a sex offender, kidnap offender, or child abuse offender for an offense committed as a juvenile;

(2) a conviction for a following offense, including attempting, soliciting, or conspiring to commit a felony of:

(a) child kidnapping under Section 76-5-301.1, except if the offender is a natural parent of the victim;

(b) rape under Section 76-5-402;

(c) rape of a child under Section 76-5-402.1;

(d) object rape under Section 76-5-402.2;

(e) object rape of a child under Section 76-5-402.3;

(f) sodomy on a child under Section 76-5-403.1;

- 2237 (g) aggravated sexual abuse of a child under Section 76-5-404.3; or
- 2238 (h) aggravated sexual assault under Section 76-5-405;
- 2239 (3) human trafficking for sexual exploitation under Section 76-5-308.1;
- 2240 (4) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);
- 2241 (5) aggravated human trafficking for sexual exploitation under Section 76-5-310;
- 2242 (6) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;
- 2243 (7) aggravated kidnapping under Section 76-5-302, except if the offender is a natural parent
- 2244 of the victim;
- 2245 (8) forcible sodomy under Section 76-5-403;
- 2246 (9) sexual abuse of a child under Section 76-5-404.1;
- 2247 (10) sexual exploitation of a minor under Section 76-5b-201;
- 2248 (11) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 2249 (12) aggravated sexual extortion under Subsection 76-5b-204(2)(b);[~~or~~]
- 2250 (13) aggravated exploitation of prostitution under Section [~~76-10-1306~~] 76-5d-208, on or
- 2251 after May 10, 2011; or
- 2252 (14) a felony violation of enticing a minor under Section 76-4-401 if the offender enticed
- 2253 the minor to engage in sexual activity that is one of the offenses described in
- 2254 Subsections (2) through (13).

2255 Section 31. Section **78B-6-1101** is amended to read:

2256 **78B-6-1101 . Definitions -- Nuisance -- Right of action -- Agriculture operations.**

- 2257 (1) A nuisance is anything that is injurious to health, indecent, offensive to the senses, or an
- 2258 obstruction to the free use of property, so as to interfere with the comfortable enjoyment
- 2259 of life or property. A nuisance may be the subject of an action.
- 2260 (2) A nuisance may include the following:
- 2261 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 2262 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 2263 (c) criminal activity committed in concert with three or more persons as provided in
- 2264 Section 76-3-203.1;
- 2265 (d) criminal activity committed for the benefit of, at the direction of, or in association
- 2266 with any criminal street gang as defined in Section 76-9-802;
- 2267 (e) criminal activity committed to gain recognition, acceptance, membership, or
- 2268 increased status with a criminal street gang as defined in Section 76-9-802;
- 2269 (f) party houses that frequently create conditions defined in Subsection (1); and
- 2270 (g) prostitution as provided in [~~Title 76, Chapter 10, Part 13, Prostitution~~] Title 76,

2271 Chapter 5d, Prostitution.

- 2272 (3) A nuisance under this part includes tobacco smoke that drifts into a residential unit a
 2273 person rents, leases, or owns, from another residential or commercial unit and the smoke:
 2274 (a) drifts in more than once in each of two or more consecutive seven-day periods; and
 2275 (b) creates any of the conditions under Subsection (1).
 2276 (4) Subsection (3) does not apply to:
 2277 (a) a residential rental unit available for temporary rental, such as for a vacation, or
 2278 available for only 30 or fewer days at a time; or
 2279 (b) a hotel or motel room.
 2280 (5) Subsection (3) does not apply to a unit that is part of a timeshare development, as
 2281 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section
 2282 57-19-2.
 2283 (6) An action may be brought by a person whose property is injuriously affected, or whose
 2284 personal enjoyment is lessened by the nuisance.
 2285 (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter
 2286 44, Agricultural Operations Nuisances Act.
 2287 (8) "Critical infrastructure materials operations" means the same as that term is defined in
 2288 Section 10-9a-901.
 2289 (9) "Manufacturing facility" means a factory, plant, or other facility including its
 2290 appurtenances, where the form of raw materials, processed materials, commodities, or
 2291 other physical objects is converted or otherwise changed into other materials,
 2292 commodities, or physical objects or where such materials, commodities, or physical
 2293 objects are combined to form a new material, commodity, or physical object.

2294 Section 32. Section **78B-6-1107** is amended to read:

2295 **78B-6-1107 . Nuisance -- Drug houses and drug dealing -- Gambling -- Group**
 2296 **criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.**

- 2297 (1) Every building or place is a nuisance where:
 2298 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or
 2299 acquisition occurs of any controlled substance, precursor, or analog specified in Title
 2300 58, Chapter 37, Utah Controlled Substances Act;
 2301 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
 2302 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as
 2303 defined in Subsection 78B-6-1101(1);
 2304 (c) criminal activity is committed in concert with three or more persons as provided in

Section 76-3-203.1;

(d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(g) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in [~~Title 76, Chapter 10, Part 13, Prostitution~~] Title 76, Chapter 5d, Prostitution; and

(h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

(2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.

(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).

Section 33. Section **78B-9-104** is amended to read:

78B-9-104 . Grounds for relief -- Retroactivity of rule.

(1) Unless precluded by Section 78B-9-106 or 78B-9-107, an individual who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for postconviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;

(c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:

(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed

- 2339 post-trial motion or postconviction proceeding, and the evidence could not have
2340 been discovered through the exercise of reasonable diligence;
- 2341 (ii) the material evidence is not merely cumulative of evidence that was known;
2342 (iii) the material evidence is not merely impeachment evidence; and
2343 (iv) viewed with all the other evidence, the newly discovered material evidence
2344 demonstrates that no reasonable trier of fact could have found the petitioner guilty
2345 of the offense or subject to the sentence received;
- 2346 (f) the petitioner can prove that:
- 2347 (i) biological evidence, as that term is defined in Section 77-11c-101, relevant to the
2348 petitioner's conviction was not preserved in accordance with Title 77, Chapter
2349 11c, Part 4, Preservation of Biological Evidence for Violent Felony Offenses;
- 2350 (ii)(A) the biological evidence described in Subsection (1)(f)(i) was not tested
2351 previously; or
2352 (B) if the biological evidence described in Subsection (1)(f)(i) was tested
2353 previously, there is a material change in circumstance, including a scientific or
2354 technological advance, that would make it plausible that a test of the biological
2355 evidence described in Subsection (1)(f)(i) would produce a favorable test result
2356 for the petitioner; and
- 2357 (iii) a favorable result described in Subsection (1)(f)(ii), which is presumed for
2358 purposes of the petitioner's action under this section, when viewed with all the
2359 other evidence, demonstrates a reasonable probability of a more favorable
2360 outcome at trial for the petitioner;
- 2361 (g) the petitioner can prove entitlement to relief under a rule announced by the United
2362 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after
2363 conviction and sentence became final on direct appeal, and that:
- 2364 (i) the rule was dictated by precedent existing at the time the petitioner's conviction
2365 or sentence became final; or
2366 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for
2367 which the petitioner was convicted; or
- 2368 (h) the petitioner committed any of the following offenses while subject to force, fraud,
2369 or coercion, as defined in Section 76-5-308:
- 2370 (i) Section 58-37-8, possession of a controlled substance;
2371 (ii) Section ~~[76-10-1304]~~ 76-5d-206, aiding prostitution;
2372 (iii) Section 76-6-206, criminal trespass;

- (iv) Section 76-6-413, theft;
- (v) Section 76-6-502, possession of forged writing or device for writing;
- (vi) any offense in Title 76, Chapter 6, Part 6, Retail Theft;
- (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification document;
- (viii) Section 76-9-702, lewdness;
- (ix) Section ~~[76-10-1302,]~~ 76-5d-202, engaging in prostitution; or
- (x) Section ~~[76-10-1313]~~ 76-5d-209, sexual solicitation by an actor offering to engage in sexual activity for compensation.

(2) The court may not grant relief from a conviction or sentence unless in light of the facts proved in the postconviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing:

- (a) the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome; or
- (b) if the petitioner challenges the conviction or the sentence on grounds that the prosecutor knowingly failed to correct false testimony at trial or at sentencing, the petitioner establishes that the false testimony, in any reasonable likelihood, could have affected the judgment of the fact finder.

(3)(a) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

- (b) Claims under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence, of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

The following section is affected by a coordination clause at the end of this bill.

Section 34. Section **80-2-301** is amended to read:

80-2-301 . Division responsibilities.

(1) The division is the child, youth, and family services authority of the state.

(2) The division shall:

- (a) administer services to minors and families, including:
 - (i) child welfare services;

- 2407 (ii) domestic violence services; and
- 2408 (iii) all other responsibilities that the Legislature or the executive director of the
- 2409 department may assign to the division;
- 2410 (b) provide the following services:
- 2411 (i) financial and other assistance to an individual adopting a child with special needs
- 2412 under Sections 80-2-806 through 80-2-809, not to exceed the amount the division
- 2413 would provide for the child as a legal ward of the state;
- 2414 (ii) non-custodial and in-home services in accordance with Section 80-2-306,
- 2415 including:
- 2416 (A) services designed to prevent family break-up; and
- 2417 (B) family preservation services;
- 2418 (iii) reunification services to families whose children are in substitute care in
- 2419 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 2420 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 2421 (iv) protective supervision of a family, upon court order, in an effort to eliminate
- 2422 abuse or neglect of a child in that family;
- 2423 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective
- 2424 Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 2425 (vi) domestic violence services, in accordance with the requirements of federal law;
- 2426 (vii) protective services to victims of domestic violence and the victims' children, in
- 2427 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 2428 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 2429 (viii) substitute care for dependent, abused, and neglected children;
- 2430 (ix) services for minors who are victims of human trafficking or human smuggling,
- 2431 as described in Sections 76-5-308 through 76-5-310.1, or who have engaged in
- 2432 prostitution or sexual solicitation, as defined in Sections ~~[76-10-1302]~~ 76-5d-202
- 2433 and ~~[76-10-1313]~~ 76-5d-209; and
- 2434 (x) training for staff and providers involved in the administration and delivery of
- 2435 services offered by the division in accordance with this chapter and Chapter 2a,
- 2436 Removal and Protective Custody of a Child;
- 2437 (c) establish standards for all:
- 2438 (i) contract providers of out-of-home care for minors and families;
- 2439 (ii) facilities that provide substitute care for dependent, abused, or neglected children
- 2440 placed in the custody of the division; and

- 2441 (iii) direct or contract providers of domestic violence services described in
2442 Subsection (2)(b)(vi);
- 2443 (d) have authority to:
- 2444 (i) contract with a private, nonprofit organization to recruit and train foster care
2445 families and child welfare volunteers in accordance with Section 80-2-405;
- 2446 (ii) approve facilities that meet the standards established under Subsection (2)(c) to
2447 provide substitute care for dependent, abused, or neglected children placed in the
2448 custody of the division; and
- 2449 (iii) approve an individual to provide short-term relief care to a foster parent if the
2450 individual:
- 2451 (A) provides the relief care for less than six consecutive nights;
- 2452 (B) provides the relief care in the short-term relief care provider's home;
- 2453 (C) is direct access qualified, as that term is defined in Section 26B-2-120; and
- 2454 (D) is an immediate family member or relative, as those terms are defined in
2455 Section 80-3-102, of the foster parent;
- 2456 (e) cooperate with the federal government in the administration of child welfare and
2457 domestic violence programs and other human service activities assigned by the
2458 department;
- 2459 (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws
2460 enacted for the protection of abused, neglected, or dependent children, in accordance
2461 with this chapter and Chapter 2a, Removal and Protective Custody of a Child, unless
2462 administration is expressly vested in another division or department of the state;
- 2463 (g) cooperate with the Workforce Development Division within the Department of
2464 Workforce Services in meeting the social and economic needs of an individual who is
2465 eligible for public assistance;
- 2466 (h) compile relevant information, statistics, and reports on child and family service
2467 matters in the state;
- 2468 (i) prepare and submit to the department, the governor, and the Legislature reports of the
2469 operation and administration of the division in accordance with the requirements of
2470 Sections 80-2-1102 and 80-2-1103;
- 2471 (j) within appropriations from the Legislature, provide or contract for a variety of
2472 domestic violence services and treatment methods;
- 2473 (k) enter into contracts for programs designed to reduce the occurrence or recurrence of
2474 abuse and neglect in accordance with Section 80-2-503;

- 2475 (l) seek reimbursement of funds the division expends on behalf of a child in the
2476 protective custody, temporary custody, or custody of the division, from the child's
2477 parent or guardian in accordance with an order for child support under Section
2478 78A-6-356;
- 2479 (m) ensure regular, periodic publication, including electronic publication, regarding the
2480 number of children in the custody of the division who:
- 2481 (i) have a permanency goal of adoption; or
2482 (ii) have a final plan of termination of parental rights, under Section 80-3-409, and
2483 promote adoption of the children;
- 2484 (n) subject to Subsections (5) and (7), refer an individual receiving services from the
2485 division to the local substance abuse authority or other private or public resource for
2486 a court-ordered drug screening test;
- 2487 (o) report before November 30, 2020, and every third year thereafter, to the Social
2488 Services Appropriations Subcommittee regarding:
- 2489 (i) the daily reimbursement rate that is provided to licensed foster parents based on
2490 level of care;
- 2491 (ii) the amount of money spent on daily reimbursements for licensed foster parents
2492 during the previous fiscal year; and
2493 (iii) any recommended changes to the division's budget to support the daily
2494 reimbursement rates described in Subsection (2)(o)(i);
- 2495 (p) when a division child welfare caseworker identifies a safety concern with the foster
2496 home, cooperate with the Office of Licensing and make a recommendation to the
2497 Office of Licensing concerning whether the foster home's license should be placed on
2498 conditions, suspended, or revoked; and
- 2499 (q) perform other duties and functions required by law.
- 2500 (3)(a) The division may provide, directly or through contract, services that include the
2501 following:
- 2502 (i) adoptions;
2503 (ii) day-care services;
2504 (iii) out-of-home placements for minors;
2505 (iv) health-related services;
2506 (v) homemaking services;
2507 (vi) home management services;
2508 (vii) protective services for minors;

- 2509 (viii) transportation services; or
2510 (ix) domestic violence services.
- 2511 (b) The division shall monitor services provided directly by the division or through
2512 contract to ensure compliance with applicable law and rules made in accordance with
2513 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2514 (c)(i) Except as provided in Subsection (3)(c)(ii), if the division provides a service
2515 through a private contract, the division shall post the name of the service provider
2516 on the division's website.
- 2517 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.
- 2518 (4)(a) The division may:
- 2519 (i) receive gifts, grants, devises, and donations;
2520 (ii) encourage merchants and service providers to:
- 2521 (A) donate goods or services; or
2522 (B) provide goods or services at a nominal price or below cost;
- 2523 (iii) distribute goods to applicants or consumers of division services free or for a
2524 nominal charge and tax free; and
- 2525 (iv) appeal to the public for funds to meet needs of applicants or consumers of
2526 division services that are not otherwise provided by law, including Sub-for-Santa
2527 programs, recreational programs for minors, and requests for household
2528 appliances and home repairs.
- 2529 (b) If requested by the donor and subject to state and federal law, the division shall use a
2530 gift, grant, devise, donation, or proceeds from the gift, grant, devise, or donation for
2531 the purpose requested by the donor.
- 2532 (5)(a) In carrying out the requirements of Subsection (2)(f), the division shall:
- 2533 (i) cooperate with the juvenile courts, the Division of Juvenile Justice and Youth
2534 Services, and with all public and private licensed child welfare agencies and
2535 institutions to develop and administer a broad range of services and support;
- 2536 (ii) take the initiative in all matters involving the protection of abused or neglected
2537 children, if adequate provisions have not been made or are not likely to be made;
2538 and
- 2539 (iii) make expenditures necessary for the care and protection of the children described
2540 in Subsection (5)(a)(ii), within the division's budget.
- 2541 (b) If an individual is referred to a local substance abuse authority or other private or
2542 public resource for court-ordered drug screening under Subsection (2)(n), the court

shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is an indigent individual.

(6) Except to the extent provided by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division is not required to investigate domestic violence in the presence of a child, as described in Section 76-5-114.

(7)(a) Except as provided in Subsection (7)(b), the division may not:

(i) require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo; or

(ii) refer an individual who is receiving services from the division for drug testing by means of a hair, fingernail, or saliva test that is administered to detect the presence of drugs.

(b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is receiving services from the division for drug testing by means of a saliva test if:

(i) the individual consents to drug testing by means of a saliva test; or

(ii) the court, based on a finding that a saliva test is necessary in the circumstances, orders the individual to complete drug testing by means of a saliva test.

Section 35. Section **80-6-303.5** is amended to read:

80-6-303.5 . Preliminary inquiry by juvenile probation officer -- Eligibility for nonjudicial adjustment.

(1) If the juvenile court receives a referral for an offense committed by a minor that is, or appears to be, within the juvenile court's jurisdiction, or for the minor being a habitual truant, a juvenile probation officer shall make a preliminary inquiry in accordance with this section to determine whether the minor is eligible to enter into a nonjudicial adjustment.

(2) If a minor is referred to the juvenile court for multiple offenses arising from a single criminal episode, and the minor is eligible under this section for a nonjudicial adjustment, the juvenile probation officer shall offer the minor one nonjudicial adjustment for all offenses arising from the single criminal episode.

(3)(a) The juvenile probation officer may:

(i) conduct a validated risk and needs assessment; and

(ii) request that a prosecuting attorney review a referral in accordance with Section

2577 80-6-304.5 if:

2578 (A) the results of the validated risk and needs assessment indicate the minor is
2579 high risk; or

2580 (B) the results of the validated risk and needs assessment indicate the minor is
2581 moderate risk and the referral is for a class A misdemeanor violation under
2582 Title 76, Chapter 5, Offenses Against the Individual, or Title 76, Chapter 9,
2583 Part 7, Miscellaneous Provisions.

2584 (b) If the referral involves an offense that is a violation of Section 41-6a-502, the minor
2585 shall:

2586 (i) undergo a drug and alcohol screening;

2587 (ii) if found appropriate by the screening, participate in an assessment; and

2588 (iii) if warranted by the screening and assessment, follow the recommendations of the
2589 assessment.

2590 (4) Except for an offense that is not eligible under Subsection (8), the juvenile probation
2591 officer shall offer a nonjudicial adjustment to a minor if:

2592 (a) the minor:

2593 (i) is referred for an offense that is a misdemeanor, infraction, or status offense;

2594 (ii) has no more than two prior adjudications; and

2595 (iii) has no more than two prior unsuccessful nonjudicial adjustment attempts;

2596 (b) the minor is referred for an offense that is alleged to have occurred before the minor
2597 was 12 years old; or

2598 (c) the minor is referred for being a habitual truant.

2599 (5) For purposes of determining a minor's eligibility for a nonjudicial adjustment under
2600 Subsection (4), the juvenile probation officer shall treat all offenses arising out of a
2601 single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial
2602 adjustment.

2603 (6) For purposes of determining a minor's eligibility for a nonjudicial adjustment under
2604 Subsection (4), the juvenile probation officer shall treat all offenses arising out of a
2605 single criminal episode that resulted in one or more prior adjudications as a single
2606 adjudication.

2607 (7) Except for a referral that involves an offense described in Subsection (8), the juvenile
2608 probation officer may offer a nonjudicial adjustment to a minor who does not meet the
2609 criteria described in Subsection (4)(a).

2610 (8) The juvenile probation officer may not offer a minor a nonjudicial adjustment if the

referral involves:

(a) an offense alleged to have occurred when the minor was 12 years old or older that is:

(i) a felony offense; or

(ii) a misdemeanor violation of:

(A) Section 41-6a-502, driving under the influence;

(B) Section 76-5-107, threat of violence;

(C) Section 76-5-107.1, threats against schools;

(D) Section 76-5-112, reckless endangerment creating a substantial risk of death or serious bodily injury;

(E) Section 76-5-206, negligent homicide;

(F) Section 76-5d-204, patronizing a prostituted individual who is a child;

(G) Section 76-5d-211, sexual solicitation by an actor offering compensation to a child in exchange for sexual activity;

~~[(F)]~~ (H) Section 76-9-702.1, sexual battery;

~~[(G)]~~ (I) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled shotgun on or about school premises;

~~[(H)]~~ (J) Section 76-10-506, threatening with or using a dangerous weapon in fight or quarrel;

~~[(I)]~~ (K) Section 76-10-507, possession of a deadly weapon with criminal intent; or

~~[(J)]~~ (L) Section 76-10-509.4, possession of a dangerous weapon by a minor; or

(b) an offense alleged to have occurred before the minor is 12 years old that is a felony violation of:

(i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(ii) Section 76-5-202, aggravated murder or attempted aggravated murder;

(iii) Section 76-5-203, murder or attempted murder;

(iv) Section 76-5-302, aggravated kidnapping;

(v) Section 76-5-405, aggravated sexual assault;

(vi) Section 76-6-103, aggravated arson;

(vii) Section 76-6-203, aggravated burglary;

(viii) Section 76-6-302, aggravated robbery; or

(ix) Section 76-10-508.1, felony discharge of a firearm.

(9) The juvenile probation officer shall request that a prosecuting attorney review a referral if:

(a) the referral involves an offense described in Subsection (8); or

(b) the minor has a current suspended order for custody under Section 80-6-711.

The following section is affected by a coordination clause at the end of this bill.

Section 36. Section **80-6-1002** is amended to read:

80-6-1002 . Vacatur of an adjudication.

(1)(a) An individual who has been adjudicated for an offense by the juvenile court may petition the juvenile court for vacatur of the adjudication if the adjudication was for a violation of:

(i) Section 76-5-308, human trafficking for labor if the petitioner engaged in the human trafficking for labor while subject to force, fraud, or coercion;

(ii) Section [~~76-10-1302,~~] 76-5d-202, engaging in prostitution;

(iii) Section [~~76-10-1304~~] 76-5d-206, aiding prostitution; or

(iv) Section [~~76-10-1313~~] 76-5d-209, sexual solicitation by an actor offering to engage in sexual activity for compensation.

(b) The petitioner shall include in the petition the relevant juvenile court incident number and any agencies known or alleged to have any records related to the offense for which vacatur is being sought.

(c) The petitioner shall include with the petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of Section 53-10-108.

(d) The petitioner shall send a copy of the petition to the prosecuting attorney.

(2)(a) Upon the filing of a petition, the juvenile court shall:

(i) set a date for a hearing; and

(ii) at least 30 days before the day on which the hearing on the petition is scheduled, notify the prosecuting attorney and any affected agency identified in the juvenile record:

(A) that a petition has been filed; and

(B) of the date of the hearing.

(b)(i) The juvenile court shall provide a victim with the opportunity to request notice of a petition for vacatur.

(ii) At least 30 days before the day on which the hearing is scheduled, a victim shall receive notice of a petition for vacatur if, before the entry of vacatur, the victim, or the victim's next of kin or authorized representative if the victim is a child or an individual who is incapacitated or deceased, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or

judgment was entered.

(iii) The notice shall include a copy of the petition and statutes and rules applicable to the petition.

(c) At the hearing, the petitioner, the prosecuting attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(3)(a) In deciding whether to grant a petition for vacatur of an adjudication of an offense for human trafficking of labor described in Subsection (1)(a)(i), the juvenile court shall consider whether the petitioner acted subject to force, fraud, or coercion at the time of the conduct giving rise to the adjudication.

(b) If the juvenile court finds by a preponderance of the evidence that the petitioner was subject to force, fraud, or coercion at the time of the conduct giving rise to the adjudication, the juvenile court shall grant vacatur of the adjudication.

(c) If the juvenile court does not find sufficient evidence, the juvenile court shall deny vacatur of the adjudication.

(4) If the petition seeks to vacate an adjudication of an offense described in ~~[Subsection]~~ Subsections (1)(a)(ii) through (iv), the juvenile court shall presumptively grant vacatur of the adjudication unless the petitioner acted as a purchaser of any sexual activity.

(5)(a) Except as provided in Subsection (5)(b), if the juvenile court grants a vacatur of an adjudication for an offense described in Subsection (1)(a), the juvenile court shall order expungement of all records in the petitioner's juvenile record pertaining to the incident identified in the petition, including relevant related records contained in the Management Information System and the Licensing Information System.

(b) The juvenile court may not order expungement of any record in the petitioner's juvenile record that contains an adjudication for a violation of:

(i) Section 76-5-202, aggravated murder; or

(ii) Section 76-5-203, murder.

(6)(a) The petitioner shall be responsible for service of the vacatur and expungement order to all affected state, county, and local entities, agencies, and officials.

(b) To avoid destruction or expungement of the records in whole or in part, the agency or entity receiving the vacatur and expungement order shall only expunge all references to the petitioner's name in the records pertaining to the relevant adjudicated juvenile court incident.

(7)(a) Upon entry of a vacatur and expungement order under this section:

(i) the proceedings in the incident identified in the petition are considered never to

2713 have occurred; and

2714 (ii) the petitioner may reply to an inquiry on the matter as though the proceedings
2715 never occurred.

2716 (b) Upon petition, any record expunged under this section may only be released to or
2717 viewed by:

2718 (i) the individual who is the subject of the record; or

2719 (ii) a person named in the petition of vacatur.

2720 **Section 37. Repealer.**

2721 This bill repeals:

2722 **Section 76-10-1308, Prosecution.**

2723 **Section 76-10-1310, Definitions.**

2724 **Section 38. Effective Date.**

2725 This bill takes effect on May 7, 2025.

2726 **Section 39. Coordinating H.B. 22 with H.B. 21.**

2727 If H.B. 22, Prostitution Offense Amendments, and H.B. 21, Criminal Code

2728 Recodification and Cross References, both pass and become law, the Legislature intends that,
2729 on May 7, 2025:

2730 (1) the amendments to the following sections in H.B. 22 supersede the amendments to those
2731 sections in H.B. 21:

2732 (a) Section 26B-7-205;

2733 (b) Section 76-2-304.5;

2734 (c) Section 76-5d-101 (renumbered from Section 76-10-1301);

2735 (d) Section 76-5d-102 (renumbered from Section 76-10-1307);

2736 (e) Section 76-5d-103 (renumbered from Section 76-10-1311);

2737 (f) Section 76-5d-104 (renumbered from Section 76-10-1312);

2738 (g) Section 76-5d-105 (renumbered from Section 76-10-1314);

2739 (h) Section 76-5d-201;

2740 (i) Section 76-5d-204;

2741 (j) Section 76-5d-209 (renumbered from Section 76-10-1313);

2742 (k) Section 76-5d-210;

2743 (l) Section 80-2-301; and

2744 (m) Section 80-6-1002; and

2745 (2) Section 76-10-1309 be renumbered to Section 76-5d-212 and the amendments in H.B.
2746 22 supersede the amendments to H.B. 21 in renumbered Section 76-10-1309.