

SB0024S01 compared with SB0024

{Omitted text} shows text that was in SB0024 but was omitted in SB0024S01

inserted text shows text that was not in SB0024 but was inserted into SB0024S01

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Child Abuse and Torture Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill concerns child abuse and torture.

Highlighted Provisions:

This bill:

- ▶ creates a new criminal offense for child torture and provides penalties;
- ▶ adds the offense of child torture to the list of offenses for which imprisonment is mandatory;
- ▶ amends existing definitions relating to the offenses of child abuse and aggravated criminal child abuse;
- ▶ modifies child abandonment, abuse or neglect of a child with a disability, and other statutes that rely on certain definitions concerning criminal child abuse;
- ▶ includes the offense of child torture in statutes that reference child abuse or aggravated child abuse, including statutes concerning background checks, murder and aggravated murder, child abuse homicide, bigamy, jail release agreements and orders, and adoption, parent-time, and custody statutes;
- ▶ adds the offense of child torture to the definition of "violent felony";
- ▶

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includes the offense of child torture as a registrable offense on the Sex, Kidnap, and Child Abuse Offender Registry;

- 25 ▶ modifies the definition of "severe type of child abuse or neglect" in the juvenile code to refer to
the amended definition of serious injury in the criminal child abuse statute; {and}
- 24 ▶ **adds coordination clauses:**
- 25 • **to merge the changes to Section 76-3-406 if both this bill and H.B. 78, Criminal**
Offenses Amendments, both pass and become law;
- 27 • **to merge the changes to Section 77-41-102 in this bill if this bill, S.B. 41, Sex, Kidnap,**
and Child Abuse Offender Registry Amendments, both pass and become law, and H.B. 21,
Criminal Code Recodification and Cross References, does not pass and become law, due to Section
77-41-102 being repealed and replaced with newly enacted statutes in S.B. 41; and
- 32 • **to merge the changes to Section 77-41-102 in this bill if this bill, S.B. 41, Sex, Kidnap,**
and Child Abuse Offender Registry Amendments, and H.B. 21, Criminal Code Recodification and
Cross References, all pass and become law, due to Section 77-41-102 being repealed and replaced
with newly enacted statutes in S.B. 41; and
- 27 ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38 None

39 This bill provides coordination clauses.

42 **AMENDS:**

43 **26B-2-120** , as last amended by Laws of Utah 2024, Chapter 234 , as last amended by Laws of Utah
2024, Chapter 234

44 **53G-6-204** , as last amended by Laws of Utah 2024, Chapters 113, 386 , as last amended by Laws
of Utah 2024, Chapters 113, 386

45 **76-2-401** , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws of Utah
2022, Chapter 181

46 **76-3-203.5** , as last amended by Laws of Utah 2024, Chapters 96, 179 , as last amended by Laws of
Utah 2024, Chapters 96, 179

47 **76-3-406** , as last amended by Laws of Utah 2024, Chapter 96 , as last amended by Laws of Utah
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- 49 **76-5-109** , as last amended by Laws of Utah 2022, Chapters 181, 335 , as last amended by Laws of Utah 2022, Chapters 181, 335
- 50 **76-5-109.2** , as enacted by Laws of Utah 2022, Chapter 181 , as enacted by Laws of Utah 2022, Chapter 181
- 51 **76-5-109.3** , as last amended by Laws of Utah 2024, Chapter 225 , as last amended by Laws of Utah 2024, Chapter 225
- 52 **76-5-110** , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws of Utah 2022, Chapter 181
- 53 **76-5-202** , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws of Utah 2022, Chapter 181
- 54 **76-5-203** , as last amended by Laws of Utah 2024, Chapters 96, 187 , as last amended by Laws of Utah 2024, Chapters 96, 187
- 55 **76-5-208** , as last amended by Laws of Utah 2023, Chapter 111 , as last amended by Laws of Utah 2023, Chapter 111
- 56 **76-7-101** , as last amended by Laws of Utah 2022, Chapter 181 , as last amended by Laws of Utah 2022, Chapter 181
- 57 **77-41-102** , as last amended by Laws of Utah 2024, Chapter 234 , as last amended by Laws of Utah 2024, Chapter 234
- 58 **78B-6-117** , as last amended by Laws of Utah 2022, Chapters 185, 430 , as last amended by Laws of Utah 2022, Chapters 185, 430
- 59 **78B-7-801** , as last amended by Laws of Utah 2023, Chapter 114 , as last amended by Laws of Utah 2023, Chapter 114
- 60 **80-1-102** , as last amended by Laws of Utah 2024, Chapter 256 , as last amended by Laws of Utah 2024, Chapter 256
- 61 **81-9-202** , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and amended by Laws of Utah 2024, Chapter 366
- 62 **81-9-207** , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and amended by Laws of Utah 2024, Chapter 366
- 63 **81-9-208** , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and amended by Laws of Utah 2024, Chapter 366

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81-9-402 , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and amended by Laws of Utah 2024, Chapter 366

64 ENACTS:

65 **76-5-109.4** , Utah Code Annotated 1953 , Utah Code Annotated 1953

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

67 **76-3-406** , as last amended by Laws of Utah 2024, Chapter 96 , as last amended by Laws of Utah 2024, Chapter 96

68

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

70 Section 1. Section **26B-2-120** is amended to read:

71 **26B-2-120. Background check -- Direct access to children or vulnerable adults.**

61 (1) As used in this section:

62 (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:

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

67 (B) a foster parent or prospective foster parent;

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

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

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

73 (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;

76 (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;

79 (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;

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- (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;
- 85 (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;
- 88 (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
- 90 (L) a short-term relief care provider.
- 91 (ii) "Applicant" does not include:
- 92 (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;
- 94 (B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services;
- 96 (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
- 100 (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.
- 105 (b) "Application" means a background check application to the office.
- 106 (c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.
- 108 (d) "Criminal finding" means a record of:
- 109 (i) an arrest for a criminal offense;
- 110 (ii) a warrant for a criminal arrest;
- 111 (iii) charges for a criminal offense; or
- 112 (iv) a criminal conviction.
- 113 (e) "Direct access" means that an individual has, or likely will have:
- 114 (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
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- (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.
- 120 (f)
- . (i) "Direct access qualified" means that the applicant has an eligible determination by the office within the license and renewal time period; and
- 122 (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.
- 124 (g) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.
- 126 (h) "Licensee" means an individual or a human services program licensed by the division.
- 128 (i) "Non-criminal finding" means a record maintained in:
 - 129 (i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
 - 131 (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
 - 133 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - 135 (iv) juvenile court arrest, adjudication, and disposition records;
 - 136 (v) 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; or
 - 139 (vi) a state child abuse or neglect registry.
- 140 (j) "Office" means the Office of Background Processing within the department.
- 141 (k) "Personal identifying information" means:
 - 142 (i) current name, former names, nicknames, and aliases;
 - 143 (ii) date of birth;
 - 144 (iii) physical address and email address;
 - 145 (iv) telephone number;
 - 146 (v) driver license or other government-issued identification;
 - 147 (vi) social security number;
 - 148 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and

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- 150 (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3,
Utah Administrative Rulemaking Act.
- 152 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to
the office:
- 154 (a) personal identifying information;
- 155 (b) a fee established by the office under Section 63J-1-504;
- 156 (c) a disclosure form, specified by the office, for consent for:
- 157 (i) an initial background check upon association with a certification, contract, or licensee with the
department;
- 159 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a certification,
contract, or licensee with the department for 180 days;
- 161 (iii) a background check when the office determines that reasonable cause exists; and
- 162 (iv) retention of personal identifying information, including fingerprints, for monitoring and notification
as described in Subsections (3)(c) and (4);
- 164 (d) if an applicant resided outside of the United States and its territories during the five years
immediately preceding the day on which the information described in Subsections (2)(a) through
(c) is submitted to the office, documentation establishing whether the applicant was convicted of a
crime during the time that the applicant resided outside of the United States or its territories; and
- 169 (e) an application showing an applicant's association with a certification, contract, or a licensee with
the department, for the purpose of the office tracking the direct access qualified status of the
applicant, which expires 180 days after the date on which the applicant is no longer associated with
a certification, contract, or a licensee with the department.
- 174 (3) The office:
- 175 (a) shall perform the following duties as part of a background check of an applicant before the office
grants or denies direct access qualified status to an applicant:
- 177 (i) check state and regional criminal background databases for the applicant's criminal history by:
- 179 (A) submitting personal identifying information to the bureau for a search; or
- 180 (B) using the applicant's personal identifying information to search state and regional criminal
background databases as authorized under Section 53-10-108;
- 182 (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal
history search of applicable national criminal background databases;

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- 185 (iii) search the Division of Child and Family Services' Licensing Information System described in
Section 80-2-1002;
- 187 (iv) search 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 for an applicant 18
years old or older;
- 190 (v) if the applicant is associated with a licensee for a prospective foster or adoptive parent, search the
Division of Child and Family Services' Management Information System described in Section
80-2-1001;
- 193 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation
database described in Section 26B-6-210;
- 195 (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect
described in Section 80-3-404; and
- 197 (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section
78A-6-209;
- 199 (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:
- 202 (i) for an annual renewal; or
- 203 (ii) when the office determines that reasonable cause exists;
- 204 (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;
- 208 (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;
- 212 (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;
- 215 (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);

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- 219 (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:
- 222 (i) search the Division of Child and Family Services' Licensing Information System described in
Section 80-2-1002; and
- 224 (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
- 227 (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.
- 230 (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.
- 233 (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.
- 236 (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:
- 238 (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
- 240 (ii) monitor state and regional criminal background databases and identify criminal activity associated
with the applicant.
- 242 (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:
- 245 (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
- 248 (ii) monitoring national criminal background databases and identifying criminal activity associated with
the applicant.
- 250 (e) The [~~Bureau~~] bureau shall notify and release to the office all information of criminal activity
associated with the applicant.

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- 252 (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:
- 255 (i) discard and destroy any retained fingerprints; and
- 256 (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.
- 260 (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:
- 263 (i) a felony or misdemeanor involving conduct that constitutes any of the following:
- 264 (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or
bestiality;
- 266 (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual
exploitation of a minor;
- 268 (C) sexual solicitation or prostitution;
- 269 (D) a violent offense committed in the presence of a child, as described in Section 76-3-203.10;
- 271 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;
- 272 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;
- 273 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;
- 274 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 275 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 276 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass Destruction;
- 278 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
- 280 (L) aggravated arson, as described in Section 76-6-103;
- 281 (M) aggravated burglary, as described in Section 76-6-203;
- 282 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;
- 283 (O) aggravated robbery, as described in Section 76-6-302;
- 284 (P) endangering persons in a human services program, as described in Section 26B-2-113;
- 286 (Q) failure to report, as described in Section 80-2-609;

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- 287 (R) identity fraud crime, as described in Section 76-6-1102;
- 288 (S) leaving a child unattended in a motor vehicle, as described in Section 76-10-2202;
- 290 (T) riot, as described in Section 76-9-101;
- 291 (U) sexual battery, as described in Section 76-9-702.1; or
- 292 (V) threatening with or using a dangerous weapon in a fight or quarrel, as described in Section
76-10-506; or
- 294 (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).
- 297 (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.
- 301 (ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in
accordance with Subsection (7).
- 303 (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.
- 306 (6) The office shall conduct a comprehensive review of an applicant's background check if the
applicant:
- 308 (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);
- 311 (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);
- 314 (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;
- 318 (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);

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- 325 (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;
- 328 (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);
- 332 (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;
- 334 (h) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5)(a);
- 337 (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;
- 339 (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:
 - 340 (i) under 28 years old; or
 - 343 (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);
- 344 (k) has a pending charge for an offense described in Subsection (5)(a);
- 347 (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 ;
- 351 (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;
- 355 (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

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exploitation database described in Section 26B-6-210, with criminal or non-criminal findings after the date of the listing;

- 359 (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
- 362 (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.
- 366 (7)
- . (a) The comprehensive review shall include an examination of:
- 367 (i) the date of the offense or incident;
- 368 (ii) the nature and seriousness of the offense or incident;
- 369 (iii) the circumstances under which the offense or incident occurred;
- 370 (iv) the age of the perpetrator when the offense or incident occurred;
- 371 (v) whether the offense or incident was an isolated or repeated incident;
- 372 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult,
including:
- 374 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 375 (B) sexual abuse;
- 376 (C) sexual exploitation; or
- 377 (D) negligent treatment;
- 378 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment
received, or additional academic or vocational schooling completed;
- 380 (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the
applicant is applying; and
- 382 (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.

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- (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.
- 390 (8) The office shall grant direct access qualified status to an applicant who is not denied under this section.
- 392 (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:
- 395 (i) is awaiting the results of the criminal history search of national criminal background databases; and
- 397 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 399 (b) The office may conditionally grant direct access qualified status to an applicant, for a maximum of one year after the day on which the office sends written notice, without requiring that the applicant be directly supervised if the office:
- 402 (i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
- 404 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 406 (c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall grant or deny direct access qualified status to the applicant in accordance with this section.
- 409 (10)
- . (a) Each time an applicant is associated with a licensee, the department shall review the current status of the applicant's background check to ensure the applicant is still eligible for direct access qualified status in accordance with this section.
- 412 (b) A licensee may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:
- 414 (i) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
- 416 (ii) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
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- (iii) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
- 420 (iv) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
- 423 (c) Notwithstanding any other provision of this section, an applicant who is denied direct access qualified status shall not have direct access to a child or vulnerable adult unless the office grants direct access qualified status to the applicant through a subsequent application in accordance with this section.
- 427 (11) If the office denies direct access qualified status to an applicant, the applicant may request a hearing in the department's Office of Administrative Hearings to challenge the office's decision.
- 430 (12)
- . (a) This Subsection (12) applies to an applicant associated with a certification, contract, or licensee serving adults only.
- 432 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee shall comply with this section.
- 434 (c) The office shall conduct a comprehensive review for an applicant if:
- 435 (i) the applicant is seeking a position:
- 436 (A) as a peer support provider;
- 437 (B) as a mental health professional; or
- 438 (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and
- 440 (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.
- 443 (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.
- 447 (b) As federally required, the office shall:
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- (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
- 453 (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.
- 459 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:
 - 460 (i) federal law or rule permits otherwise; or
 - 461 (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
 - 463 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
 - 464 (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).
 - 467 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status if the applicant has been convicted of:
 - 469 (i) a felony involving conduct that constitutes any of the following:
 - 470 (A) child abuse, as described in ~~[Sections]~~ Section 76-5-109;
 - 471 (B) ~~[, 76-5-109.2, and]~~ aggravated child abuse, as described in Section 76-5-109.2;
 - 472 (C) child abandonment, as described in Section 76-5-109.3;
 - 473 (D) child torture, as described in Section 76-5-109.4;
 - 474 ~~[(B)]~~ (E) commission of domestic violence in the presence of a child, as described in Section 76-5-114;
 - 476 ~~[(C)]~~ (F) abuse or neglect of a child with a disability, as described in Section 76-5-110;
 - 478 ~~[(D)]~~ (G) intentional aggravated abuse of a vulnerable adult, as described in Section 76-5-111;
 - 480 ~~[(E)]~~ (H) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
 - 482 ~~[(F)]~~ (I) aggravated murder, as described in Section 76-5-202;
 - 483 ~~[(G)]~~ (J) murder, as described in Section 76-5-203;
 - 484 ~~[(H)]~~ (K) manslaughter, as described in Section 76-5-205;
 - 485 ~~[(I)]~~ (L) child abuse homicide, as described in Section 76-5-208;

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- 486 [~~J~~] (M) homicide by assault, as described in Section 76-5-209;
- 487 [~~K~~] (N) kidnapping, as described in Section 76-5-301;
- 488 [~~L~~] (O) child kidnapping, as described in Section 76-5-301.1;
- 489 [~~M~~] (P) aggravated kidnapping, as described in Section 76-5-302;
- 490 [~~N~~] (Q) human trafficking of a child, as described in Section 76-5-308.5;
- 491 [~~O~~] (R) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 492 [~~P~~] (S) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual Exploitation Act;
- 494 [~~Q~~] (T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 495 [~~R~~] (U) aggravated arson, as described in Section 76-6-103;
- 496 [~~S~~] (V) aggravated burglary, as described in Section 76-6-203;
- 497 [~~T~~] (W) aggravated robbery, as described in Section 76-6-302;
- 498 [~~U~~] (X) lewdness involving a child, as described in Section 76-9-702.5;
- 499 [~~V~~] (Y) incest, as described in Section 76-7-102; or
- 500 [~~W~~] (Z) domestic violence, as described in Section 77-36-1; or
- 501 (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of
an offense described in Subsection (13)(d)(i).
- 503 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status
to an applicant if, within the five years from the date on which the office conducts the background
check, the applicant was convicted of a felony involving conduct that constitutes a violation of any
of the following:
- 507 (i) aggravated assault, as described in Section 76-5-103;
- 508 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 509 (iii) mayhem, as described in Section 76-5-105;
- 510 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 511 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 512 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 514 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
- 516 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 517 (f) In addition to the circumstances described in Subsection (6), the office shall conduct a
comprehensive review of an applicant's background check under this section if the applicant:
- 520 (i) has an offense described in Subsection (5)(a);

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- 521 (ii) has an infraction conviction entered on a date that is no more than three years before the date on
which the office conducts the background check;
- 523 (iii) has a listing in the Division of Child and Family Services' Licensing Information System described
in Section 80-2-1002;
- 525 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult, neglect, or exploitation
database described in Section 26B-2-210;
- 527 (v) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or
- 529 (vi) has a listing on the registry check described in Subsection (13)(b) as having a substantiated or
supported finding of a severe type of child abuse or neglect, as defined in Section 80-1-102.
- 532 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may
make rules, consistent with this part, to:
- 534 (a) establish procedures for, and information to be examined in, the comprehensive review described in
Subsections (6), (7), and (13); and
- 536 (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.
- 551 Section 2. Section **53G-6-204** is amended to read:
- 552 **53G-6-204. School-age children exempt from school attendance.**
- 542 (1)
- . (a) A local school board or charter school governing board may excuse a school-age child from
attendance for any of the following reasons:
- 544 (i) a school-age child over 16 years old may receive a partial release from school to enter
employment, or attend a trade school, if the school-age child has completed grade 8; or
- 547 (ii) on an annual basis, a school-age child may receive a full release from attending a public,
regularly established private, or part-time school or class if:
- 549 (A) the school-age child has already completed the work required for graduation from high school;
- 551 (B) the school-age child is in a physical or mental condition, certified by a competent physician or
physician assistant if required by the local school board or charter school governing board, which
renders attendance inexpedient and impracticable;
- 555 (C) proper influences and adequate opportunities for education are provided in connection with the
school-age child's employment; or

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- 557 (D) the district superintendent or charter school governing board has determined that a school-age child
over 16 years old is unable to profit from attendance at school because of inability or a continuing
negative attitude toward school regulations and discipline.
- 561 (b) A school-age child receiving a partial release from school under Subsection (1)(a)(i) is required to
attend:
- 563 (i) school part time as prescribed by the local school board or charter school governing board; or
565 (ii) a home school part time.
- 566 (c) In each case, evidence of reasons for granting an exemption under Subsection (1) must be sufficient
to satisfy the local school board or charter school governing board.
- 568 (d) A local school board or charter school governing board that excuses a school-age child from
attendance as provided by this Subsection (1) shall issue a certificate that the child is excused from
attendance during the time specified on the certificate.
- 571 (2)
. (a)
. (i) As used in this Subsection (2)(a), "child abuse" means a criminal felony or attempted felony
offense of which an individual is convicted, or to which an individual pleads guilty or no
contest, for conduct that constitutes any of the following:
- 575 (A) child abuse under Section 76-5-109;
576 (B) aggravated child abuse under Section 76-5-109.2;
577 (C) child abandonment under Section 76-5-109.3;
578 ~~(D)~~ (D) child torture under Section 76-5-109.4;
579 ~~[(D)]~~ (E) commission of domestic violence in the presence of a child under Section 76-5-114;
581 ~~[(E)]~~ (F) child abuse homicide under Section 76-5-208;
582 ~~[(F)]~~ (G) child kidnapping under Section 76-5-301.1;
583 ~~[(G)]~~ (H) human trafficking of a child under Section 76-5-308.5;
584 ~~[(H)]~~ (I) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or in Title 76,
Chapter 5b, Part 2, Sexual Exploitation, if the victim is under 18 years old;
587 ~~[(I)]~~ (J) sexual exploitation of a minor under Section 76-5b-201;
588 ~~[(J)]~~ (K) aggravated sexual exploitation of a minor under Section 76-5b-201.1; or
589 ~~[(K)]~~ (L) an offense in another state that, if committed in this state, would constitute an offense
described in this Subsection (2)(a)(i).

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- 591 (ii) Except as provided in Subsection (2)(a)(iii), a local school board shall excuse a school-age child
from attendance, if the school-age child's parent or legal guardian files a signed affidavit with
the school-age child's school district of residence, as defined in Section 53G-6-302, that:
- 595 (A) the school-age child will attend a home school; and
- 596 (B) the parent or legal guardian assumes sole responsibility for the education of the school-age child,
except to the extent the school-age child is dual enrolled in a public school as provided in Section
53G-6-702.
- 599 (iii) If a parent or legal guardian has been convicted of child abuse or if a court of competent
jurisdiction has made a substantiated finding of child abuse against the parent or legal guardian:
- 602 (A) the parent or legal guardian may not assume responsibility for the education of a school-age child
under Subsection (2)(a)(ii); and
- 604 (B) the local school board may not accept the affidavit described in Subsection (2)(a)(ii) from the parent
or legal guardian or otherwise exempt the school-age child from attendance under Subsection (2)(a)
(ii) in relation to the parent's or legal guardian's intent to home school the child.
- 608 (iv) Nothing in this Subsection (2)(a) affects the ability of another of a child's parents or legal
guardians who is not prohibited under Subsection (2)(a)(iii) to file the affidavit described in
Subsection (2)(a)(ii).
- 611 (b) A signed affidavit filed in accordance with Subsection (2)(a) shall remain in effect as long as:
- 613 (i) the school-age child attends a home school;
- 614 (ii) the school district where the affidavit was filed remains the school-age child's district of residence;
and
- 616 (iii) the parent or legal guardian who filed the signed affidavit has not been convicted of child abuse or
been the subject of a substantiated finding of child abuse by a court of competent jurisdiction.
- 619 (c) A parent or legal guardian of a school-age child who attends a home school is solely responsible for:
- 621 (i) the selection of instructional materials and textbooks;
- 622 (ii) the time, place, and method of instruction; and
- 623 (iii) the evaluation of the home school instruction.
- 624 (d) A local school board may not:
- 625 (i) require a parent or legal guardian of a school-age child who attends a home school to maintain
records of instruction or attendance;
- 627 (ii) require credentials for individuals providing home school instruction;

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- 628 (iii) inspect home school facilities; or
- 629 (iv) require standardized or other testing of home school students.
- 630 (e) Upon the request of a parent or legal guardian, a local school board shall identify the knowledge, skills, and competencies a student is recommended to attain by grade level and subject area to assist the parent or legal guardian in achieving college and career readiness through home schooling.
- 634 (f) A local school board that excuses a school-age child from attendance under this Subsection (2) shall annually issue a certificate stating that the school-age child is excused from attendance for the specified school year.
- 637 (g) A local school board shall issue a certificate excusing a school-age child from attendance:
- 639 (i) within 30 days after receipt of a signed affidavit filed by the school-age child's parent or legal guardian under this Subsection (2); and
- 641 (ii) on or before August 1 each year thereafter unless:
- 642 (A) the school-age child enrolls in a school within the school district;
- 643 (B) the school-age child's parent or legal guardian notifies the school district that the school-age child no longer attends a home school; or
- 645 (C) the school-age child's parent or legal guardian notifies the school district that the school-age child's school district of residence has changed.
- 647 (3) A parent or legal guardian who is eligible to file and files a signed affidavit under Subsection (2)(a) is exempt from the application of Subsections 53G-6-202(2), (5), and (6).
- 650 (4)
- . (a) Nothing in this section may be construed to prohibit or discourage voluntary cooperation, resource sharing, or testing opportunities between a school or school district and a parent or legal guardian of a child attending a home school.
- 653 (b) The exemptions in this section apply regardless of whether:
- 654 (i) a parent or legal guardian provides education instruction to the parent's or legal guardian's child alone or in cooperation with other parents or legal guardians similarly exempted under this section; or
- 657 (ii) the parent or legal guardian makes payment for educational services the parent's or legal guardian's child receives.
- 670 Section 3. Section **76-2-401** is amended to read:
- 671 **76-2-401. Justification as defense -- When allowed.**

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- 661 (1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The
defense of justification may be claimed:
- 663 (a) when the actor's conduct is in defense of persons or property under the circumstances described in
Sections 76-2-402 through 76-2-406 of this part;
- 665 (b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or
employee;
- 667 (c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other
persons in loco parentis, as limited by Subsection (2);
- 669 (d) when the actor's conduct is reasonable discipline of persons in custody under the laws of the state; or
- 671 (e) when the actor's conduct is justified for any other reason under the laws of this state.
- 672 (2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves
causing serious bodily injury, as defined in Section 76-1-101.5, serious ~~physical~~ injury, as defined
in Section 76-5-109, or the death of the minor.

686 Section 4. Section **76-3-203.5** is amended to read:

687 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

- 677 (1) As used in this section:
- 678 (a) "Felony" means any violation of a criminal statute of the state, any other state, the United States,
or any district, possession, or territory of the United States for which the maximum punishment the
offender may be subjected to exceeds one year in prison.
- 682 (b) "Habitual violent offender" means a person convicted within the state of any violent felony and who
on at least two previous occasions has been convicted of a violent felony and committed to either
prison in Utah or an equivalent correctional institution of another state or of the United States either
at initial sentencing or after revocation of probation.
- 687 (c) "Violent felony" means:
- 688 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the
following offenses punishable as a felony:
- 690 (A) arson as described in Section 76-6-102;
- 691 (B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);
- 692 (C) criminal mischief as described in Section 76-6-106;
- 693 (D) aggravated arson as described in Section 76-6-103;
- 694 (E) assault by prisoner as described in Section 76-5-102.5;

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- 695 (F) disarming a police officer as described in Section 76-5-102.8;
- 696 (G) aggravated assault as described in Section 76-5-103;
- 697 (H) aggravated assault by prisoner as described in Section 76-5-103.5;
- 698 (I) mayhem as described in Section 76-5-105;
- 699 (J) stalking as described in Subsection 76-5-106.5(2);
- 700 (K) threat of terrorism as described in Section 76-5-107.3;
- 701 (L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);
- 702 (M) child torture as described in Section 76-5-109.4;
- 703 [~~(M)~~] (N) commission of domestic violence in the presence of a child as described in Section 76-5-114;
- 705 [~~(N)~~] (O) abuse or neglect of a child with a disability as described in Section 76-5-110;
- 707 [~~(O)~~] (P) abuse or exploitation of a vulnerable adult as described in Section 76-5-111, 76-5-111.2,
76-5-111.3, or 76-5-111.4;
- 709 [~~(P)~~] (Q) endangerment of a child or vulnerable adult as described in Section 76-5-112.5;
- 711 [~~(Q)~~] (R) an offense described in Chapter 5, Part 2, Criminal Homicide;
- 712 [~~(R)~~] (S) kidnapping as described in Section 76-5-301;
- 713 [~~(S)~~] (T) child kidnapping as described in Section 76-5-301.1;
- 714 [~~(T)~~] (U) aggravated kidnapping as described in Section 76-5-302;
- 715 [~~(U)~~] (V) rape as described in Section 76-5-402;
- 716 [~~(V)~~] (W) rape of a child as described in Section 76-5-402.1;
- 717 [~~(W)~~] (X) object rape as described in Section 76-5-402.2;
- 718 [~~(X)~~] (Y) object rape of a child as described in Section 76-5-402.3;
- 719 [~~(Y)~~] (Z) forcible sodomy as described in Section 76-5-403;
- 720 [~~(Z)~~] (AA) sodomy on a child as described in Section 76-5-403.1;
- 721 [~~(AA)~~] (BB) forcible sexual abuse as described in Section 76-5-404;
- 722 [~~(BB)~~] (CC) sexual abuse of a child as described in Section 76-5-404.1;
- 723 [~~(CC)~~] (DD) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- 724 [~~(DD)~~] (EE) aggravated sexual assault as described in Section 76-5-405;
- 725 [~~(EE)~~] (FF) sexual exploitation of a minor as described in Section 76-5b-201;
- 726 [~~(FF)~~] (GG) aggravated sexual exploitation of a minor as described in Section 76-5b-201.1;
- 728 [~~(GG)~~] (HH) sexual exploitation of a vulnerable adult as described in Section 76-5b-202;
- 730 [~~(HH)~~] (II) burglary as described in Subsection 76-6-202(3)(b);

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- 731 [~~(H)~~] (JJ) aggravated burglary as described in Section 76-6-203;
- 732 [~~(J)~~] (KK) robbery as described in Section 76-6-301;
- 733 [~~(K)~~] (LL) aggravated robbery as described in Section 76-6-302;
- 734 [~~(L)~~] (MM) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or (1)(a)(ii);
- 736 [~~(M)~~] (NN) tampering with a witness as described in Section 76-8-508;
- 737 [~~(N)~~] (OO) retaliation against a witness, victim, or informant as described in Section 76-8-508.3;
- 739 [~~(O)~~] (PP) tampering or retaliating against a juror as described in Subsection 76-8-508.5(2)(a)(iii);
- 741 [~~(P)~~] (QQ) extortion to dismiss a criminal proceeding as described in Subsection 76-6-406(1)(a)(i),
(ii), or (ix);
- 743 [~~(Q)~~] (RR) possession, use, or removal of explosive, chemical, or incendiary devices as described in
Subsections 76-10-306(3) through (6);
- 745 [~~(R)~~] (SS) unlawful delivery of explosive, chemical, or incendiary devices as described in Section
76-10-307;
- 747 [~~(S)~~] (TT) purchase or possession of a dangerous weapon or handgun by a restricted person as
described in Section 76-10-503;
- 749 [~~(T)~~] (UU) aggravated exploitation of prostitution as described in Subsection 76-10-1306(1)(a);
- 751 [~~(U)~~] (VV) bus hijacking as described in Section 76-10-1504; and
- 752 [~~(V)~~] (WW) discharging firearms and hurling missiles as described in Section 76-10-1505; or
- 754 (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.
- 757 (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:
- 760 (a) third degree felony is as if the conviction were for a first degree felony;
- 761 (b) second degree felony is as if the conviction were for a first degree felony; or
- 762 (c) first degree felony remains the penalty for a first degree penalty except:
- 763 (i) the convicted person is not eligible for probation; and
- 764 (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.
- 767 (3)

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- . (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 prosecution.
- 772 (b)
- . (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:
- 774 (A) the defendant is the person who was convicted or committed;
- 775 (B) the defendant was represented by counsel or had waived counsel; or
- 776 (C) the defendant's plea was understandingly or voluntarily entered.
- 777 (ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.
- 780 (4)
- . (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:
- 783 (i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or
- 785 (ii) allegation against the defendant of being a habitual violent offender.
- 786 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.
- 790 (c)
- . (i) Before or at the time of sentencing the trier of fact shall determine if this section applies.
- 792 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.
- 795 (iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.
- 797 (d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance

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of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

- 805 (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.
- 809 (5)
- . (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this
section.
- 811 (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.
- 814 (6) The sentencing enhancement described in this section does not apply if:
- 815 (a) the offense for which the person is being sentenced is:
- 816 (i) a grievous sexual offense;
- 817 (ii) child kidnapping, Section 76-5-301.1;
- 818 (iii) aggravated kidnapping, Section 76-5-302; or
- 819 (iv) forcible sexual abuse, Section 76-5-404; and
- 820 (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.
- 835 Section 5. Section **76-3-406** is amended to read:
- 836 **76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or
hospitalization may not be granted.**
- 826 (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a, Commitment and
Treatment of Individuals with a Mental Condition, except as provided in Section 76-5-406.5 or
Subsection 77-16a-103(6) or (7), probation may not be granted, the execution or imposition of
sentence may not be suspended, the court may not enter a judgment for a lower category of offense,
and hospitalization may not be ordered, the effect of which would in any way shorten the prison
sentence for an individual who commits a capital felony or a first degree felony involving:
- 833 (a) child torture as described in Section 76-5-109.4;
- 834 (b) aggravated murder as described in Section 76-5-202;

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- 835 ~~[(b)]~~ (c) murder as described in Section 76-5-203;
- 836 ~~[(e)]~~ (d) child kidnapping as described in Section 76-5-301.1;
- 837 ~~[(d)]~~ (e) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
- 838 ~~[(e)]~~ (f) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);
- 839 ~~[(f)]~~ (g) rape of a child as described in Section 76-5-402.1;
- 840 ~~[(g)]~~ (h) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);
- 841 ~~[(h)]~~ (i) object rape of a child as described in Section 76-5-402.3;
- 842 ~~[(i)]~~ (j) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);
- 843 ~~[(j)]~~ (k) sodomy on a child as described in Section 76-5-403.1;
- 844 ~~[(k)]~~ (l) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
- 845 ~~[(l)]~~ (m) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- 846 ~~[(m)]~~ (n) aggravated sexual assault as described in Section 76-5-405; or
- 847 ~~[(n)]~~ (o) any attempt to commit a felony listed in Subsection ~~[(1)(f), (h), or (j)]~~ (1)(g), (i), or (k).
- 848 (2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the defendant:
- 851 (a) was under 18 years old at the time of the offense; and
- 852 (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.
- 867 Section 6. Section **76-5-109** is amended to read:
- 868 **76-5-109. Child abuse.**
- 856 (1)
- 857 (a) As used in this section:
- 857 (i) "Child" means an individual who is younger than 18 years old.
- 858 (ii) ~~["Physical injury"]~~ "Injury" means ~~[an]~~ a physical or psychological injury to or condition of a child which impairs the physical or psychological condition of the child, including:
- 861 (A) a bruise or other contusion of the skin;
- 862 (B) a minor laceration or abrasion;
- 863 (C) failure to thrive or malnutrition; or
- 864 (D) any other condition ~~[which]~~ that imperils the child's physical or psychological health or welfare and that is not a serious ~~[physical-]~~injury.
- 866

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(iii) "Psychological injury" means an identifiable mental or emotional harm, damage, impairment, or dysfunction.

868 [~~(iii)~~] (iv)

(A) "Serious [~~physical~~]injury" means [~~any physical~~] an injury or set of injuries that:

870 (I) seriously impairs the child's health, which includes the child's physical or mental well-being or development;

872 [~~(H)~~ involves physical torture;]

873 [~~(H)~~] (II) causes serious emotional harm to the child; or

874 [~~(V)~~] (III) involves a substantial risk of death to the child.

875 (B) "Serious [~~physical~~]injury" includes:

876 (I) fracture of any bone or bones;

877 (II) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

880 (III) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

882 (IV) any injury caused by use of a dangerous weapon;

883 (V) any combination of two or more [~~physical~~]injuries inflicted by the same [~~person~~] individual, either at the same time or on different occasions;

885 (VI) any damage to internal organs of the body;

886 (VII) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

889 (VIII) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

891 (IX) any impediment of the breathing or the circulation of blood by application of pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely to produce a loss of consciousness;

894 (X) any conduct involving unreasonable forcible restriction of a child's movements, including restraining or confining the child with restraints or in an enclosed space or forcing the child to remain in a stress position;

897 (XI) any conduct involving forcing or coercing a child to injure the child's self, an individual known to the child, or an animal known to the child;

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- 899 (XII) any conduct involving a threat to harm or kill the child, an individual known to the child, or an animal known to the child;
- 901 (XIII) any conduct involving unreasonably subjecting a child to excessive heat, cold, darkness, solitary confinement, or sleep deprivation;
- 903 [~~(X)~~] (XIV) any conduct that results in starvation~~[-or-]~~, dehydration, failure to thrive, or malnutrition, that jeopardizes the child's life or seriously injures the child's physical or mental well-being or development; or
- 906 [~~(XI)~~] (XV) unconsciousness caused by the unlawful infliction of a brain injury or unlawfully causing any deprivation of oxygen to the brain.
- 908 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 909 (2) An actor commits child abuse if the actor:
- 910 (a) inflicts upon a child [~~physical~~] an injury; or
- 911 (b) having the care or custody of [~~such~~] a child, causes or permits another to inflict [~~physical~~] an injury upon [~~a~~] the child.
- 913 (3)
- . (a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or knowingly.
- 915 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly.
- 916 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal negligence.
- 918 (4)
- . (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent may not, for that reason alone, be considered to have committed an offense under this section.
- 923 (b) A parent or guardian of a child does not violate this section by selecting a treatment option for a medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.
- 926 (c) An actor is not guilty of an offense under this section for conduct that constitutes:
- 927 (i) reasonable discipline or management of a child, including withholding privileges;
- 928 (ii) conduct described in Section 76-2-401; or
- 929 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 930 (A) in self-defense;

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- 931 (B) in defense of others;
- 932 (C) to protect the child; or
- 933 (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (4)
(c)(iii)(A) through (C).
- 948 Section 7. Section **76-5-109.2** is amended to read:
- 949 **76-5-109.2. Aggravated child abuse.**
- 937 (1)
- . (a) As used in this section:
- 938 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 939 (ii) "Serious [~~physical~~]injury" means the same as that term is defined in Section 76-5-109.
- 941 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 942 (2) [~~An~~] Under circumstances not amounting to a violation of Section 76-5-109.4, Child torture, an
actor commits aggravated child abuse if the actor:
- 944 (a) inflicts upon a child a serious [~~physical~~]injury; or
- 945 (b) having the care or custody of [~~such~~] a child, causes or permits another to inflict a serious [~~physical~~]
injury upon [~~a~~] the child.
- 947 (3)
- . (a) A violation of Subsection (2) is a second degree felony if done intentionally or knowingly.
- 949 (b) A violation of Subsection (2) is a third degree felony if done recklessly.
- 950 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal negligence.
- 952 (4)
- . (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through
prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established
church or religious denomination of which the parent or legal guardian is a member or adherent may
not, for that reason alone, be considered to have committed an offense under this section.
- 957 (b) A parent or guardian of a child does not violate this section by selecting a treatment option for the
medical condition of the child, if the treatment option is one that a reasonable parent or guardian
would believe to be in the best interest of the child.
- 960 (c) An actor is not guilty of an offense under this section for conduct that constitutes:
- 961 (i) conduct described in Section 76-2-401; or
- 962 (ii) the use of reasonable and necessary physical restraint or force on a child:

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- 963 (A) in self-defense;
964 (B) in defense of others;
965 (C) to protect the child; or
966 (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (4)
(c)(ii)(A) through (C).

981 Section 8. Section **76-5-109.3** is amended to read:

982 **76-5-109.3. Child abandonment.**

970 (1)

. (a) As used in this section:

971 (i) "Child" means the same as that term is defined in Section 76-5-109.

972 (ii) "Enterprise" means the same as that term is defined in Section 76-10-1602.

973 (iii) "Serious [~~physical~~]injury" means the same as that term is defined in Section 76-5-109.

975 (b) Terms defined in Section 76-1-101.5 apply to this section.

976 (2)

. (a) Except as provided in Subsection (4), an actor commits child abandonment if the actor:

978 (i) is a parent or legal guardian of a child, and:

979 (A) intentionally ceases to maintain physical custody of the child;

980 (B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the
child; and

982 (C)

. (I) intentionally fails to provide the child with food, shelter, or clothing;

983 (II) manifests an intent to permanently not resume physical custody of the child; or

985 (III) for a period of at least 30 days, intentionally fails to resume physical custody of the child and fails
to manifest a genuine intent to resume physical custody of the child; or

988 (ii) encourages or causes the parent or legal guardian of a child to violate Subsection (2)(a)(i).

990 (b) Except as provided in Subsection (4), an enterprise commits child abandonment if the enterprise
encourages, commands, induces by misrepresentation, or causes another to violate Subsection (2)
(a).

993 (3)

. (a)

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

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- 994 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second degree felony if,
as a result of the child abandonment:
- 996 (A) the child suffers a serious ~~[physical]~~injury; or
- 997 (B) the actor or enterprise receives, directly or indirectly, any benefit.
- 998 (b)
- . (i) In addition to the penalty described in Subsection (3)(a)(ii), the court may order the actor or
enterprise described in Subsection (3)(a)(ii)(B) to pay the costs of investigating and prosecuting the
offense and the costs of securing any forfeiture provided for under Subsection (3)(b)(ii).
- 1002 (ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is subject to criminal or
civil forfeiture pursuant to Title 77, Chapter 11b, Forfeiture of Seized Property.
- 1005 (4)
- . (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through
prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established
church or religious denomination of which the parent or legal guardian is a member or adherent may
not, for that reason alone, be considered to have committed an offense under this section.
- 1010 (b) An actor is not guilty of an offense under this section for conduct that constitutes:
- 1011 (i) the safe relinquishment of a child pursuant to the provisions of Section 80-4-502;
- 1012 (ii) giving legal consent to a court order for termination of parental rights:
- 1013 (A) in a legal adoption proceeding; or
- 1014 (B) in a case in which a petition for the termination of parental rights, or the termination of a
guardianship, has been filed;
- 1016 (iii) reasonable discipline or management of a child, including withholding privileges; or
- 1018 (iv) conduct described in Section 76-2-401.
- 1019 (c) It is a defense to prosecution under Subsection (2)(a)(i) that the actor committed child abandonment
due to:
- 1021 (i) intimidation;
- 1022 (ii) isolation;
- 1023 (iii) harassment;
- 1024 (iv) coercion;
- 1025 (v) the actor's reasonable fear of bodily harm; or
- 1026

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(vi) the reasonable actions of the actor to protect the safety and welfare of the actor or another individual.

1041 Section 9. Section **9** is enacted to read:

1042 **76-5-109.4. Child torture.**

1030 (1)

(a) As used in this section:

1031 (i) "Child" means the same as that term is defined in Section 76-5-109.

1032 (ii) "Course of conduct" means a pattern of conduct composed of two or more acts that evidence a continuity of purpose.

1034 (iii) "Serious injury" means the same as that term is defined in Section 76-5-109.

1035 (b) Terms defined in Section 76-1-101.5 apply to this section.

1036 (2) An actor commits child torture if the actor intentionally or knowingly inflicts upon a child, or having the care or custody of a child, intentionally or knowingly causes or permits another to inflict upon the child:

1039 (a) a serious injury that is inflicted in an exceptionally cruel or exceptionally depraved manner that causes the child to experience extreme physical or psychological pain or anguish; or

1042 (b) a serious injury, or more than one serious injury, as part of a course of conduct or over a prolonged period of time.

1057 (3)

1044 ~~{(3)}~~ (a) ~~{A}~~ Except as provided under Subsection (3)(b), a violation of Subsection (2) is a first degree felony subject to a sentence of imprisonment of at least 10 years and which may be for life.

1060 (b) If, when imposing a sentence of imprisonment, a court finds that a lesser term than the term described in Subsection (3)(a) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

1064 (i) seven years and which may be for life; or

1065 (ii) four years and which may be for life.

1046 (4) Imprisonment under Subsection (3) is mandatory in accordance with Section 76-3-406.

1047 (5) An actor's conduct is not subject to punishment under Subsection (2)(b) if the serious injury that forms the basis for the offense is based solely on the commission of two or more injuries by the same individual as described under Subsection 76-5-109(1)(a)(iii)(B)(V).

1071 Section 10. Section **76-5-110** is amended to read:

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- 1072 **76-5-110. Abuse or neglect of a child with a disability.**
- 1053 (1)
- 1054 . (a) As used in this section:
- 1055 (i) "Abuse" means:
- 1056 (A) inflicting [~~physical~~]injury;
- 1058 (B) having the care or custody of a child with a disability, causing or permitting another to inflict [~~physical~~]injury; or
- 1059 (C) unreasonable confinement.
- 1060 (ii) "Caretaker" means:
- 1062 (A) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or
- 1065 (B) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.
- 1066 (iii) "Child with a disability" means an individual under 18 years old who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the individual is unable to care for the individual's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.
- 1070 (iv) "Injury" means the same as that term is defined in Section 76-5-109.
- 1071 [~~(iv)~~] (v) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.
- 1073 [~~(v)~~] "~~Physical injury~~" ~~means the same as that term is defined in Section 76-5-109.;~~
- 1074 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1075 (2) An actor commits abuse or neglect of a child with a disability if the actor is a caretaker and intentionally, knowingly, or recklessly abuses or neglects a child with a disability.
- 1077 (3) A violation of Subsection (2) is a third degree felony.
- 1078 (4)
- 1079 . (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent may not, for that reason alone, be considered to be in violation under this section.

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- 1083 (b) Subject to Section 80-3-109, the exception under Subsection (4)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.
- 1087 (c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the child with a disability.
- 1111 Section 11. Section **76-5-202** is amended to read:
- 1112 **76-5-202. Aggravated murder -- Penalties -- Affirmative defense and special mitigation -- Separate offense.**
- 1094 (1)
- . (a) As used in this section:
- 1095 (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.
- 1096 (ii) "Emergency responder" means the same as that term is defined in Section 53-2b-102.
- 1098 (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.
- 1099 (iv) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
- 1101 (v) "Peace officer" means:
- 1102 (A) a correctional officer, federal officer, law enforcement officer, or special function officer; or
- 1104 (B) any other person who may exercise peace officer authority in accordance with Title 53, Chapter 13, Peace Officer Classifications.
- 1106 (vi) "Special function officer" means the same as that term is defined in Section 53-13-105.
- 1108 (vii) "Target a law enforcement officer" means an act:
- 1109 (A) involving the unlawful use of force and violence against a law enforcement officer;
- 1111 (B) that causes serious bodily injury or death; and
- 1112 (C) that is in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.
- 1115 (viii) "Weapon of mass destruction" means the same as that term is defined in Section 76-10-401.
- 1117 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1118 (2)
- . (a) An actor commits aggravated murder if the actor intentionally or knowingly causes the death of another individual under any of the following circumstances:

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- 1120 (i) the actor committed homicide while confined in a jail or other correctional institution;
- 1122 (ii)
- . (A) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more individuals other than the actor were killed; or
- 1125 (B) the actor, during commission of the homicide, attempted to kill one or more other individuals in addition to the deceased individual;
- 1127 (iii) the actor knowingly created a great risk of death to another individual other than the deceased individual and the actor;
- 1129 (iv) the actor committed homicide incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated child abuse as described in Subsection 76-5-109.2(3)(a), child torture, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;
- 1137 (v) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as described in Subsection 76-9-704(2)(e);
- 1140 (vi) the actor committed homicide for the purpose of avoiding or preventing an arrest of the actor or another individual by a peace officer acting under color of legal authority or for the purpose of effecting the actor's or another individual's escape from lawful custody;
- 1144 (vii) the actor committed homicide for pecuniary gain;
- 1145 (viii) the actor committed, engaged, or employed another person to commit the homicide subject to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;
- 1148 (ix) the actor previously committed or was convicted of:
- 1149 (A) aggravated murder under this section;
- 1150 (B) attempted aggravated murder under this section;
- 1151 (C) murder, under Section 76-5-203;
- 1152 (D) attempted murder, under Section 76-5-203; or
- 1153

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- (E) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(ix);
- 1155 (x) the actor was previously convicted of:
- 1156 (A) aggravated assault, under Section 76-5-103;
- 1157 (B) mayhem, under Section 76-5-105;
- 1158 (C) kidnapping, under Section 76-5-301;
- 1159 (D) child kidnapping, under Section 76-5-301.1;
- 1160 (E) aggravated kidnapping, under Section 76-5-302;
- 1161 (F) rape, under Section 76-5-402;
- 1162 (G) rape of a child, under Section 76-5-402.1;
- 1163 (H) object rape, under Section 76-5-402.2;
- 1164 (I) object rape of a child, under Section 76-5-402.3;
- 1165 (J) forcible sodomy, under Section 76-5-403;
- 1166 (K) sodomy on a child, under Section 76-5-403.1;
- 1167 (L) aggravated sexual abuse of a child, under Section 76-5-404.3;
- 1168 (M) aggravated sexual assault, under Section 76-5-405;
- 1169 (N) aggravated arson, under Section 76-6-103;
- 1170 (O) aggravated burglary, under Section 76-6-203;
- 1171 (P) aggravated robbery, under Section 76-6-302;
- 1172 (Q) felony discharge of a firearm, under Section 76-10-508.1; or
- 1173 (R) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(x);
- 1175 (xi) the actor committed homicide for the purpose of:
- 1176 (A) preventing a witness from testifying;
- 1177 (B) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
- 1179 (C) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
- 1181 (D) disrupting or hindering any lawful governmental function or enforcement of laws;
- 1183

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- (xii) the deceased individual was a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
- 1186 (xiii) the deceased individual was on duty in a verified position or the homicide is based on, is caused by, or is related to the deceased individual's position, and the actor knew, or reasonably should have known, that the deceased individual holds or has held the position of:
- 1190 (A) a peace officer;
- 1191 (B) an executive officer, prosecuting officer, jailer, or prison official;
- 1192 (C) a firefighter, search and rescue personnel, emergency medical personnel, ambulance personnel, or any other emergency responder;
- 1194 (D) a judge or other court official, juror, probation officer, or parole officer; or
- 1195 (E) a security officer contracted to secure, guard, or otherwise protect tangible personal property, real property, or the life and well-being of human or animal life in the area of the offense;
- 1198 (xiv) the actor committed homicide:
- 1199 (A) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;
- 1202 (B) by means of any weapon of mass destruction; or
- 1203 (C) to target a law enforcement officer;
- 1204 (xv) the actor committed homicide during the act of unlawfully assuming control of an aircraft, train, or other public conveyance by use of threats or force with intent to:
- 1207 (A) obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard;
- 1209 (B) direct the route or movement of the public conveyance; or
- 1210 (C) otherwise exert control over the public conveyance;
- 1211 (xvi) the actor committed homicide by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 1214 (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or for ransom;
- 1216 (xviii) the actor committed homicide in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the deceased individual before death;

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- 1220 (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body, whether before
or after death, in a manner demonstrating the actor's depravity of mind; or
- 1223 (xx) the deceased individual, at the time of the death of the deceased individual:
- 1224 (A) was younger than 14 years old; and
- 1225 (B) was not an unborn child.
- 1226 (b) An actor commits aggravated murder if the actor, with reckless indifference to human life, causes
the death of another individual incident to an act, scheme, course of conduct, or criminal episode
during which the actor is a major participant in the commission or attempted commission of:
- 1230 (i) aggravated child abuse, punishable as a felony of the second degree under Subsection 76-5-109.2(3)
(a);
- 1232 (ii) child torture under Section 76-5-109.4;
- 1233 [~~(ii)~~] (iii) child kidnapping[;] under Section 76-5-301.1;
- 1234 [~~(iii)~~] (iv) rape of a child[;] under Section 76-5-402.1;
- 1235 [~~(iv)~~] (v) object rape of a child[;] under Section 76-5-402.3;
- 1236 [~~(v)~~] (vi) sodomy on a child[;] under Section 76-5-403.1; or
- 1237 [~~(vi)~~] (vii) sexual abuse or aggravated sexual abuse of a child[;] under Section 76-5-404.1.
- 1239 (3)
- . (a) If a notice of intent to seek the death penalty has been filed, a violation of Subsection (2) is a capital
felony.
- 1241 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital
first degree felony punishable as provided in Section 76-3-207.7.
- 1243 (c)
- . (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek
the death penalty.
- 1245 (ii) The notice shall be served on the defendant or defense counsel and filed with the court.
- 1247 (iii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the
arraignment upon written stipulation of the parties or upon a finding by the court of good cause.
- 1250 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first
degree felony aggravated murder during the period in which the prosecutor may file a notice of
intent to seek the death penalty under Subsection (3)(c)(i).

1254

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- (e) If the defendant was younger than 18 years old at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.
- 1257 (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:
- 1263 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
- 1265 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- 1267 (4)
- . (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the actor caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
- 1272 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
- 1274 (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
- 1279 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
- 1281 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- 1283 (5)
- . (a) Any aggravating circumstance described in Subsection (2) that constitutes a separate offense does not merge with the crime of aggravated murder.
- 1285

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- (b) An actor who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

1308 Section 12. Section **76-5-203** is amended to read:

1309 **76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation -- Separate offenses.**

1291 (1)

(a) As used in this section, "predicate offense" means:

1292 (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

1293 (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused individual is younger than 18 years old;

1295 (iii) child torture under Section 76-5-109.4;

1296 [~~(iii)~~] (iv) kidnapping under Section 76-5-301;

1297 [~~(iv)~~] (v) child kidnapping under Section 76-5-301.1;

1298 [~~(v)~~] (vi) aggravated kidnapping under Section 76-5-302;

1299 [~~(vi)~~] (vii) rape under Section 76-5-402;

1300 [~~(vii)~~] (viii) rape of a child under Section 76-5-402.1;

1301 [~~(viii)~~] (ix) object rape under Section 76-5-402.2;

1302 [~~(ix)~~] (x) object rape of a child under Section 76-5-402.3;

1303 [~~(x)~~] (xi) forcible sodomy under Section 76-5-403;

1304 [~~(xi)~~] (xii) sodomy upon a child under Section 76-5-403.1;

1305 [~~(xii)~~] (xiii) forcible sexual abuse under Section 76-5-404;

1306 [~~(xiii)~~] (xiv) sexual abuse of a child under Section 76-5-404.1;

1307 [~~(xiv)~~] (xv) aggravated sexual abuse of a child under Section 76-5-404.3;

1308 [~~(xv)~~] (xvi) aggravated sexual assault under Section 76-5-405;

1309 [~~(xvi)~~] (xvii) arson under Section 76-6-102;

1310 [~~(xvii)~~] (xviii) aggravated arson under Section 76-6-103;

1311 [~~(xviii)~~] (xix) burglary under Section 76-6-202;

1312 [~~(xix)~~] (xx) aggravated burglary under Section 76-6-203;

1313 [~~(xx)~~] (xxi) robbery under Section 76-6-301;

1314 [~~(xxi)~~] (xxii) aggravated robbery under Section 76-6-302;

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- 1315 [~~(xxii)~~] (xxiii) escape under Section 76-8-309;
- 1316 [~~(xxiii)~~] (xxiv) aggravated escape under Section 76-8-309.3; or
- 1317 [~~(xxiv)~~] (xxv) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a
firearm or dangerous weapon.
- 1319 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1320 (2) An actor commits murder if:
- 1321 (a) the actor intentionally or knowingly causes the death of another individual;
- 1322 (b) intending to cause serious bodily injury to another individual, the actor commits an act clearly
dangerous to human life that causes the death of the other individual;
- 1324 (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly
engages in conduct that creates a grave risk of death to another individual and thereby causes the
death of the other individual;
- 1327 (d)
- . (i) the actor is engaged in the commission, attempted commission, or immediate flight from the
commission or attempted commission of any predicate offense, or is a party to the predicate offense;
- 1330 (ii) an individual other than a party described in Section 76-2-202 is killed in the course of the
commission, attempted commission, or immediate flight from the commission or attempted
commission of any predicate offense; and
- 1333 (iii) the actor acted with the intent required as an element of the predicate offense;
- 1334 (e) the actor recklessly causes the death of a peace officer or military service member in uniform while
in the commission or attempted commission of:
- 1336 (i) an assault against a peace officer under Section 76-5-102.4;
- 1337 (ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor
uses force against the peace officer; or
- 1339 (iii) an assault against a military service member in uniform under Section 76-5-102.4; or
- 1341 (f) the actor commits a homicide that would be aggravated murder, but the offense is reduced in
accordance with Subsection 76-5-202(4).
- 1343 (3)
- . (a)
- . (i) A violation of Subsection (2) is a first degree felony.
- 1344

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- (ii) A defendant who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.
- 1346 (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:
- 1351 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
- 1353 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment of conviction for attempted manslaughter.
- 1356 (4)
- . (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another individual or attempted to cause the death of another individual under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
- 1361 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
- 1363 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
- 1368 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
- 1370 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.
- 1372 (5)
- . (a) Any predicate offense that constitutes a separate offense does not merge with the crime of murder.
- 1374 (b) An actor who is convicted of murder, based on a predicate offense that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.
- 1396 Section 13. Section **76-5-208** is amended to read:

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1397 **76-5-208. Child abuse homicide -- Penalties.**

1378 (1)

. (a) As used in this section, "child abuse" means an offense described in [~~Sections~~] Section 76-5-109, 76-5-109.2, 76-5-109.3, [~~and~~] 76-5-109.4, or 76-5-114.

1380 (b) Terms defined in Section 76-1-101.5 apply to this section.

1381 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an actor commits child abuse homicide if:

1383 (a)

. (i) the actor causes the death of another individual who is younger than 18 years old; and

1385 (ii) the individual's death results from child abuse; and

1386 (b)

. (i) the child abuse is based on a violation of Section 76-5-109.4, Child Torture;

1387 (ii) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);

1388 [~~(ii)~~] (iii) the child abuse is done with criminal negligence under Subsection 76-5-109.2(3)(c); or

1390 [~~(iii)~~] (iv) under circumstances not amounting to the type of child abuse homicide described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).

1394 (3)

. (a) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(i) is a first degree felony.

1396 (b) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(ii) or (iii) is a second degree felony.

1418 Section 14. Section **76-7-101** is amended to read:

1419 **76-7-101. Bigamy -- Penalty -- Defense.**

1400 (1) An individual is guilty of bigamy if:

1401 (a) the individual purports to marry another individual; and

1402 (b) knows or reasonably should know that one or both of the individuals described in Subsection (1)(a) are legally married to another individual.

1404 (2) An individual who violates Subsection (1) is guilty of an infraction.

1405 (3) An individual is guilty of a third degree felony if the individual induces bigamy:

1406 (a) under fraudulent or false pretenses; or

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- 1407 (b) by threat or coercion.
- 1408 (4) An individual is guilty of a second degree felony if the individual:
- 1409 (a) cohabitates with another individual with whom the individual is engaged in bigamy as described in Subsection (1); and
- 1411 (b) in furtherance of the conduct described in Subsection (4)(a), commits a felony offense, or for Subsection [~~(4)(b)(xiii)~~] (4)(b)(xiv), a misdemeanor offense, in violation of one or more of the following:
- 1414 (i) Section 76-5-109, child abuse;
- 1415 (ii) Section 76-5-109.2, aggravated child abuse;
- 1416 (iii) Section 76-5-109.3, child abandonment;
- 1417 (iv) Section 76-5-109.4, child torture;
- 1418 [~~(iv)~~] (v) Section 76-5-111, abuse of a vulnerable adult;
- 1419 [~~(v)~~] (vi) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1420 [~~(vi)~~] (vii) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1421 [~~(vii)~~] (viii) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1422 [~~(viii)~~] (ix) Chapter 5, Part 2, Criminal Homicide;
- 1423 [~~(ix)~~] (x) Section 76-5-208, child abuse homicide;
- 1424 [~~(x)~~] (xi) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 1425 [~~(xi)~~] (xii) Chapter 5, Part 4, Sexual Offenses;
- 1426 [~~(xii)~~] (xiii) Section 76-7-201, criminal nonsupport;
- 1427 [~~(xiii)~~] (xiv) Section 76-9-702.1, sexual battery;
- 1428 [~~(xiv)~~] (xv) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
- 1429 [~~(xv)~~] (xvi) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.
- 1430 (5) It is a defense to prosecution under Subsection (2) that:
- 1431 (a) the individual ceased the practice of bigamy as described in Subsection (1) under reasonable fear of coercion or bodily harm;
- 1433 (b) the individual entered the practice of bigamy, as described in Subsection (1), as a minor and ceased the practice of bigamy at any time after the individual entered the practice of bigamy; or
- 1436 (c) law enforcement discovers that the individual practices bigamy, as described in Subsection (1), as a result of the individual's efforts to protect the safety and welfare of another individual.
- 1459 Section 15. Section **77-41-102** is amended to read:

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1460 **77-41-102. Definitions.**

As used in this chapter:

1442 (1) "Child abuse offender" means an individual:

1443 (a) who has been convicted in this state of a violation of:

1444 (i)

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

1445 [~~(ii)~~] (B) attempting, soliciting, or conspiring to commit aggravated child abuse under Subsection
76-5-109.2(3)(a) or (b); or

1447 (ii)

. (A) child torture under Section 76-5-109.4; or

1448 (B) attempting, soliciting, or conspiring to commit child torture under Section 76-5-109.4;

1450 (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 offense listed in Subsection (1)(a); and

1453 (ii)

. (A) who is a Utah resident; or

1454 (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;

1457 (c)

. (i)

. (A) who is required to register as a child abuse offender in another jurisdiction of original conviction;

1459 (B) who is required to register as a child abuse offender by a state, a federal, or a military court; or

1461 (C) who would be required to register as a child abuse offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and

1464 (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;

1466 (d)

. (i)

. (A) who is a nonresident regularly employed or working in this state; or

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- 1467 (B) who is a student in this state; and
- 1468 (ii)
- . (A) who was convicted of the offense listed in Subsection (1)(a) or a substantially equivalent offense in another jurisdiction; or
- 1470 (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 in Subsection (1)(a);
- 1473 (e) who is found not guilty by reason of insanity in this state or in another jurisdiction of the offense listed in Subsection (1)(a); or
- 1475 (f)
- . (i) who is adjudicated under Section 80-6-701 for the offense listed in Subsection (1)(a); and
- 1477 (ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:
- 1479 (A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;
- 1481 (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
- 1484 (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.
- 1486 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in ~~[section]~~ Section 53-10-201.
- 1488 (3) "Business day" means a day on which state offices are open for regular business.
- 1489 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.
- 1491 (5)
- . (a) "Convicted" means a plea or conviction of:
- 1492 (i) guilty;
- 1493 (ii) guilty with a mental illness; or
- 1494 (iii) no contest.
- 1495 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.
- 1497 (c) "Convicted" does not include:

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- 1498 (i) a withdrawn or dismissed plea in abeyance;
- 1499 (ii) a diversion agreement; or
- 1500 (iii) an adjudication of a minor for an offense under Section 80-6-701.
- 1501 (6) "Department" means the Department of Public Safety.
- 1502 (7) "Division" means the Division of Juvenile Justice and Youth Services.
- 1503 (8) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.
- 1506 (9) "Indian Country" means:
- 1507 (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;
- 1510 (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and
- 1513 (c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.
- 1515 (10) "Jurisdiction" means any state, Indian Country, United States Territory, or property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.
- 1518 (11) "Kidnap offender" means an individual, other than a natural parent of the victim:
- 1519 (a) who has been convicted in this state of a violation of:
- 1520 (i) kidnapping under Subsection 76-5-301(2)(c) or (d);
- 1521 (ii) child kidnapping under Section 76-5-301.1;
- 1522 (iii) aggravated kidnapping under Section 76-5-302;
- 1523 (iv) human trafficking for labor under Section 76-5-308;
- 1524 (v) human smuggling under Section 76-5-308.3;
- 1525 (vi) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);
- 1526 (vii) aggravated human trafficking under Section 76-5-310;
- 1527 (viii) aggravated human smuggling under Section 76-5-310.1;
- 1528 (ix) human trafficking of a vulnerable adult for labor under Section 76-5-311; or
- 1529 (x) attempting, soliciting, or conspiring to commit a felony offense listed in Subsections (11)(a)(i) through (ix);
- 1531 (b)

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- . (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
- 1534 (ii)
 - . (A) who isa is a Utah resident; or
 - 1535 (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;
- 1538 (c)
 - . (i)
 - . (A) who is required to register as a kidnap offender in another jurisdiction of original conviction;
 - 1540 (B) who is required to register as a kidnap offender by a state, federal, or military court; or
 - 1542 (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
 - 1545 (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;
- 1547 (d)
 - . (i)
 - . (A) who is a nonresident regularly employed or working in this state; or
 - 1548 (B) who is a student in this state; and
 - 1549 (ii)
 - . (A) who was convicted of one or more offenses listed in Subsection (11)(a) or any substantially equivalent offense in another jurisdiction; or
 - 1551 (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 in Subsection (11)(a);
 - 1554 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (11)(a); or
 - 1556 (f)
 - . (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (11)(a); and
 - 1558 (ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:
 - 1560 (A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

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- 1562 (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
- 1565 (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.
- 1567 (12) "Natural parent" means a minor's biological or adoptive parent, including the minor's noncustodial
parent.
- 1569 (13) "Offender" means a child abuse offender, kidnap offender, or sex offender.
- 1570 (14) "Online identifier" or "Internet identifier":
- 1571 (a) means any electronic mail, chat, instant messenger, social networking, or similar name used for
Internet communication; and
- 1573 (b) does not include date of birth, social security number, PIN number, or Internet passwords.
- 1575 (15) "Primary residence" means the location where the offender regularly resides, even if the offender
intends to move to another location or return to another location at a future date.
- 1578 (16) "Register" means to comply with the requirements of this chapter and administrative rules of the
department made under this chapter.
- 1580 (17) "Registration website" means the Sex, Kidnap, and Child Abuse Offender Notification and
Registration website described in Section 77-41-110 and the information on the website.
- 1583 (18) "Secondary residence" means real property that the offender owns or has a financial interest in, or
a location where the offender stays overnight a total of 10 or more nights in a 12-month period when
not staying at the offender's primary residence.
- 1586 (19) "Sex offender" means an individual:
- 1587 (a) convicted in this state of:
- 1588 (i) a felony or class A misdemeanor violation of enticing a minor under Section 76-4-401;
- 1590 (ii) sexual exploitation of a vulnerable adult under Section 76-5b-202;
- 1591 (iii) human trafficking for sexual exploitation under Section 76-5-308.1;
- 1592 (iv) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);
- 1594 (v) aggravated human trafficking for sexual exploitation under Section 76-5-310;
- 1595 (vi) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;
- 1597 (vii) unlawful sexual activity with a minor under Section 76-5-401, except as provided in Subsection
76-5-401(3)(b) or (c);

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- 1599 (viii) sexual abuse of a minor under Section 76-5-401.1, except as provided in Subsection
76-5-401.1(3);
- 1601 (ix) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- 1602 (x) rape under Section 76-5-402;
- 1603 (xi) rape of a child under Section 76-5-402.1;
- 1604 (xii) object rape under Section 76-5-402.2;
- 1605 (xiii) object rape of a child under Section 76-5-402.3;
- 1606 (xiv) a felony violation of forcible sodomy under Section 76-5-403;
- 1607 (xv) sodomy on a child under Section 76-5-403.1;
- 1608 (xvi) forcible sexual abuse under Section 76-5-404;
- 1609 (xvii) sexual abuse of a child under Section 76-5-404.1;
- 1610 (xviii) aggravated sexual abuse of a child under Section 76-5-404.3;
- 1611 (xix) aggravated sexual assault under Section 76-5-405;
- 1612 (xx) custodial sexual relations under Section 76-5-412, when the individual in custody is younger than
18 years old, if the offense is committed on or after May 10, 2011;
- 1615 (xxi) sexual exploitation of a minor under Section 76-5b-201;
- 1616 (xxii) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 1617 (xxiii) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- 1618 (xxiv) incest under Section 76-7-102;
- 1619 (xxv) lewdness under Section 76-9-702, if the individual has been convicted of the offense four or more
times;
- 1621 (xxvi) sexual battery under Section 76-9-702.1, if the individual has been convicted of the offense four
or more times;
- 1623 (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;
- 1625 (xxviii) lewdness involving a child under Section 76-9-702.5;
- 1626 (xxix) a felony or class A misdemeanor violation of voyeurism under Section 76-9-702.7;
- 1628 (xxx) aggravated exploitation of prostitution under Section 76-10-1306; or
- 1629 (xxxi) attempting, soliciting, or conspiring to commit a felony offense listed in this Subsection (19)(a);
- 1631 (b)

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- 1634 (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
- 1635 (ii)
 - . (A) who is a Utah resident; or
 - 1638 (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;
 - 1638 (c)
 - . (i)
 - . (A) who is required to register as a sex offender in another jurisdiction of original conviction;
 - 1640 (B) who is required to register as a sex offender by a state, federal, or military court; or
 - 1642 (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
 - 1645 (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;
 - 1647 (d)
 - . (i)
 - . (A) who is a nonresident regularly employed or working in this state; or
 - 1648 (B) who is a student in this state; and
 - 1649 (ii)
 - . (A) who was convicted of one or more offenses listed in Subsection (19)(a) or a substantially equivalent
offense in another jurisdiction; or
 - 1651 (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);
 - 1654 (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
 - 1656 (f)
 - . (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (19)(a); and
 - 1658 (ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that
offense if:
 - 1660 (A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

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- 1662 (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
- 1665 (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.
- 1667 (20) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the
Influence and Reckless Driving.
- 1669 (21) "Vehicle" means a motor vehicle, an aircraft, or a watercraft subject to registration in any
jurisdiction.
- 1691 Section 16. Section **78B-6-117** is amended to read:
- 1692 **78B-6-117. Who may adopt -- Adoption of minor.**
- 1673 (1) A minor child may be adopted by an adult individual, in accordance with this section and this part.
- 1675 (2) A child may be adopted by:
- 1676 (a) adults who are legally married to each other in accordance with the laws of this state, including
adoption by a stepparent; or
- 1678 (b) subject to Subsections (3) and (4), a single adult.
- 1679 (3) A child may not be adopted by an individual who is cohabiting in a relationship that is not a legally
valid and binding marriage under the laws of this state unless the individual is a relative of the child
or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.
- 1683 (4) To provide a child who is in the custody of the division with the most beneficial family structure,
when a child in the custody of the division is placed for adoption, the division or child-placing
agency shall place the child with a married couple, unless:
- 1686 (a) there are no qualified married couples who:
- 1687 (i) have applied to adopt a child;
- 1688 (ii) are willing to adopt the child; and
- 1689 (iii) are an appropriate placement for the child;
- 1690 (b) the child is placed with a relative of the child;
- 1691 (c) the child is placed with an individual who has already developed a substantial relationship with the
child;
- 1693 (d) the child is placed with an individual who:
- 1694

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- (i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and
- 1696 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 1697 (A) knew the individual with whom the child is placed before the parent consented to the adoption; or
- 1699 (B) became aware of the individual with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or
- 1702 (e) it is in the best interests of the child to place the child with a single adult.
- 1703 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:
- 1706 (a) child abuse, as described in Section 76-5-109;
- 1707 (b) aggravated child abuse, as described in Section 76-5-109.2;
- 1708 (c) child abandonment, as described in Section 76-5-109.3;
- 1709 (d) child torture, as described in Section 76-5-109.4;
- 1710 (e) commission of domestic violence in the presence of a child, as described in Section 76-5-114;
- 1712 [~~(b)~~] (f) child abuse homicide, as described in Section 76-5-208;
- 1713 [~~(e)~~] (g) child kidnapping, as described in Section 76-5-301.1;
- 1714 [~~(d)~~] (h) human trafficking of a child, as described in Section 76-5-308.5;
- 1715 [~~(e)~~] (i) sexual abuse of a minor, as described in Section 76-5-401.1;
- 1716 [~~(f)~~] (j) rape of a child, as described in Section 76-5-402.1;
- 1717 [~~(g)~~] (k) object rape of a child, as described in Section 76-5-402.3;
- 1718 [~~(h)~~] (l) sodomy on a child, as described in Section 76-5-403.1;
- 1719 [~~(i)~~] (m) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- 1721 [~~(j)~~] (n) sexual exploitation of a minor, as described in Section 76-5b-201;
- 1722 [~~(k)~~] (o) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- 1724 [~~(l)~~ aggravated child abuse, as described in Section 76-5-109.2;]
- 1725 [~~(m)~~ child abandonment, as described in Section 76-5-109.3;]
- 1726 [~~(n)~~ commission of domestic violence in the presence of a child, as described in Section 76-5-114; or]
- 1728 [~~(o)~~] (p) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

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- 1730 (6)
- . (a) For purpose of this Subsection (6), "disqualifying offense" means an offense listed in Subsection (5) that prevents a court from considering an individual for adoption of a child except as provided in this Subsection (6).
- 1733 (b) An individual described in Subsection (5) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:
- 1735 (i) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- 1737 (ii) during the 10 years before the day on which the individual files a petition with the court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;
- 1741 (iii) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
- 1743 (iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any time in the future when considering all of the following:
- 1746 (A) the child's age;
- 1747 (B) the child's gender;
- 1748 (C) the child's development;
- 1749 (D) the nature and seriousness of the disqualifying offense;
- 1750 (E) the preferences of a child 12 years old or older;
- 1751 (F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and
- 1754 (G) any other relevant information;
- 1755 (v) the individual can provide evidence of all of the following:
- 1756 (A) the relationship with the child is of long duration;
- 1757 (B) that an emotional bond exists with the child; and
- 1758 (C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and

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- 1760 (vi) the adoption is by:
- 1761 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- 1763 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102 and there is not another relative without a disqualifying offense filing an adoption petition.
- 1766 (c) The individual with the disqualifying offense bears the burden of proof regarding why adoption with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.
- 1770 (d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:
- 1772 (i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and
- 1774 (ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:
- 1776 (A) an impartial custody evaluation shall be completed; and
- 1777 (B) a guardian ad litem shall be assigned.
- 1778 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.
- 1800 Section 17. Section **78B-7-801** is amended to read:
- 1801 **78B-7-801. Definitions.**
- As used in this part:
- 1783 (1)
- . (a) "Jail release agreement" means a written agreement that is entered into by an individual who is arrested or issued a citation, regardless of whether the individual is booked into jail:
- 1786 (i) under which the arrested or cited individual agrees to not engage in any of the following:
- 1788 (A) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;
- 1790 (B) threatening or harassing the alleged victim; or
- 1791 (C) knowingly entering onto the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim, unless, after a law enforcement officer or the law enforcement officer's employing agency notifies or attempts to notify the alleged victim, the individual enters the premises while accompanied by a law enforcement officer for the purpose of retrieving the individual's personal belongings; and
- 1797 (ii) that specifies other conditions of release from jail or arrest.

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- 1798 (b) "Jail release agreement" includes a written agreement that includes the conditions described in
Section (1)(a) entered into by a minor who is taken into custody or placed in detention or a shelter
facility under Section 80-6-201.
- 1801 (2) "Jail release court order" means a written court order that:
- 1802 (a) orders an arrested or cited individual not to engage in any of the following:
- 1803 (i) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;
- 1805 (ii) threatening or harassing the alleged victim; or
- 1806 (iii) knowingly entering onto the premises of the alleged victim's residence or on premises temporarily
occupied by the alleged victim, unless, after a law enforcement officer or the law enforcement
officer's employing agency notifies or attempts to notify the alleged victim, the individual enters
the premises while accompanied by a law enforcement officer for the purpose of retrieving the
individual's personal belongings; and
- 1812 (b) specifies other conditions of release from jail.
- 1813 (3) "Minor" means the same as that term is defined in Section 80-1-102.
- 1814 (4) "Offense against a child or vulnerable adult" means the commission or attempted commission of an
offense described in:
- 1816 (a) Section 76-5-109, child abuse;
- 1817 (b) Section 76-5-109.2, aggravated child abuse;
- 1818 (c) Section 76-5-109.3, child abandonment;
- 1819 (d) Section 76-5-109.4, child torture;
- 1820 [~~(d)~~] (e) Section 76-5-110, abuse or neglect of a child with a disability;
- 1821 [~~(e)~~] (f) Section 76-5-111, abuse of a vulnerable adult;
- 1822 [~~(f)~~] (g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1823 [~~(g)~~] (h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1824 [~~(h)~~] (i) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1825 [~~(i)~~] (j) Section 76-5-114, commission of domestic violence in the presence of a child; or
- 1826 [~~(j)~~] (k) Section 76-9-702.1, sexual battery.
- 1827 (5) "Qualifying offense" means:
- 1828 (a) domestic violence;
- 1829 (b) an offense against a child or vulnerable adult; or
- 1830

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(c) the commission or attempted commission of an offense described in Section 76-9-702.1 or Title 76, Chapter 5, Part 4, Sexual Offenses.

1852 Section 18. Section **80-1-102** is amended to read:

1853 **80-1-102. Juvenile Code definitions.**

Except as provided in Section 80-6-1103, as used in this title:

1835 (1)

. (a) "Abuse" means:

1836 (i)

. (A) nonaccidental harm of a child;

1837 (B) threatened harm of a child;

1838 (C) sexual exploitation;

1839 (D) sexual abuse; or

1840 (E) human trafficking of a child in violation of Section 76-5-308.5; or

1841 (ii) that a child's natural parent:

1842 (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

1844 (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

1847 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

1849 (b) "Abuse" does not include:

1850 (i) reasonable discipline or management of a child, including withholding privileges;

1851 (ii) conduct described in Section 76-2-401; or

1852 (iii) the use of reasonable and necessary physical restraint or force on a child:

1853 (A) in self-defense;

1854 (B) in defense of others;

1855 (C) to protect the child; or

1856 (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1) (b)(iii)(A) through (C).

1858 (2) "Abused child" means a child who has been subjected to abuse.

1859 (3)

. (a) "Adjudication" means, except as provided in Subsection (3)(b):

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- 1860 (i) for a delinquency petition or criminal information under Chapter 6, Juvenile Justice:
- 1862 (A) a finding by the juvenile court that the facts alleged in a delinquency petition or criminal
information alleging that a minor committed an offense have been proved;
- 1865 (B) an admission by a minor in the juvenile court as described in Section 80-6-306; or
- 1867 (C) a plea of no contest by minor in the juvenile court; or
- 1868 (ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in
the petition have been proved.
- 1870 (b) "Adjudication" does not include:
- 1871 (i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's
admission; or
- 1873 (ii) a finding of not competent to proceed in accordance with Section 80-6-402.
- 1874 (4)
- . (a) "Adult" means an individual who is 18 years old or older.
- 1875 (b) "Adult" does not include an individual:
- 1876 (i) who is 18 years old or older; and
- 1877 (ii) who is a minor.
- 1878 (5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 1880 (6) "Board" means the Board of Juvenile Court Judges.
- 1881 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18 years old.
- 1883 (8) "Child and family plan" means a written agreement between a child's parents or guardian and the
Division of Child and Family Services as described in Section 80-3-307.
- 1885 (9) "Child placing" means the same as that term is defined in Section 26B-2-101.
- 1886 (10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.
- 1887 (11) "Child protection team" means a team consisting of:
- 1888 (a) the child welfare caseworker assigned to the case;
- 1889 (b) if applicable, the child welfare caseworker who made the decision to remove the child;
- 1891 (c) a representative of the school or school district where the child attends school;
- 1892 (d) if applicable, the law enforcement officer who removed the child from the home;
- 1893 (e) a representative of the appropriate Children's Justice Center, if one is established within the county
where the child resides;
- 1895

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- (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;
- 1897 (g) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and
- 1899 (h) any other individuals determined appropriate and necessary by the team coordinator and chair.
- 1901 (12)
- . (a) "Chronic abuse" means repeated or patterned abuse.
- 1902 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 1903 (13)
- . (a) "Chronic neglect" means repeated or patterned neglect.
- 1904 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 1905 (14) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.
- 1907 (15) "Commit" or "committed" means, unless specified otherwise:
- 1908 (a) with respect to a child, to transfer legal custody; and
- 1909 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 1910 (16) "Community-based program" means a nonsecure residential or nonresidential program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least restrictive setting, consistent with public safety, and operated by or under contract with the Division of Juvenile Justice and Youth Services.
- 1914 (17) "Community placement" means placement of a minor in a community-based program described in Section 80-5-402.
- 1916 (18) "Correctional facility" means:
- 1917 (a) a county jail; or
- 1918 (b) a secure correctional facility as defined in Section 64-13-1.
- 1919 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.
- 1921 (20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
- 1923 (21) "Dependent child" or "dependency" means a child who is without proper care through no fault of the child's parent, guardian, or custodian.
- 1925 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a parent or a previous custodian to another person, agency, or institution.

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- 1927 (23) "Detention" means home detention or secure detention.
- 1928 (24) "Detention facility" means a facility, established by the Division of Juvenile Justice and Youth Services in accordance with Section 80-5-501, for minors held in detention.
- 1930 (25) "Detention risk assessment tool" means an evidence-based tool established under Section 80-5-203 that:
- 1932 (a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and
- 1934 (b) is designed to assist in making a determination of whether a minor shall be held in detention.
- 1936 (26) "Developmental immaturity" means incomplete development in one or more domains that manifests as a functional limitation in the minor's present ability to:
- 1938 (a) consult with counsel with a reasonable degree of rational understanding; and
- 1939 (b) have a rational as well as factual understanding of the proceedings.
- 1940 (27) "Disposition" means an order by a juvenile court, after the adjudication of a minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.
- 1942 (28) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.
- 1945 (29) "Educational series" means an evidence-based instructional series:
- 1946 (a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104; and
- 1948 (b) designed to prevent substance use or the onset of a mental health disorder.
- 1949 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 1950 (31) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.
- 1954 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 1955 (33) "Formal probation" means a minor is:
- 1956 (a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and
- 1958 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 1959 (34) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

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- 1961 (35) "Guardian" means a person appointed by a court to make decisions regarding a minor, including
the authority to consent to:
- 1963 (a) marriage;
- 1964 (b) enlistment in the armed forces;
- 1965 (c) major medical, surgical, or psychiatric treatment; or
- 1966 (d) legal custody, if legal custody is not vested in another individual, agency, or institution.
- 1968 (36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 1969 (37) "Harm" means:
- 1970 (a) physical or developmental injury or damage;
- 1971 (b) emotional damage that results in a serious impairment in the child's growth, development, behavior,
or psychological functioning;
- 1973 (c) sexual abuse; or
- 1974 (d) sexual exploitation.
- 1975 (38) "Home detention" means placement of a minor:
- 1976 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent of the minor's
parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile
Justice and Youth Services or the juvenile court; or
- 1979 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the minor's home,
or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms
and conditions established by the Division of Juvenile Justice and Youth Services or the juvenile
court.
- 1983 (39)
- . (a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be
the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.
- 1986 (b) "Incest" includes:
- 1987 (i) blood relationships of the whole or half blood, regardless of whether the relationship is legally
recognized;
- 1989 (ii) relationships of parent and child by adoption; and
- 1990 (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent
and stepchild exists.
- 1992 (40) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

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- 1993 (41) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 1994 (42) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.
- 1996 (43) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.
- 1998 (44) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
- 1999 (45)
- . (a) "Intake probation" means a minor is:
- 2000 (i) monitored by a juvenile probation officer; and
- 2001 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2002 (b) "Intake probation" does not include formal probation.
- 2003 (46) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.
- 2006 (47) "Juvenile offender" means:
- 2007 (a) a serious youth offender; or
- 2008 (b) a youth offender.
- 2009 (48) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.
- 2011 (49) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice and Youth Services, or under contract with the Division of Juvenile Justice and Youth Services, that is responsible for minors taken into temporary custody under Section 80-6-201.
- 2015 (50) "Legal custody" means a relationship embodying:
- 2016 (a) the right to physical custody of the minor;
- 2017 (b) the right and duty to protect, train, and discipline the minor;
- 2018 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
- 2020 (d) the right to determine where and with whom the minor shall live; and
- 2021 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2022 (51) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.
- 2024 (52) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.
- 2026 (53) "Mental illness" means:
- 2027

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- (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
- 2029 (b) the same as that term is defined in:
 - 2030 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
 - 2032 (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- 2034 (54) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:
 - 2035 (a) a child; or
 - 2036 (b) an individual:
 - 2037 (i)
 - . (A) who is at least 18 years old and younger than 21 years old; and
 - 2038 (B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense;
 - 2042 (ii)
 - . (A) who is at least 18 years old and younger than 25 years old; and
 - 2043 (B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(b); or
 - 2045 (iii)
 - . (A) who is at least 18 years old and younger than 21 years old; and
 - 2046 (B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(c).
- 2048 (55) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-101.
- 2050 (56) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-401.1.
- 2054 (57)
 - . (a) "Natural parent" means, except as provided in Section 80-3-302, a minor's biological or adoptive parent.
 - 2056 (b) "Natural parent" includes the minor's noncustodial parent.

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- 2057 (58)
- . (a) "Neglect" means action or inaction causing:
- 2058 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe Relinquishment of a
Newborn Child;
- 2060 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or
custodian;
- 2062 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence
or medical care, or any other care necessary for the child's health, safety, morals, or well-being;
- 2065 (iv) a child to be at risk of being neglected or abused because another child in the same home is
neglected or abused;
- 2067 (v) abandonment of a child through an unregulated child custody transfer under Section
78B-24-203; or
- 2069 (vi) educational neglect.
- 2070 (b) "Neglect" does not include:
- 2071 (i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not
provide specified medical treatment for a child;
- 2073 (ii) a health care decision made for a child by the child's parent or guardian, unless the state or other
party to a proceeding shows, by clear and convincing evidence, that the health care decision is not
reasonable and informed;
- 2076 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 2077 (iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid
harm or unreasonable risk of harm, to engage in independent activities, including:
- 2080 (A) traveling to and from school, including by walking, running, or bicycling;
- 2081 (B) traveling to and from nearby commercial or recreational facilities;
- 2082 (C) engaging in outdoor play;
- 2083 (D) remaining in a vehicle unattended, except under the conditions described in Subsection
76-10-2202(2);
- 2085 (E) remaining at home unattended; or
- 2086 (F) engaging in a similar independent activity.
- 2087 (59) "Neglected child" means a child who has been subjected to neglect.
- 2088

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- (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the consent in writing of:
- 2091 (a) the assigned juvenile probation officer; and
- 2092 (b)
- . (i) the minor; or
- 2093 (ii) the minor and the minor's parent, guardian, or custodian.
- 2094 (61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:
- 2096 (a) understand the nature of the proceedings against the minor or of the potential disposition for the offense charged; or
- 2098 (b) consult with counsel and participate in the proceedings against the minor with a reasonable degree of rational understanding.
- 2100 (62) "Parole" means a conditional release of a juvenile offender from residency in secure care to live outside of secure care under the supervision of the Division of Juvenile Justice and Youth Services, or another person designated by the Division of Juvenile Justice and Youth Services.
- 2104 (63) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2105 (64)
- . (a) "Probation" means a legal status created by court order, following an adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's home under prescribed conditions.
- 2108 (b) "Probation" includes intake probation or formal probation.
- 2109 (65) "Prosecuting attorney" means:
- 2110 (a) the attorney general and any assistant attorney general;
- 2111 (b) any district attorney or deputy district attorney;
- 2112 (c) any county attorney or assistant county attorney; and
- 2113 (d) any other attorney authorized to commence an action on behalf of the state.
- 2114 (66) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from the home until the earlier of:
- 2116 (a) the day on which the shelter hearing is held under Section 80-3-301; or
- 2117 (b) the day on which the child is returned home.
- 2118 (67) "Protective services" means expedited services that are provided:

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- 2119 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 2120 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 2121 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
- 2123 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 2124 (c) in cases where the child's welfare is endangered:
- 2125 (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
- 2127 (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
- 2129 (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:
- 2131 (A) removal from the child's home;
- 2132 (B) placement in substitute care; and
- 2133 (C) petitioning the court for termination of parental rights.
- 2134 (68) "Protective supervision" means a legal status created by court order, following an adjudication on the ground of abuse, neglect, or dependency, whereby:
- 2136 (a) the minor is permitted to remain in the minor's home; and
- 2137 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided by an agency designated by the juvenile court.
- 2139 (69)
- . (a) "Related condition" means a condition that:
- 2140 (i) is found to be closely related to intellectual disability;
- 2141 (ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;
- 2143 (iii) is likely to continue indefinitely; and
- 2144 (iv) constitutes a substantial limitation to the individual's ability to function in society.
- 2145 (b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.
- 2147 (70)
- . (a) "Residual parental rights and duties" means the rights and duties remaining with a parent after legal custody or guardianship, or both, have been vested in another person or agency, including:
- 2150 (i) the responsibility for support;

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- 2151 (ii) the right to consent to adoption;
- 2152 (iii) the right to determine the child's religious affiliation; and
- 2153 (iv) the right to reasonable parent-time unless restricted by the court.
- 2154 (b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:
- 2156 (i) marriage;
- 2157 (ii) enlistment; and
- 2158 (iii) major medical, surgical, or psychiatric treatment.
- 2159 (71) "Runaway" means a child, other than an emancipated child, who willfully leaves the home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.
- 2162 (72) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour supervision and confinement of the minor.
- 2166 (73) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.
- 2168 (74) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services:
- 2171 (a) before disposition of an offense that is alleged to have been committed by the minor; or
- 2173 (b) under Section 80-6-704.
- 2174 (75) "Serious youth offender" means an individual who:
- 2175 (a) is at least 14 years old, but under 25 years old;
- 2176 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and
- 2179 (c) is committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.
- 2181 (76) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
- 2182 (77) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.
- 2184 (78)

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- . (a) "Severe type of child abuse or neglect" means, except as provided in Subsection (78)(b):
- 2186 (i) if committed by an individual who is 18 years old or older:
- 2187 (A) chronic abuse;
- 2188 (B) severe abuse;
- 2189 (C) sexual abuse;
- 2190 (D) sexual exploitation;
- 2191 (E) abandonment;
- 2192 (F) chronic neglect; or
- 2193 (G) severe neglect; or
- 2194 (ii) if committed by an individual who is under 18 years old:
- 2195 (A) causing serious [~~physical~~]injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or
- 2197 (B) sexual behavior with or upon another child that indicates a significant risk to other children.
- 2199 (b) "Severe type of child abuse or neglect" does not include:
- 2200 (i) the use of reasonable and necessary physical restraint by an educator in accordance with Subsection 53G-8-302(2) or Section 76-2-401;
- 2202 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another individual from physical injury; or
- 2207 (iii) a health care decision made for a child by a child's parent or guardian, unless, subject to Subsection (78)(c), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.
- 2211 (c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.
- 2213 (79) "Sexual abuse" means:
- 2214 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;
- 2216 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:
- 2218 (i) there is an indication of force or coercion;

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- 2219 (ii) the children are related, as described in Subsection (39), including siblings by marriage while the marriage exists or by adoption;
- 2221 (iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or
- 2223 (iv) there is a disparity in chronological age of four or more years between the two children;
- 2225 (c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:
- 2228 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 2230 (ii) child bigamy, Section 76-7-101.5;
- 2231 (iii) incest, Section 76-7-102;
- 2232 (iv) lewdness, Section 76-9-702;
- 2233 (v) sexual battery, Section 76-9-702.1;
- 2234 (vi) lewdness involving a child, Section 76-9-702.5; or
- 2235 (vii) voyeurism, Section 76-9-702.7; or
- 2236 (d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.
- 2239 (80) "Sexual exploitation" means knowingly:
- 2240 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2241 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2242 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 2245 (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:
- 2247 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2248 (ii) engaging in sexual or simulated sexual conduct; or
- 2249 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

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- 2253 (81) "Shelter" means the temporary care of a child in a physically unrestricted facility pending a disposition or transfer to another jurisdiction.
- 2255 (82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.
- 2256 (83) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the Division of Child and Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that focus on:
- 2260 (a) age;
- 2261 (b) social factors;
- 2262 (c) emotional factors;
- 2263 (d) sexual factors;
- 2264 (e) intellectual factors;
- 2265 (f) family risk factors; and
- 2266 (g) other related considerations.
- 2267 (84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- 2268 (85) "Status offense" means an offense that would not be an offense but for the age of the offender.
- 2270 (86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of alcohol or other drugs or substances.
- 2272 (87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence, and separate consideration of each allegation made or identified in the case, that abuse, neglect, or dependency occurred .
- 2275 (88) "Substitute care" means:
- 2276 (a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;
- 2280 (b) services provided for a minor in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or
- 2283 (c) the licensing and supervision of a substitute care facility.
- 2284 (89) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of each allegation made

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or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

- 2288 (90) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.
- 2290 (91) "Therapist" means:
- 2291 (a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in the division's or agency's custody; or
- 2294 (b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.
- 2296 (92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.
- 2298 (93) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
- 2299 (a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;
- 2301 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
- 2302 (c) results in the situations described in Subsections (93)(a) and (b).
- 2303 (94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
- 2305 (95) "Unsupported" means a finding by the Division of Child and Family Services at the completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
- 2309 (96) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.
- 2311 (97) "Without merit" means a finding at the completion of an investigation by the Division of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.
- 2315 (98) "Youth offender" means an individual who is:
- 2316 (a) at least 12 years old, but under 21 years old; and
- 2317 (b) committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

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2339 Section 19. Section **81-9-202** is amended to read:

2340 **81-9-202. Advisory guidelines for a custody and parent-time arrangement.**

- 2321 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304, the following advisory guidelines are suggested to govern a custody and parent-time arrangement between parents.
- 2324 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a court-imposed solution.
- 2326 (3) A parent-time schedule shall be used to maximize the continuity and stability of the minor child's life.
- 2328 (4) Each parent shall give special consideration to make the minor child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the minor child or in the life of either parent which may inadvertently conflict with the parent-time schedule.
- 2332 (5)
- . (a) The court shall determine the responsibility for the pick up, delivery, and return of the minor child when the parent-time order is entered.
- 2334 (b) The court may change the responsibility described in Subsection (5)(a) at any time a subsequent modification is made to the parent-time order.
- 2336 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
- 2337 (i) have the minor child ready for parent-time at the time the minor child is to be picked up ; and
- 2339 (ii) be present at the custodial home or make reasonable alternate arrangements to receive the minor child at the time the minor child is returned.
- 2341 (d) If the custodial parent will be transporting the minor child, the noncustodial parent shall:
- 2343 (i) be at the appointed place at the time the noncustodial parent is to receive the minor child; and
- 2345 (ii) have the minor child ready to be picked up at the appointed time and place or have made reasonable alternate arrangements for the custodial parent to pick up the minor child.
- 2348 (6) A parent may not interrupt regular school hours for a school-age minor child for the exercise of parent-time.
- 2350 (7) The court may:
- 2351 (a) make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents; and

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- 2353 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 2355 (8) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.
- 2357 (9) A parent may not withhold parent-time or child support due to the other parent's failure to comply with a court-ordered parent-time schedule.
- 2359 (10)
- . (a) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the minor child is participating or being honored.
- 2362 (b) The noncustodial parent is entitled to attend and participate fully in the functions described in Subsection (10)(a).
- 2364 (c) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records.
- 2366 (d) A parent shall immediately notify the other parent in the event of a medical emergency.
- 2368 (11) Each parent shall provide the other with the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.
- 2371 (12)
- . (a) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the minor child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available.
- 2374 (b) If the parents cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably ~~available by~~ available by taking into consideration:
- 2377 (i) the best interests of the minor child;
- 2378 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
- 2379 (iii) any other factors the court considers material.
- 2380 (13)
- . (a) Parental care is presumed to be better care for the minor child than surrogate care.
- 2382 (b) The court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the minor child, to provide the child care.

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- 2384 (c) Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.
- 2386 (14) Each parent shall:
- 2387 (a) provide all surrogate care providers with the name, current address, and telephone number of the other parent; and
- 2389 (b) provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.
- 2392 (15)
- . (a) Each parent is entitled to an equal division of major religious holidays celebrated by the parents.
- 2394 (b) The parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the minor child on the religious holiday.
- 2396 (16) If the minor child is on a different parent-time schedule than a sibling, based on Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.
- 2400 (17)
- . (a) When one or both parents are servicemembers or contemplating joining a uniformed service, the parents should resolve issues of custodial responsibility in the event of deployment as soon as practicable through reaching a voluntary agreement pursuant to Section 78B-20-201 or through court order obtained pursuant to this part.
- 2404 (b) Service members shall ensure their family care plan reflects orders and agreements entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents Custody, Parent-time, and Visitation Act.
- 2407 (18) A parent shall immediately notify the other parent if:
- 2408 (a) the parent resides with an individual or provides an individual with access to the minor child; and
- 2410 (b) the parent knows that the individual:
- 2411 (i) is required to register as a sex offender or a kidnap offender for an offense against a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
- 2413 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child Abuse Offender Registry; or
- 2415 (iii) has been convicted of:

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- 2416 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, or
76-5-208;
- 2418 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2420 (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3,
Kidnapping, Trafficking, and Smuggling;
- 2422 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation
Act; or
- 2424 (E) an offense that is substantially similar to an offense under Subsections (18)(b)(iii)(A) through (D).
- 2426 (19)
- . (a) For emergency purposes, whenever the minor child travels with a parent, the parent shall provide the
following information to the other parent:
- 2428 (i) an itinerary of travel dates;
- 2429 (ii) destinations;
- 2430 (iii) places where the minor child or traveling parent can be reached; and
- 2431 (iv) the name and telephone number of an available third person who would be knowledgeable of
the minor child's location.
- 2433 (b) Unchaperoned travel of a minor child under the age of five years is not recommended.
- 2454 Section 20. Section **81-9-207** is amended to read:
- 2455 **81-9-207. Supervised parent-time.**
- 2437 (1) If it is necessary to protect a minor child and there is no less restrictive means reasonably available,
and in accordance with Section 81-9-104, a court may order supervised parent-time if the court finds
evidence that the minor child would be subject to physical or emotional harm or child abuse, as
described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, and 80-1-102, from
the noncustodial parent if left unsupervised with the noncustodial parent.
- 2443 (2) If the court finds evidence of domestic violence, child abuse, or an ongoing risk to a child, and
orders supervised parent-time, the court shall give preference to supervision by a professional
individual or private agency trained in child abuse reporting laws, the developmental needs of a
child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
- 2448 (3) If a professional individual or private agency described in Subsection (2) is not available, affordable,
or practicable under the circumstances, a court shall give preference to supervision by an individual
who is:

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- 2451 (a) capable and willing to provide physical and psychological safety and security to the minor child, and to assist in the avoidance and prevention of domestic and family violence; and
- 2454 (b) is trained in child abuse reporting laws, the developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
- 2456 (4) If an individual described in Subsection (2) or (3) is not available, affordable, or practicable under the circumstances, or if the court does not find evidence of domestic violence, child abuse, or an ongoing risk to a minor child, a court may order supervised parent-time that is supervised by an individual who is willing to supervise, and is capable of protecting the minor child from physical or emotional harm, or child abuse, and the court shall give preference to individuals suggested by the parties, including relatives.
- 2463 (5) At the time supervised parent-time is imposed, the court shall consider:
- 2464 (a) whether the cost of professional or agency services is likely to prevent the noncustodial parent from exercising parent-time; and
- 2466 (b) whether the requirement for supervised parent-time should expire after a set period of time.
- 2468 (6)
- . (a) Except when the court makes a finding that, due to abuse by or the incapacity of the noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the physical or psychological safety and protection of the minor child, the court shall, in its order for supervised parent-time, provide specific goals and expectations for the noncustodial parent to accomplish before unsupervised parent-time may be granted.
- 2474 (b) The court shall schedule one or more follow-up hearings to revisit the issue of supervised parent-time.
- 2476 (7) A noncustodial parent may, at any time, petition the court to modify the order for supervised parent-time if the noncustodial parent can demonstrate that the specific goals and expectations set by the court as described in Subsection (6) have been accomplished.
- 2498 Section 21. Section **81-9-208** is amended to read:
- 2499 **81-9-208. Modification or termination of a custody or parent-time order -- Noncompliance with a parent-time order.**
- 2482 (1) The court has continuing jurisdiction to make subsequent changes to modify:
- 2483 (a) custody of a minor child if there is a showing of a substantial and material change in circumstances since the entry of the order; and

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- 2485 (b) parent-time for a minor child if there is a showing that there is a change in circumstances since the entry of the order.
- 2487 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a showing by a parent that the other parent:
- 2489 (a) resides with an individual or provides an individual with access to the minor child; and
- 2491 (b) knows that the individual:
- 2492 (i) is required to register as a sex offender or a kidnap offender for an offense against a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
- 2494 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child Abuse Offender Registry; or
- 2496 (iii) has been convicted of:
- 2497 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, or 76-5-208;
- 2499 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2501 (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 2503 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation Act; or
- 2505 (E) an offense that is substantially similar to an offense under Subsections (2)(b)(iii)(A) through (D).
- 2507 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal custody or joint physical custody if:
- 2510 (a) the verified petition or accompanying affidavit initially alleges that admissible evidence will show that there has been a substantial and material change in the circumstances of the minor child or one or both parents or joint legal or physical custodians since the entry of the order to be modified;
- 2514 (b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child; and
- 2516 (c)
- . (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 81-9-205(8); or
- 2518

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- (ii) if no dispute resolution procedure is contained in the order that established joint legal custody or joint physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 81-9-205(13) unless the parents certify that, in good faith, they have used a dispute resolution procedure to resolve their dispute.
- 2523 (4)
- . (a) In determining whether the best interest of a minor child will be served by either modifying or terminating the joint legal custody or joint physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors described in Sections 81-9-204 and 81-9-205.
- 2527 (b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:
- 2529 (i) a substantial and material change of circumstance has occurred; and
- 2530 (ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child.
- 2532 (c) The court shall give substantial weight to the existing joint legal custody or joint physical custody order when the minor child is thriving, happy, and well-adjusted.
- 2534 (5) The court shall, in every case regarding a petition for termination of a joint legal custody or joint physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Section 81-9-204.
- 2537 (6) The court may modify the terms and conditions of the existing order in accordance with this chapter and may order the parents to file a parenting plan in accordance with Section 81-9-203.
- 2540 (7) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 81-9-203.
- 2544 (8) If an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are service members, and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.
- 2548 (9) If the court finds that an action to modify custody or parent-time is filed or answered frivolously and, in a manner, designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

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- 2551 (10) If a petition to modify custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees expended by the prevailing party in that action if the court determines that the petition was without merit and not asserted or defended against in good faith.
- 2555 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court:
- 2558 (a) may award to the prevailing party:
- 2559 (i) actual attorney fees incurred;
- 2560 (ii) the costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time, including:
- 2562 (A) court costs;
- 2563 (B) child care expenses;
- 2564 (C) transportation expenses actually incurred;
- 2565 (D) lost wages, if ascertainable; or
- 2566 (E) counseling for a parent or a minor child if ordered or approved by the court; or
- 2567 (iii) any other appropriate equitable remedy; and
- 2568 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up parent-time is not in the best interest of the minor child.
- 2589 Section 22. Section **81-9-402** is amended to read:
- 2590 **81-9-402. Custody and visitation for individuals other than a parent -- Venue.**
- 2572 (1)
- . (a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.
- 2575 (b) There is a rebuttable presumption that a parent's decisions are in the minor child's best interests.
- 2577 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to an individual other than a parent who, by clear and convincing evidence, establishes that:
- 2580 (a) the individual has intentionally assumed the role and obligations of a parent;
- 2581 (b) the individual and the minor child have formed a substantial emotional bond and created a parent-child type relationship;

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- 2583 (c) the individual substantially contributed emotionally or financially to the minor child's well being;
- 2585 (d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
- 2587 (e) the continuation of the relationship between the individual and the minor child is in the minor child's best interest;
- 2589 (f) the loss or cessation of the relationship between the individual and the minor child would substantially harm the minor child; and
- 2591 (g) the parent:
- 2592 (i) is absent; or
- 2593 (ii) is found by a court to have abused or neglected the minor child.
- 2594 (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350, an individual shall file a verified petition, or a petition supported by an affidavit, for custodial or visitation rights to the minor child in the juvenile court if a matter is pending in the juvenile court, or in the district court in the county where the minor child:
- 2598 (a) currently resides; or
- 2599 (b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.
- 2601 (4) An individual may file a petition under this section in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or visitation with a minor child.
- 2604 (5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information described in Section 78B-13-209.
- 2607 (6) An individual may not file a petition under this section against a parent who is actively serving outside the state in any branch of the military.
- 2609 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the Utah Rules of Civil Procedure on all of the following:
- 2611 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
- 2612 (b) any individual who has court-ordered custody or visitation rights;
- 2613 (c) the minor child's guardian;
- 2614 (d) the guardian ad litem, if one has been appointed;
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- (e) an individual or agency that has physical custody of the minor child or that claims to have custody or visitation rights; and
- 2617 (f) any other individual or agency that has previously appeared in any action regarding custody of or visitation with the minor child.
- 2619 (8) The court may order a custody evaluation to be conducted in any proceeding brought under this section.
- 2621 (9) The court may enter temporary orders in a proceeding brought under this section pending the entry of final orders.
- 2623 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child under this section to an individual:
- 2625 (a) who is not the parent of the minor child; and
- 2626 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:
- 2629 (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, and 76-5-114;
- 2631 (ii) child abuse homicide, as described in Section 76-5-208;
- 2632 (iii) child kidnapping, as described in Section 76-5-301.1;
- 2633 (iv) human trafficking of a child, as described in Section 76-5-308.5;
- 2634 (v) sexual abuse of a minor, as described in Section 76-5-401.1;
- 2635 (vi) rape of a child, as described in Section 76-5-402.1;
- 2636 (vii) object rape of a child, as described in Section 76-5-402.3;
- 2637 (viii) sodomy on a child, as described in Section 76-5-403.1;
- 2638 (ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- 2640 (x) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2641 (xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- 2642 (xii) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).
- 2644 (11)
- . (a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).
- 2647

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- (b) An individual described in Subsection (10) may only be considered for custody of a minor child if the following criteria are met by clear and convincing evidence:
- 2649 (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;
- 2650 (ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- 2653 (iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;
- 2657 (iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
- 2659 (v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:
- 2662 (A) the minor child's age;
- 2663 (B) the minor child's gender;
- 2664 (C) the minor child's development;
- 2665 (D) the nature and seriousness of the disqualifying offense;
- 2666 (E) the preferences of a minor child who is 12 years old or older;
- 2667 (F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and
- 2670 (G) any other relevant information;
- 2671 (vi) the individual can provide evidence of the following:
- 2672 (A) the relationship with the minor child is of long duration;
- 2673 (B) that an emotional bond exists with the minor child; and
- 2674 (C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the minor child are met;
- 2676 (vii)
- . (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the minor child and does not have a disqualifying offense; or
- 2679

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- (B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and
- 2681 (viii) that the continuation of the relationship between the individual with the disqualifying offense and the minor child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).
- 2685 (c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the minor child over another responsible relative or equally situated individual who does not have a disqualifying offense.
- 2689 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:
- 2691 (i) preference for custody is given to a relative who does not have a disqualifying offense; and
- 2693 (ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:
- 2695 (A) an impartial custody evaluation shall be completed; and
- 2696 (B) a guardian ad litem shall be assigned.
- 2697 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

2718 Section 23. **Effective date.**

This bill takes effect on May 7, 2025.

2720 Section 24. **Coordinating S.B. 24 with H.B. 78.**

If S.B. 24, Child Abuse and Torture Amendments, and H.B. 78, Criminal Offenses Amendments, both pass and become law, the Legislature intends that, on May 7, 2025, the following language be inserted as Subsection 76-3-406(2)(b) in H.B. 78 and that the existing subsections in Subsection 76-3-406(2) in H.B. 78 be renumbered accordingly:

"(b) child torture as described in Section 76-5-109.4;".

2726 Section 25. **Coordinating S.B. 24 with S.B. 41 if H.B. 21 does not pass and become law.**

If S.B. 24, Child Abuse and Torture Amendments, and S.B. 41, Sex, Kidnap, and Child Abuse Offender Registry Amendments, both pass and become law, and H.B. 21, Criminal Code Recodification and Cross References, does not pass and become law, the Legislature intends that, on May 7, 2025:

(1) Section 53-29-202, enacted in S.B. 41, be amended to read:

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"(1) An individual is an offender described in Subsection (2) and subject to the requirements, restrictions, and penalties described in this chapter if the individual:

(a) has been convicted in this state of:

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

(ii) child torture under Section 76-5-109.4;

(iii) a felony or class A misdemeanor violation of enticing a minor under Section

2738

76-4-401;

(iv) sexual exploitation of a vulnerable adult under Section 76-5b-202;

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

(vi) human trafficking of a child for sexual exploitation under Subsection

2742

76-5-308.5(4)(b);

(vii) aggravated human trafficking for sexual exploitation under Section 76-5-310;

(viii) human trafficking of a vulnerable adult for sexual exploitation under Section

2745

76-5-311;

(ix) unlawful sexual activity with a minor under Section 76-5-401, except as provided in Subsection 76-5-401(3)(b) or (c);

(x) sexual abuse of a minor under Section 76-5-401.1, on the individual's first offense unless the individual was younger than 21 years old at the time of the offense then on the individual's second offense;

(xi) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

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

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

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

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

(xvi) a felony violation of forcible sodomy under Section 76-5-403;

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

(xviii) forcible sexual abuse under Section 76-5-404;

(xix) sexual abuse of a child under Section 76-5-404.1;

(xx) aggravated sexual abuse of a child under Section 76-5-404.3;

(xxi) aggravated sexual assault under Section 76-5-405;

(xxii) custodial sexual relations under Section 76-5-412, if the victim in custody is

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younger than 18 years old and the offense is committed on or after May 10, 2011;

(xxiii) sexual exploitation of a minor under Section 76-5b-201;

(xxiv) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(xxv) sexual extortion or aggravated sexual extortion under Section 76-5b-204;

(xxvi) incest under Section 76-7-102;

(xxvii) lewdness under Section 76-9-702, if the individual has been convicted of the offense four or more times;

(xxviii) sexual battery under Section 76-9-702.1, if the individual has been convicted of the offense four or more times;

(xxix) 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;

(xxx) lewdness involving a child under Section 76-9-702.5;

(xxxi) a felony or class A misdemeanor violation of voyeurism under Section

2776

76-9-702.7;

(xxxii) aggravated exploitation of prostitution under Section 76-10-1306;

(xxxiii) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;

(xxxiv) child kidnapping under Section 76-5-301.1, if the offender was not the natural parent of the child victim;

(xxxv) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

(xxxvi) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

(xxxvii) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

(xxxviii) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

(xxxix) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;

(xl) aggravated human smuggling under Section 76-5-310.1, if the offender was not the natural parent of the child victim;

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(xli) human trafficking of a vulnerable adult for labor under Section 76-5-311, if the offender was not the natural parent of the child victim; or

(xlii) attempting, soliciting, or conspiring to commit a felony violation of an offense listed in Subsections (1)(a)(i) through (xli);

(b)(i) has been convicted of a criminal offense, or an attempt, solicitation, or conspiracy to commit a criminal offense in an external jurisdiction that is substantially equivalent to the offense listed in Subsection (1)(a); and

(ii)(A) is a Utah resident; or

(B) is not a Utah resident and is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(c)(i)(A) is required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense;

(B) is ordered by a court to register on a registry for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense; or

(C) would be required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a), or a substantially equivalent offense, if residing in the external jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and

(ii) is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(d)(i)(A) is a nonresident regularly employed or working in this state; or

(B) who is a student in this state; and

(ii)(A) is convicted of an offense listed in Subsection (1)(a) or a substantially equivalent offense in an external jurisdiction; or

(B) is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (1)(a);

(e) is found not guilty by reason of insanity in this state or in an external jurisdiction of an offense listed in Subsection (1)(a) or a substantially equivalent offense; or

(f)(i) is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (1)(a); and

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(ii) 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.

(2) Subject to Subsection (3), an individual is:

(a) a child abuse offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(i) through (ii); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(i) through (ii) or a substantially equivalent offense;

(b) a sex offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(iii) through (xxxii); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(iii) through (xxxii) or a substantially equivalent offense; or

(c) a kidnap offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(xxxiii) through (xli); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(xxxiii) through (xli) or a substantially equivalent offense.

(3) An individual who has committed a registrable offense described in Subsection (1)(d)(ii)(B) in an external jurisdiction that is not substantially equivalent to an offense described in Subsection (1)(a) and is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence is a child abuse offender, sex offender, or kidnap offender based on the individual's status on the registry in the individual's state of residence.

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(4) Notwithstanding Subsection 53-29-101(2)(a), a plea of guilty or nolo contendere to a charge of sexual battery or lewdness that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction even if the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.";

(2) Subsection 53-29-203(1)(a), enacted in S.B. 41, be amended to read:

"(a) 10 years after the day on which the offender's sentence for the offense has been terminated if the registrable offense is for:

_____ (i) a felony or class A misdemeanor violation of enticing a minor under Section

2864

76-4-401, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(a)(ii) through (xxiv):

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

_____ (iii) child torture under Section 76-5-109.4;

_____ (iv) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;

_____ (v) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

_____ (vi) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

_____ (vii) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

_____ (viii) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;

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

_____ (x) human trafficking of a vulnerable adult for labor under Section 76-5-311;

_____ (xi) a felony violation of unlawful sexual activity with a minor under Section

2881

76-5-401;

_____ (xii) sexual abuse of a minor under Section 76-5-401.1;

_____ (xiii) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

_____ (xiv) forcible sexual abuse under Section 76-5-404;

_____ (xv) custodial sexual relations under Section 76-5-412;

_____ (xvi) sexual exploitation of a vulnerable adult under Section 76-5b-202;

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(xvii) sexual extortion under Subsection 76-5b-204(2)(a);

(xviii) incest under Section 76-7-102;

(xix) four to seven convictions of lewdness under Section 76-9-702;

(xx) four to seven convictions of sexual battery under Section 76-9-702.1;

(xxi) any combination of convictions of lewdness under Section 76-9-702, and of sexual battery under Section 76-9-702.1, that total four to seven convictions;

(xxii) lewdness involving a child under Section 76-9-702.5;

(xxiii) a felony or class A misdemeanor violation of voyeurism under Section

2895

76-9-702.7;

(xxiv) aggravated exploitation of prostitution under Section 76-10-1306, committed on or before May 9, 2011;

(xxv) attempting, soliciting, or conspiring to commit an offense listed in Subsections (1)(a)(i) through (xxiv) if the attempt, solicitation, or conspiracy is a registrable offense; or

(xxvi) attempting, soliciting, or conspiring to commit:

(A) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

(B) human trafficking for sexual exploitation under Section 76-5-308.1, if the offender was not the natural parent of the child victim;

(C) human trafficking of a child for sexual exploitation under Subsection

2906

76-5-308.5(4)(b), if the offender was not the natural parent of the child victim;

(D) aggravated human trafficking for sexual exploitation under Section 76-5-310, if the offender was not the natural parent of the child victim;

(E) human trafficking of a vulnerable adult for sexual exploitation under Section

2910

76-5-311, if the offender was not the natural parent of the child victim;

(F) forcible sodomy under Section 76-5-403;

(G) sexual abuse of a child under Section 76-5-404.1;

(H) sexual exploitation of a minor under Section 76-5b-201;

(I) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(J) aggravated sexual extortion under Subsection 76-5b-204(2)(b); or

(K) aggravated exploitation of prostitution under Section 76-10-1306, on or after May 10, 2011; or"; and

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(3) the following language be inserted as Subsection 53-29-205(3)(c) in S.B. 41 and the existing subsections in Subsection 53-29-205(3) in S.B. 41 be renumbered accordingly: "(c) child torture under Section 76-5-109.4;".

2921 Section 26. **Coordinating S.B. 24 with H.B. 21 and S.B. 41, if all pass and become law.**

If S.B. 24, Child Abuse and Torture Amendments, S.B. 41, Sex, Kidnap, and Child Abuse Offender Registry Amendments, and H.B. 21, Criminal Code Recodification and Cross References, all pass and become law, the Legislature intends that, on May 7, 2025:

(1) Section 53-29-202, enacted in S.B. 41, be amended to read:

"(1) An individual is an offender described in Subsection (2) and subject to the requirements, restrictions, and penalties described in this chapter if the individual:

(a) has been convicted in this state of:

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

(ii) child torture under Section 76-5-109.4;

(iii) a felony or class A misdemeanor violation of enticing a minor under Section

2932
76-4-401;

(iv) sexual exploitation of a vulnerable adult under Section 76-5b-202;

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

(vi) human trafficking of a child for sexual exploitation under Subsection

2936
76-5-308.5(4)(b);

(vii) aggravated human trafficking for sexual exploitation under Section 76-5-310;

(viii) human trafficking of a vulnerable adult for sexual exploitation under Section

2939
76-5-311;

(ix) unlawful sexual activity with a minor under Section 76-5-401, except as provided in Subsection 76-5-401(3)(b) or (c);

(x) sexual abuse of a minor under Section 76-5-401.1, on the individual's first offense unless the individual was younger than 21 years old at the time of the offense then on the individual's second offense;

(xi) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

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

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

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

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- (xv) object rape of a child under Section 76-5-402.3;
- (xvi) a felony violation of forcible sodomy under Section 76-5-403;
- (xvii) sodomy on a child under Section 76-5-403.1;
- (xviii) forcible sexual abuse under Section 76-5-404;
- (xix) sexual abuse of a child under Section 76-5-404.1;
- (xx) aggravated sexual abuse of a child under Section 76-5-404.3;
- (xxi) aggravated sexual assault under Section 76-5-405;
- (xxii) custodial sexual relations under Section 76-5-412, if the victim in custody is younger than 18 years old and the offense is committed on or after May 10, 2011;
- (xxiii) sexual exploitation of a minor under Section 76-5b-201;
- (xxiv) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- (xxv) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- (xxvi) incest under Section 76-7-102;
- (xxvii) lewdness under Section 76-9-702, if the individual has been convicted of the offense four or more times;
- (xxviii) sexual battery under Section 76-9-702.1, if the individual has been convicted of the offense four or more times;
- (xxix) 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;
- (xxx) lewdness involving a child under Section 76-9-702.5;
- (xxxi) a felony or class A misdemeanor violation of:
 - (A) voyeurism under Section 76-12-306;
 - (B) recorded or photographed voyeurism under Section 76-12-307; or
 - (C) distribution of images obtained through voyeurism under Section 76-12-308;
- (xxxii) aggravated exploitation of prostitution under Section 76-10-1306;
- (xxxiii) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;
- (xxxiv) child kidnapping under Section 76-5-301.1, if the offender was not the natural parent of the child victim;
- (xxxv) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

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(xxxvi) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

(xxxvii) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

(xxxviii) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

(xxxix) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;

(xl) aggravated human smuggling under Section 76-5-310.1, if the offender was not the natural parent of the child victim;

(xli) human trafficking of a vulnerable adult for labor under Section 76-5-311, if the offender was not the natural parent of the child victim; or

(xlii) attempting, soliciting, or conspiring to commit a felony violation of an offense listed in Subsections (1)(a)(i) through (xli);

(b)(i) has been convicted of a criminal offense, or an attempt, solicitation, or conspiracy to commit a criminal offense in an external jurisdiction that is substantially equivalent to the offense listed in Subsection (1)(a); and

(ii)(A) is a Utah resident; or

(B) is not a Utah resident and is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(c)(i)(A) is required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense;

(B) is ordered by a court to register on a registry for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense; or

(C) would be required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a), or a substantially equivalent offense, if residing in the external jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and

(ii) is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(d)(i)(A) is a nonresident regularly employed or working in this state; or

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- (B) who is a student in this state; and
- (ii)(A) is convicted of an offense listed in Subsection (1)(a) or a substantially equivalent offense in an external jurisdiction; or
- (B) is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (1)(a);
- (e) is found not guilty by reason of insanity in this state or in an external jurisdiction of an offense listed in Subsection (1)(a) or a substantially equivalent offense; or
- (f)(i) is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (1)(a); and
- (ii) 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.
- (2) Subject to Subsection (3), an individual is:
 - (a) a child abuse offender if the individual:
 - (i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(i) through (ii); or
 - (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(i) through (ii) or a substantially equivalent offense;
 - (b) a sex offender if the individual:
 - (i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(iii) through (xxxii); or
 - (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(iii) through (xxxii) or a substantially equivalent offense; or
 - (c) a kidnap offender if the individual:

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_____ (i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(xxxiii) through (xli); or

_____ (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(xxxiii) through (xli) or a substantially equivalent offense.

(3) An individual who has committed a registrable offense described in Subsection (1)(d)(ii)(B) in an external jurisdiction that is not substantially equivalent to an offense described in Subsection (1)(a) and is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence is a child abuse offender, sex offender, or kidnap offender based on the individual's status on the registry in the individual's state of residence.

(4) Notwithstanding Subsection 53-29-101(2)(a), a plea of guilty or nolo contendere to a charge of sexual battery or lewdness that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction even if the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.";

(2) Subsection 53-29-203(1)(a), enacted in S.B. 41, be amended to read:

"(a) 10 years after the day on which the offender's sentence for the offense has been terminated if the registrable offense is for:

_____ (i) a felony or class A misdemeanor violation of enticing a minor under Section

3060

76-4-401, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(a)(ii) through (xxiv):

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

_____ (iii) child torture under Section 76-5-109.4;

_____ (iv) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;

_____ (v) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

_____ (vi) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

_____ (vii) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

_____ (viii) aggravated human trafficking for labor under Section 76-5-310, if the offender

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was not the natural parent of the child victim;

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

(x) human trafficking of a vulnerable adult for labor under Section 76-5-311;

(xi) a felony violation of unlawful sexual activity with a minor under Section

3077

76-5-401;

(xii) sexual abuse of a minor under Section 76-5-401.1;

(xiii) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

(xiv) forcible sexual abuse under Section 76-5-404;

(xv) custodial sexual relations under Section 76-5-412;

(xvi) sexual exploitation of a vulnerable adult under Section 76-5b-202;

(xvii) sexual extortion under Subsection 76-5b-204(2)(a);

(xviii) incest under Section 76-7-102;

(xix) four to seven convictions of lewdness under Section 76-9-702;

(xx) four to seven convictions of sexual battery under Section 76-9-702.1;

(xxi) any combination of convictions of lewdness under Section 76-9-702, and of sexual battery under Section 76-9-702.1, that total four to seven convictions;

(xxii) lewdness involving a child under Section 76-9-702.5;

(xxiii) a felony or class A misdemeanor violation of:

(A) voyeurism under Section 76-12-306;

(B) recorded or photographed voyeurism under Section 76-12-307; or

(C) distribution of images obtained through voyeurism under Section 76-12-308;

(xxiv) aggravated exploitation of prostitution under Section 76-10-1306, committed on or before May 9, 2011;

(xxv) attempting, soliciting, or conspiring to commit an offense listed in Subsections (1)(a)(i) through (xxiv) if the attempt, solicitation, or conspiracy is a registrable offense; or

(xxvi) attempting, soliciting, or conspiring to commit:

(A) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

(B) human trafficking for sexual exploitation under Section 76-5-308.1, if the offender was not the natural parent of the child victim;

(C) human trafficking of a child for sexual exploitation under Subsection

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76-5-308.5(4)(b), if the offender was not the natural parent of the child victim;

_____ (D) aggravated human trafficking for sexual exploitation under Section 76-5-310, if the offender was not the natural parent of the child victim;

_____ (E) human trafficking of a vulnerable adult for sexual exploitation under Section

3108

76-5-311, if the offender was not the natural parent of the child victim;

_____ (F) forcible sodomy under Section 76-5-403;

_____ (G) sexual abuse of a child under Section 76-5-404.1;

_____ (H) sexual exploitation of a minor under Section 76-5b-201;

_____ (I) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

_____ (J) aggravated sexual extortion under Subsection 76-5b-204(2)(b); or

_____ (K) aggravated exploitation of prostitution under Section 76-10-1306, on or after May 10, 2011; or";

(3) the following language be inserted as Subsection 53-29-205(3)(c) in S.B. 41 and the existing subsections in Subsection 53-29-205(3) in S.B. 41 be renumbered accordingly:

"(c) child torture under Section 76-5-109.4;"; and

(4) Subsection 53-29-205(3)(u), enacted in S.B. 41, be amended to read:

"(u) a felony violation of:

_____ (i) recorded or photographed voyeurism under Section 76-12-307; or

_____ (ii) distribution of images obtained through voyeurism under Section 76-12-308;".

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