

Sexual Offense Revisions
2025 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Stephen L. Whyte

LONG TITLE

General Description:

This bill changes certain sexual offenses and sentencing for sexual offenses.

Highlighted Provisions:

This bill:

- amends sentencing provisions concerning repeat and habitual sex offenders, including requiring mandatory imprisonment;
- provides a definition of a female breast for purposes of certain sexual and sexual exploitation offenses that includes a breast that is undeveloped or partially developed;
- expands the definition of "child sexual abuse material" to include a minor observing or being used for sexually explicit conduct;
- modifies the definition of "sexual explicit conduct" concerning certain bodily functions;
- changes the mental state necessary to commit the offense of sexual exploitation of a minor;
- expands the offense of sexual exploitation of a minor to include when an actor accesses child sexual abuse material with the intent to view;
- provides a safe harbor provision for certain employees and independent contractors who access child sexual abuse material within the scope of employment;
- changes the mental state necessary to commit the offense of aggravated sexual exploitation of a minor;
- amends the offense of aggravated sexual exploitation of a minor to remove a lesser penalty for circumstances when the child sexual abuse material depicts an individual who is 14 years old or older and pubescent; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

32 AMENDS:

33 **76-3-203.13**, as last amended by Laws of Utah 2022, Chapter 181

34 **76-3-406**, as last amended by Laws of Utah 2024, Chapter 96

35 **76-3-407**, as last amended by Laws of Utah 2023, Chapter 457

36 **76-5-401.1**, as last amended by Laws of Utah 2024, Chapter 234

37 **76-5-401.2**, as last amended by Laws of Utah 2022, Chapter 181

38 **76-5-404**, as last amended by Laws of Utah 2022, Chapter 181

39 **76-5-404.1**, as last amended by Laws of Utah 2024, Chapters 96, 97

40 **76-5-412.2**, as enacted by Laws of Utah 2022, Chapter 181

41 **76-5-413.2**, as enacted by Laws of Utah 2022, Chapter 181

42 **76-5b-103**, as last amended by Laws of Utah 2024, Chapters 127, 142

43 **76-5b-201**, as last amended by Laws of Utah 2024, Chapter 142

44 **76-5b-201.1**, as last amended by Laws of Utah 2024, Chapter 142

45

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

47 Section 1. Section **76-3-203.13** is amended to read:

48 **76-3-203.13 . Enhanced penalty for unlawful sexual contact with a student.**

49 (1) A person convicted of a sexual offense described in Section 76-5-401.1 or 76-5-401.2
50 may be subject to an enhanced penalty if, at the time of the commission of the sexual
51 offense, the actor:

52 (a) was 18 years old or older;

53 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as
54 that position is defined in Subsection [~~76-5-404.1(1)(a)(iv)(S)~~] 76-5-404.1(1)(a)(v)(S);
55 and

56 (c) committed the offense against an individual who at the time of the offense was
57 enrolled as a student at the school where the actor was employed or was acting as a
58 volunteer.

59 (2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of
60 one classification higher than the offense of which the person was convicted.

61 Section 2. Section **76-3-406** is amended to read:

62 **76-3-406 . Crimes for which probation, suspension of sentence, lower category of**
63 **offense, or hospitalization may not be granted.**

64 (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a,

65 Commitment and Treatment of Individuals with a Mental Condition, except as provided

66 in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted,
 67 the execution or imposition of sentence may not be suspended, the court may not enter a
 68 judgment for a lower category of offense, and hospitalization may not be ordered, the
 69 effect of which would in any way shorten the prison sentence for:

- 70 (a) an individual who commits a capital felony or a first degree felony involving:
- 71 ~~[(a)]~~ (i) aggravated murder as described in Section 76-5-202;
 - 72 ~~[(b)]~~ (ii) murder as described in Section 76-5-203;
 - 73 ~~[(c)]~~ (iii) child kidnapping as described in Section 76-5-301.1;
 - 74 ~~[(d)]~~ (iv) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
 - 75 ~~[(e)]~~ (v) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);
 - 76 ~~[(f)]~~ (vi) rape of a child as described in Section 76-5-402.1;
 - 77 ~~[(g)]~~ (vii) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);
 - 78 ~~[(h)]~~ (viii) object rape of a child as described in Section 76-5-402.3;
 - 79 ~~[(i)]~~ (ix) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);
 - 80 ~~[(j)]~~ (x) sodomy on a child as described in Section 76-5-403.1;
 - 81 ~~[(k)]~~ (xi) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
 - 82 ~~[(l)]~~ (xii) aggravated sexual abuse of a child as described in Section 76-5-404.3;
 - 83 ~~[(m)]~~ (xiii) aggravated sexual assault as described in Section 76-5-405; or
 - 84 ~~[(n)]~~ (xiv) any attempt to commit a felony listed in Subsection ~~[(1)(f), (h), or (j):]~~
 - 85 (1)(a)(vi), (viii), or (x); or

86 (b) an offense for which the penalty has been increased under Section 76-3-407, Repeat
 87 and habitual sex offenders.

88 (2) Except for an offense before the district court in accordance with Section 80-6-502 or
 89 80-6-504, the provisions of this section do not apply if the sentencing court finds that the
 90 defendant:

- 91 (a) was under 18 years old at the time of the offense; and
- 92 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
 93 delayed filing of the information.

94 Section 3. Section **76-3-407** is amended to read:

95 **76-3-407 . Repeat and habitual sex offenders -- Additional prison term for prior**
 96 **felony convictions -- Mandatory imprisonment for entire term of imprisonment.**

97 (1) As used in this section:

- 98 (a) "Prior sexual offense" means:
- 99 (i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;

- 100 (ii) sexual exploitation of a minor, Section 76-5b-201;
- 101 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 102 (iv) a felony offense of enticing a minor, Section 76-4-401;
- 103 (v) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
- 104 (iv); or
- 105 (vi) an offense in another state, territory, or district of the United States that, if
- 106 committed in Utah, would constitute an offense described in Subsections (1)(a)(i)
- 107 through (v).
- 108 (b) "Sexual offense" means:
- 109 (i) an offense that is a second or third degree felony~~[of the second or third degree]~~,
- 110 or an attempted offense, which attempt is a second or third degree felony~~[of the~~
- 111 ~~second or third degree]~~, described in Chapter 5, Part 4, Sexual Offenses;
- 112 (ii) sexual exploitation of a minor, Section 76-5b-201;
- 113 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 114 (iv) a felony offense of enticing a minor, Section 76-4-401;
- 115 (v) a felony attempt to commit an offense described in Subsections (1)(b)(ii) through
- 116 (iv); or
- 117 (vi) an offense in another state, territory, or district of the United States that, if
- 118 committed in Utah, would constitute an offense described in Subsections (1)(b)(i)
- 119 through (v).
- 120 (2) Notwithstanding any other provision of law, the minimum and maximum penalty for a
- 121 sexual offense is increased by five years for each conviction of the defendant for a prior
- 122 sexual offense that arose from a separate criminal episode, if the trier of fact finds that:
- 123 (a) the defendant was convicted of a prior sexual offense; and
- 124 (b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a)
- 125 before the defendant was convicted of the sexual offense for which the defendant is
- 126 being sentenced.
- 127 (3) The increased [~~maximum~~]term described in Subsection (2) shall be in addition to, and
- 128 consecutive to, any other prison term served by the defendant.
- 129 (4) If a defendant's conviction is increased under this section, the defendant's entire
- 130 sentence for the conviction is subject to mandatory imprisonment under Section 76-3-406.
- 131 Section 4. Section **76-5-401.1** is amended to read:
- 132 **76-5-401.1 . Sexual abuse of a minor -- Penalties -- Limitations.**
- 133 (1)(a) As used in this section:

- 134 (i) "Female breast" means the undeveloped, partially developed, or developed breast
 135 of a female individual.
- 136 (ii) "Indecent liberties" means:
- 137 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or
 138 female breast;
- 139 (B) causing any part of an individual's body to touch the actor's or another's
 140 genitals, pubic area, anus, buttocks, or female breast;
- 141 (C) simulating or pretending to engage in sexual intercourse with another
 142 individual, including genital-genital, oral-genital, anal-genital, or oral-anal
 143 intercourse; or
- 144 (D) causing an individual to simulate or pretend to engage in sexual intercourse
 145 with the actor or another, including genital-genital, oral-genital, anal-genital, or
 146 oral-anal intercourse.
- 147 [(ii)] (iii) "Minor" means an individual who is 14 years old or older, but younger than
 148 16 years old, at the time the sexual activity described in Subsection (2) occurred.
- 149 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 150 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an
 151 actor commits sexual abuse of a minor if the actor:
- 152 (i) is four years or more older than the minor; and
- 153 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or
 154 with the intent to arouse or gratify the sexual desire of any individual:
- 155 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
- 156 (B) touches the female breast of a [~~female~~]minor; or
- 157 (C) otherwise takes indecent liberties with the minor.
- 158 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
 159 relevant element of a violation of Subsection (2)(a).
- 160 (3) A violation of Subsection (2)(a) is:
- 161 (a) a class A misdemeanor; and
- 162 (b) not subject to registration under Subsection 77-41-102(19)(a)(viii) on a first offense
 163 if the offender was younger than 21 years old at the time of the offense.
- 164 (4) The offenses referred to in Subsection (2)(a) are:
- 165 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
- 166 (b) rape, in violation of Section 76-5-402;
- 167 (c) object rape, in violation of Section 76-5-402.2;

- 168 (d) forcible sodomy, in violation of Section 76-5-403;
 169 (e) aggravated sexual assault, in violation of Section 76-5-405; or
 170 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

171 Section 5. Section **76-5-401.2** is amended to read:

172 **76-5-401.2 . Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**
 173 **Limitations.**

174 (1)(a) As used in this section:

- 175 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
 176 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
 177 [(ii)] (iii) "Minor" means an individual who is 16 years old or older, but younger than
 178 18 years old, at the time the sexual conduct described in Subsection (2) occurred.

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

180 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an
 181 actor commits unlawful sexual conduct with a minor if the actor:

182 (i)(A) is seven or more years older but less than 10 years older than the minor at
 183 the time of the sexual conduct;

184 (B) engages in any conduct listed in Subsection (2)(b); and

185 (C) knew or reasonably should have known the age of the minor; or

186 (ii)(A) is 10 or more years older than the minor at the time of the sexual conduct;
 187 and

188 (B) engages in any conduct listed in Subsection (2)(b).

189 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the actor:

190 (i) has sexual intercourse with the minor;

191 (ii) engages in any sexual act with the minor involving the genitals of one individual
 192 and the mouth or anus of another individual;

193 (iii)(A) causes the penetration, however slight, of the genital or anal opening of
 194 the minor by any foreign object, substance, instrument, or device, including a
 195 part of the human body; and

196 (B) causes the penetration with the intent to cause substantial emotional or bodily
 197 pain to any individual or with the intent to arouse or gratify the sexual desire of
 198 any individual; or

199 (iv) with the intent to cause substantial emotional or bodily pain to any individual or
 200 with the intent to arouse or gratify the sexual desire of any individual:

201 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;

- 202 (B) touches the female breast of a [~~female~~]minor; or
- 203 (C) otherwise takes indecent liberties with the minor.
- 204 (c)(i) Any touching, even if accomplished through clothing, is sufficient to constitute
- 205 the relevant element of a violation of Subsection (2)(a).
- 206 (ii) Any penetration, however slight, is sufficient to constitute the relevant element
- 207 under Subsection (2)(b)(i).
- 208 (iii) Any touching, however slight, is sufficient to constitute the relevant element
- 209 under Subsection (2)(b)(ii).
- 210 (3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
- 211 (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- 212 (4) The offenses referred to in Subsection (2)(a) are:
- 213 (a) rape, in violation of Section 76-5-402;
- 214 (b) object rape, in violation of Section 76-5-402.2;
- 215 (c) forcible sodomy, in violation of Section 76-5-403;
- 216 (d) forcible sexual abuse, in violation of Section 76-5-404;
- 217 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 218 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
- 219 Section 6. Section **76-5-404** is amended to read:
- 220 **76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.**
- 221 (1)(a) As used in this section[~~,"indecent"~~] :
- 222 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 223 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
- 224 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 225 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an
- 226 actor commits forcible sexual abuse if:
- 227 (i) without the consent of the individual, the actor:
- 228 (A) touches the anus, buttocks, pubic area, or any part of the genitals of another
- 229 individual;
- 230 (B) touches the female breast of another individual[~~who is female~~]; or
- 231 (C) otherwise takes indecent liberties with another individual;
- 232 (ii) the actor intends to:
- 233 (A) cause substantial emotional or bodily pain to any individual; or
- 234 (B) arouse or gratify the sexual desire of any individual; and
- 235 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or

- 236 older.
- 237 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
- 238 relevant element of a violation of Subsection (2)(a).
- 239 (3)(a) A violation of Subsection (2) is a second degree felony~~[-of the second degree]~~,
- 240 punishable by a term of imprisonment of not less than one year nor more than 15
- 241 years.
- 242 (b)(i) Notwithstanding Subsection (3)(a) and except as provided in Subsection
- 243 (3)(b)(ii), a violation of Subsection (2) is a first degree felony~~[-of the first degree]~~,
- 244 punishable by a term of imprisonment for 15 years and which may be for life, if
- 245 the trier of fact finds that during the course of the commission of the forcible
- 246 sexual abuse the ~~[defendant]~~ actor caused serious bodily injury to the victim.
- 247 (ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser
- 248 term than the term described in Subsection (3)(b)(i) is in the interests of justice
- 249 and states the reasons for this finding on the record, the court may impose a term
- 250 of imprisonment of not less than:
- 251 (A) 10 years and which may be for life; or
- 252 (B) six years and which may be for life.
- 253 (4) The offenses referred to in Subsection (2)(a) are:
- 254 (a) rape, in violation of Section 76-5-402;
- 255 (b) object rape, in violation of Section 76-5-402.2;
- 256 (c) forcible sodomy, in violation of Section 76-5-403; or
- 257 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 258 (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section
- 259 76-3-406.

260 Section 7. Section **76-5-404.1** is amended to read:

261 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**

- 262 (1)(a) As used in this section:
- 263 (i) "Adult" means an individual 18 years old or older.
- 264 (ii) "Child" means an individual younger than 14 years old.
- 265 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 266 ~~[(iii)]~~ (iv) "Indecent liberties" means the same as that term is defined in Section
- 267 76-5-401.1.
- 268 ~~[(iv)]~~ (v) "Position of special trust" means:
- 269 (A) an adoptive parent;

- 270 (B) an athletic manager who is an adult;
 271 (C) an aunt;
 272 (D) a babysitter;
 273 (E) a coach;
 274 (F) a cohabitant of a parent if the cohabitant is an adult;
 275 (G) a counselor;
 276 (H) a doctor or physician;
 277 (I) an employer;
 278 (J) a foster parent;
 279 (K) a grandparent;
 280 (L) a legal guardian;
 281 (M) a natural parent;
 282 (N) a recreational leader who is an adult;
 283 (O) a religious leader;
 284 (P) a sibling or a stepsibling who is an adult;
 285 (Q) a scout leader who is an adult;
 286 (R) a stepparent;
 287 (S) a teacher or any other individual employed by or volunteering at a public or
 288 private elementary school or secondary school, and who is 18 years old or
 289 older;
 290 (T) an instructor, professor, or teaching assistant at a public or private institution
 291 of higher education;
 292 (U) an uncle;
 293 (V) a youth leader who is an adult; or
 294 (W) any individual in a position of authority, other than those individuals listed in
 295 Subsections [~~(1)(a)(iv)(A)~~] (1)(a)(v)(A) through (V), which enables the
 296 individual to exercise undue influence over the child.

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

298 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an
 299 actor commits sexual abuse of a child if the actor:

300 (i)(A) touches, whether over or under the clothing, the buttocks or pubic area of a
 301 child;

302 (B) touches, whether over or under the clothing, the female breast of a [~~female~~]
 303 child;

- 304 (C) touches the anus or genitals of a child over the clothing; or
 305 (D) otherwise takes indecent liberties with a child whether over or under the
 306 clothing; and
- 307 (ii) the actor's conduct is with intent to:
 308 (A) cause substantial emotional or bodily pain to any individual; or
 309 (B) arouse or gratify the sexual desire of any individual.
- 310 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
 311 violation of Subsection (2)(a).
- 312 (3) A violation of Subsection (2) is a second degree felony.
- 313 (4) The offenses referred to in Subsection (2)(a) are:
 314 (a) rape of a child, in violation of Section 76-5-402.1;
 315 (b) object rape of a child, in violation of Section 76-5-402.3;
 316 (c) sodomy on a child, in violation of Section 76-5-403.1; or
 317 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 318 Section 8. Section **76-5-412.2** is amended to read:
 319 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**
- 320 (1)(a) As used in this section:
 321 (i) "Actor" means the same as that term is defined in Section 76-5-412.
 322 (ii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
 323 [~~(ii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section
 324 76-5-401.1.
 325 [~~(iii)~~] (iv) "Person in custody" means the same as that term is defined in Section
 326 76-5-412.
 327 [~~(iv)~~] (v) "Private provider or contractor" means the same as that term is defined in
 328 Section 76-5-412.
- 329 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 330 (2)(a) An actor commits custodial sexual misconduct if:
 331 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not
 332 amounting to commission of, or an attempt to commit, an offense under
 333 Subsection 76-5-412(4); and
 334 (ii)(A) the actor knows that the individual is a person in custody; or
 335 (B) a reasonable person in the actor's position should have known under the
 336 circumstances that the individual was a person in custody.
- 337 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the

338 intent to cause substantial emotional or bodily pain to another individual or with the
339 intent to arouse or gratify the sexual desire of any individual:

340 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in
341 custody;

342 (ii) touching the female breast of a [~~female~~]person in custody; or

343 (iii) otherwise taking indecent liberties with a person in custody.

344 (3)(a) A violation of Subsection (2) is a class A misdemeanor.

345 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years
346 old, a violation of Subsection (2) is a third degree felony.

347 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
348 penalty under another provision of state law than is provided under this Subsection (3),
349 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
350 offense.

351 (4)(a) It is not a defense to the commission of, or attempt to commit, the offense
352 described in Subsection (2) if the person in custody is younger than 18 years old, that
353 the actor:

354 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
355 the alleged offense; or

356 (ii) was unaware of the true age of the person in custody.

357 (b) Consent of the person in custody is not a defense to any violation or attempted
358 violation of Subsection (2).

359 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the
360 result of compulsion, as the defense is described in Subsection 76-2-302(1).

361 Section 9. Section **76-5-413.2** is amended to read:

362 **76-5-413.2 . Custodial sexual misconduct with a youth receiving state services --**

363 **Penalties -- Defenses and limitations.**

364 (1)(a) As used in this section:

365 (i) "Actor" means the same as that term is defined in Section 76-5-413.

366 (ii) "Department" means the same as that term is defined in Section 76-5-413.

367 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.

368 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section
369 76-5-401.1.

370 [~~(iv)~~] (v) "Juvenile court" means the same as that term is defined in Section 76-5-413.

371 [~~(v)~~] (vi) "Private provider or contractor" means the same as that term is defined in

372 Section 76-5-413.
373 [(vi)] (vii) "Youth receiving state services" means the same as that term is defined in
374 Section 76-5-413.

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

376 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an
377 actor commits custodial sexual misconduct with a youth receiving state services if:

378 (i) the actor commits any of the acts described in Subsection (2)(b); and

379 (ii)(A) the actor knows that the individual is a youth receiving state services; or

380 (B) a reasonable person in the actor's position should have known under the
381 circumstances that the individual was a youth receiving state services.

382 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
383 intent to cause substantial emotional or bodily pain to any individual or with the
384 intent to arouse or gratify the sexual desire of any individual:

385 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth
386 receiving state services;

387 (ii) touching the female breast of a [~~female~~] youth receiving state services; or

388 (iii) otherwise taking indecent liberties with a youth receiving state services.

389 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
390 relevant element of a violation of Subsection (2)(a).

391 (3)(a) A violation of Subsection (2) is a class A misdemeanor.

392 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
393 than 18 years old, a violation of Subsection (2) is a third degree felony.

394 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
395 penalty under another provision of state law than is provided under this Subsection (3),
396 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
397 offense.

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

399 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

400 (b) rape, in violation of Section 76-5-402;

401 (c) rape of a child, in violation of Section 76-5-402.1;

402 (d) object rape, in violation of Section 76-5-402.2;

403 (e) object rape of a child, in violation of Section 76-5-402.3;

404 (f) forcible sodomy, in violation of Section 76-5-403;

405 (g) sodomy on a child, in violation of Section 76-5-403.1;

- 406 (h) forcible sexual abuse, in violation of Section 76-5-404;
- 407 (i) sexual abuse of a child, in violation of Section 76-5-404.1;
- 408 (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;
- 409 (k) aggravated sexual assault, in violation of Section 76-5-405; or
- 410 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
- 411 (5)(a) It is not a defense to the commission of, or an attempt to commit, the offense
- 412 described in Subsection (2) if the youth receiving state services is younger than 18
- 413 years old, that the actor:
- 414 (i) mistakenly believed the youth receiving state services to be 18 years old or older
- 415 at the time of the alleged offense; or
- 416 (ii) was unaware of the true age of the youth receiving state services.
- 417 (b) Consent of the youth receiving state services is not a defense to any violation or
- 418 attempted violation of Subsection (2).
- 419 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 420 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 421 Section 10. Section **76-5b-103** is amended to read:
- 422 **76-5b-103 . Definitions.**
- 423 As used in this chapter:
- 424 (1) "Child sexual abuse material" means any visual depiction, including any live
- 425 performance, photograph, film, video, picture, or computer or computer-generated
- 426 image, picture, or video, whether made or produced by electronic, mechanical, or other
- 427 means, of sexually explicit conduct, where:
- 428 (a) the production of the visual depiction involves the use of a minor engaging in,
- 429 observing, or being used for sexually explicit conduct;
- 430 (b) the visual depiction is:
- 431 (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or
- 432 (ii) artificially generated and depicts an individual with substantial characteristics of a
- 433 minor engaging in, observing, or being used for sexually explicit conduct; or
- 434 (c) the visual depiction has been created, adapted, or modified to appear that an
- 435 identifiable minor is engaging, observing, or being used for in sexually explicit
- 436 conduct.
- 437 (2) "Children's Justice Center" means a facility or satellite office established under the
- 438 Children's Justice Center Program described in Section 67-5b-102.
- 439 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,

440 give, grant admission to, provide access to, or otherwise transfer.

441 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a
442 female individual.

443 [~~3~~] (5) "Identifiable minor" means an individual:

444 (a)(i) who was a minor at the time the visual depiction was created, adapted, or
445 modified; or

446 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
447 depiction; and

448 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
449 distinguishing characteristic, such as a birthmark, or other recognizable feature.

450 [~~4~~] (6) "Identifiable vulnerable adult" means an individual:

451 (a)(i) who was a vulnerable adult at the time the visual depiction was created,
452 adapted, or modified; or

453 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
454 the visual depiction; and

455 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
456 distinguishing characteristic, such as a birthmark, or other recognizable feature.

457 [~~5~~] (7) "Lacks capacity to consent" means the same as that term is defined in Section
458 76-5-111.4.

459 [~~6~~] (8) "Live performance" means any act, play, dance, pantomime, song, or other activity
460 performed by live actors in person.

461 [~~7~~] (9) "Minor" means an individual who is younger than 18 years old.

462 [~~8~~] (10) "Nudity or partial nudity" means any state of dress or undress in which the human
463 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
464 areola, is less than completely and opaquely covered.

465 [~~9~~] (11) "Produce" means:

466 (a) the photographing, filming, taping, directing, producing, creating, designing, or
467 composing of child sexual abuse material or vulnerable adult sexual abuse material; or

468 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,
469 directing, producing, creating, designing, or composing of child sexual abuse
470 material or vulnerable adult sexual abuse material.

471 [~~10~~] (12) "Sexually explicit conduct" means actual or simulated:

472 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
473 whether between individuals of the same or opposite sex;

- 474 (b) masturbation;
- 475 (c) bestiality;
- 476 (d) sadistic or masochistic activities;
- 477 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
- 478 individual;
- 479 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
- 480 arousal of any individual;
- 481 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 482 (h) the ~~[explicit representation]~~ visual depiction of ~~[the-]~~defecation or urination ~~[functions]~~
- 483 for the purpose of causing sexual arousal of any individual.

484 ~~[(11)]~~ (13) "Simulated sexually explicit conduct" means a feigned or pretended act of

485 sexually explicit conduct which duplicates, within the perception of an average person,

486 the appearance of an actual act of sexually explicit conduct.

487 ~~[(12)]~~ (14) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111

488 (1).

489 ~~[(13)]~~ (15) "Vulnerable adult sexual abuse material" means any visual depiction, including

490 any live performance, photograph, film, video, picture, or computer or

491 computer-generated image or picture, whether made or produced by electronic,

492 mechanical, or other means, of sexually explicit conduct, where:

- 493 (a) the production of the visual depiction involves the use of a vulnerable adult engaging
- 494 in sexually explicit conduct;
- 495 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
- 496 (c) the visual depiction has been created, adapted, or modified to appear that an
- 497 identifiable vulnerable adult is engaging in sexually explicit conduct.

498 Section 11. Section **76-5b-201** is amended to read:

499 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**

- 500 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 501 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses[
- 502 ~~or intentionally]~~ , views, accesses with the intent to view, or maintains access with the
- 503 intent to view, child sexual abuse material.
- 504 (3)(a) A violation of Subsection (2) is a second degree felony.
- 505 (b) It is a separate offense under this section:
- 506 (i) for each minor depicted in the child sexual abuse material; and
- 507 (ii) for each time the same minor is depicted in different child sexual abuse material.

- 508 (4) For a charge of violating this section, it is an affirmative defense that:
- 509 (a) the defendant:
- 510 (i) did not solicit the child sexual abuse material from the minor depicted in the child
- 511 sexual abuse material;
- 512 (ii) is not more than two years older than the minor depicted in the child sexual abuse
- 513 material; and
- 514 (iii) upon request of a law enforcement agent or the minor depicted in the child
- 515 sexual abuse material, removes from an electronic device or destroys the child
- 516 sexual abuse material and all copies of the child sexual abuse material in the
- 517 defendant's possession; and
- 518 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,
- 519 Sexual Offenses.
- 520 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
- 521 actual identity of the identifiable minor is not required.
- 522 (6) The following are not criminally or civilly liable under this section when acting in good
- 523 faith compliance with Section 77-4-201:
- 524 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 525 the scope of employment, for the good faith performance of:
- 526 (i) reporting or data preservation duties required under federal or state law; or
- 527 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
- 528 material on tangible or intangible property, or of detecting and reporting the
- 529 presence of child sexual abuse material on the property;
- 530 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
- 531 independent contractor who is contracted with a law enforcement agency, acting
- 532 within the scope of a criminal investigation;
- 533 (c) an employee of a court who may be required to view child sexual abuse material
- 534 during the course of and within the scope of the employee's employment;
- 535 (d) a juror who may be required to view child sexual abuse material during the course of
- 536 the individual's service as a juror;
- 537 (e) an attorney or employee of an attorney who is required to view child sexual abuse
- 538 material during the course of a judicial process and while acting within the scope of
- 539 employment;
- 540 (f) an employee of the Department of Health and Human Services who is required to
- 541 view child sexual abuse material within the scope of the employee's employment;

542 (g) an employee, independent contractor, or designated interviewer of a Children's
 543 Justice Center, within the scope of the employee's, independent contractor's, or
 544 designated interviewer's scope of employment or assignment; or
 545 ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope
 546 of the attorney's responsibility to represent the Department of Health and Human
 547 Services, including the divisions and offices within the Department of Health and
 548 Human Services.

549 Section 12. Section **76-5b-201.1** is amended to read:

550 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

551 (1) ~~[As used in this section:]~~

552 ~~[(a) "Physical abuse" or "physically abused" means the same as the term "physical~~
 553 ~~abuse" is defined in Section 80-1-102.]~~

554 ~~[(b) The terms-]~~ Terms defined in Section 76-1-101.5 apply to this section.

555 (2) An actor commits aggravated sexual exploitation of a minor if the actor:

556 (a) ~~[intentionally]~~ knowingly distributes or produces child sexual abuse material; or

557 ~~[(b) knowingly produces child sexual abuse material; or]~~

558 ~~[(e)]~~ (b) is the minor's parent or legal guardian and knowingly consents to or permits the
 559 minor to be sexually exploited as described in Subsection (2)(a) ~~[or (b)]~~ or Section
 560 76-5b-201.

561 (3)(a) Except as provided in Subsection (3)(b)~~[or (e)]~~, a violation of Subsection (2) is a
 562 first degree felony.

563 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection
 564 (2) is a second degree felony.

565 ~~[(e) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse~~
 566 ~~material depicts an individual who is:]~~

567 ~~[(i) 14 years old or older; or]~~

568 ~~[(ii) pubescent.]~~

569 (4) It is a separate offense under this section:

570 (a) for each minor depicted in the child sexual abuse material; and

571 (b) for each time the same minor is depicted in different child sexual abuse material.

572 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
 573 actual identity of the identifiable minor is not required.

574 (6) The following are not criminally or civilly liable under this section when acting in good
 575 faith compliance with Section 77-4-201:

- 576 (a) an entity or an employee, director, officer, or agent of an entity when acting within
577 the scope of employment, for the good faith performance of:
- 578 (i) reporting or data preservation duties required under federal or state law; or
579 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
580 material on tangible or intangible property, or of detecting and reporting the
581 presence of child sexual abuse material on the property;
- 582 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
583 independent contractor who is contracted with a law enforcement agency, acting
584 within the scope of a criminal investigation;
- 585 (c) an employee of a court who may be required to view child sexual abuse material
586 during the course of and within the scope of the employee's employment;
- 587 (d) a juror who may be required to view child sexual abuse material during the course of
588 the individual's service as a juror;
- 589 (e) an attorney or employee of an attorney who is required to view child sexual abuse
590 material during the course of a judicial process and while acting within the scope of
591 employment;
- 592 (f) an employee of the Department of Health and Human Services who is required to
593 view child sexual abuse material within the scope of the employee's employment;
- 594 (g) an employee, independent contractor, or designated interviewer of a Children's
595 Justice Center, within the scope of the employee's, independent contractor's, or
596 designated interviewer's scope of employment or assignment; or
- 597 [~~g~~] (h) an attorney who is required to view child sexual abuse material within the scope
598 of the attorney's responsibility to represent the Department of Health and Human
599 Services, including the divisions and offices within the Department of Health and
600 Human Services.

601 Section 13. **Effective Date.**

602 This bill takes effect on May 7, 2025.