

Stephen L. Whyte proposes the following substitute bill:

**Sexual Offense Revisions**  
2025 GENERAL SESSION  
STATE OF UTAH

**Chief Sponsor: Stephen L. Whyte**  
Senate Sponsor: Michael K. McKell

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**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 are required to access or view 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;
- ▶ includes a coordination clause 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; and

29       ▸ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       This bill provides a coordination clause.

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **76-3-203.13**, as last amended by Laws of Utah 2022, Chapter 181

37       **76-3-406**, as last amended by Laws of Utah 2024, Chapter 96

38       **76-3-407**, as last amended by Laws of Utah 2023, Chapter 457

39       **76-5-401.1**, as last amended by Laws of Utah 2024, Chapter 234

40       **76-5-401.2**, as last amended by Laws of Utah 2022, Chapter 181

41       **76-5-404**, as last amended by Laws of Utah 2022, Chapter 181

42       **76-5-404.1**, as last amended by Laws of Utah 2024, Chapters 96, 97

43       **76-5-412.2**, as enacted by Laws of Utah 2022, Chapter 181

44       **76-5-413.2**, as enacted by Laws of Utah 2022, Chapter 181

45       **76-5b-103**, as last amended by Laws of Utah 2024, Chapters 127, 142

46       **76-5b-201**, as last amended by Laws of Utah 2024, Chapter 142

47       **76-5b-201.1**, as last amended by Laws of Utah 2024, Chapter 142

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

49       **76-3-406**, as last amended by Laws of Utah 2024, Chapter 96

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

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

53       **76-3-203.13 . Enhanced penalty for unlawful sexual contact with a student.**

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

57       (a) was 18 years old or older;

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

61       (c) committed the offense against an individual who at the time of the offense was  
62       enrolled as a student at the school where the actor was employed or was acting as a

63 volunteer.

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

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

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

68 **76-3-406 . Crimes for which probation, suspension of sentence, lower category of**  
69 **offense, or hospitalization may not be granted.**

70 (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a,  
71 Commitment and Treatment of Individuals with a Mental Condition, except as provided  
72 in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted,  
73 the execution or imposition of sentence may not be suspended, the court may not enter a  
74 judgment for a lower category of offense, and hospitalization may not be ordered, the  
75 effect of which would in any way shorten the prison sentence for:

76 (a) an individual who commits a capital felony or a first degree felony involving:

77 [~~(a)~~] (i) aggravated murder as described in Section 76-5-202;

78 [~~(b)~~] (ii) murder as described in Section 76-5-203;

79 [~~(c)~~] (iii) child kidnapping as described in Section 76-5-301.1;

80 [~~(d)~~] (iv) aggravated kidnapping as described in Subsection 76-5-302(3)(b);

81 [~~(e)~~] (v) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);

82 [~~(f)~~] (vi) rape of a child as described in Section 76-5-402.1;

83 [~~(g)~~] (vii) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);

84 [~~(h)~~] (viii) object rape of a child as described in Section 76-5-402.3;

85 [~~(i)~~] (ix) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);

86 [~~(j)~~] (x) sodomy on a child as described in Section 76-5-403.1;

87 [~~(k)~~] (xi) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);

88 [~~(l)~~] (xii) aggravated sexual abuse of a child as described in Section 76-5-404.3;

89 [~~(m)~~] (xiii) aggravated sexual assault as described in Section 76-5-405; or

90 [~~(n)~~] (xiv) any attempt to commit a felony listed in Subsection [~~(1)(f), (h), or (j):~~]

91 (1)(a)(vi), (viii), or (x); or

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

94 (2) Except for an offense before the district court in accordance with Section 80-6-502 or  
95 80-6-504, the provisions of this section do not apply if the sentencing court finds that the  
96 defendant:

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

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

101 **76-3-407 . Repeat and habitual sex offenders -- Additional prison term for prior**  
102 **felony convictions -- Mandatory imprisonment for entire term of imprisonment.**

103 (1) As used in this section:

104 (a) "Prior sexual offense" means:

- 105 (i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;  
106 (ii) sexual exploitation of a minor, Section 76-5b-201;  
107 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;  
108 (iv) a felony offense of enticing a minor, Section 76-4-401;  
109 (v) a felony attempt to commit an offense described in Subsections (1)(a)(i) through  
110 (iv); or  
111 (vi) an offense in another state, territory, or district of the United States that, if  
112 committed in Utah, would constitute an offense described in Subsections (1)(a)(i)  
113 through (v).

114 (b) "Sexual offense" means:

- 115 (i) an offense that is a felony[~~of the second or third degree~~], or an attempted offense,  
116 which attempt is a felony[~~of the second or third degree~~], described in Chapter 5,  
117 Part 4, Sexual Offenses;  
118 (ii) sexual exploitation of a minor, Section 76-5b-201;  
119 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;  
120 (iv) a felony offense of enticing a minor, Section 76-4-401;  
121 (v) a felony attempt to commit an offense described in Subsections (1)(b)(ii) through  
122 (iv); or  
123 (vi) an offense in another state, territory, or district of the United States that, if  
124 committed in Utah, would constitute an offense described in Subsections (1)(b)(i)  
125 through (v).

126 (2) Notwithstanding any other provision of law, the minimum and maximum penalty for a  
127 sexual offense is increased by five years for each conviction of the defendant for a prior  
128 sexual offense that arose from a separate criminal episode, if the trier of fact finds that:

- 129 (a) the defendant was convicted of a prior sexual offense; and  
130 (b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a)

131 before the defendant [~~was convicted of~~] committed the sexual offense for which the  
 132 defendant is being sentenced.

133 (3) The increased [~~maximum~~] term described in Subsection (2) shall be in addition to, and  
 134 consecutive to, any other prison term served by the defendant.

135 (4) If a defendant's conviction is increased under this section, the defendant's entire  
 136 sentence for the conviction is subject to mandatory imprisonment under Section 76-3-406.

137 Section 4. Section **76-5-401.1** is amended to read:

138 **76-5-401.1 . Sexual abuse of a minor -- Penalties -- Limitations.**

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

140 (i) "Female breast" means the undeveloped, partially developed, or developed breast  
 141 of a female individual.

142 (ii) "Indecent liberties" means:

143 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or  
 144 female breast;

145 (B) causing any part of an individual's body to touch the actor's or another's  
 146 genitals, pubic area, anus, buttocks, or female breast;

147 (C) simulating or pretending to engage in sexual intercourse with another  
 148 individual, including genital-genital, oral-genital, anal-genital, or oral-anal  
 149 intercourse; or

150 (D) causing an individual to simulate or pretend to engage in sexual intercourse  
 151 with the actor or another, including genital-genital, oral-genital, anal-genital, or  
 152 oral-anal intercourse.

153 [~~(ii)~~] (iii) "Minor" means an individual who is 14 years old or older, but younger than  
 154 16 years old, at the time the sexual activity described in Subsection (2) occurred.

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

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

158 (i) is four years or more older than the minor; and

159 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or  
 160 with the intent to arouse or gratify the sexual desire of any individual:

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

162 (B) touches the female breast of a [~~female~~] minor; or

163 (C) otherwise takes indecent liberties with the minor.

164 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the

165 relevant element of a violation of Subsection (2)(a).

166 (3) A violation of Subsection (2)(a) is:

167 (a) a class A misdemeanor; and

168 (b) not subject to registration under Subsection 77-41-102(19)(a)(viii) on a first offense  
169 if the offender was younger than 21 years old at the time of the offense.

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

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

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

173 (c) object rape, in violation of Section 76-5-402.2;

174 (d) forcible sodomy, in violation of Section 76-5-403;

175 (e) aggravated sexual assault, in violation of Section 76-5-405; or

176 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

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

178 **76-5-401.2 . Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**

179 **Limitations.**

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

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

182 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

183 [(ii)] (iii) "Minor" means an individual who is 16 years old or older, but younger than  
184 18 years old, at the time the sexual conduct described in Subsection (2) occurred.

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

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

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

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

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

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

193 and

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

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

196 (i) has sexual intercourse with the minor;

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

- 199 (iii)(A) causes the penetration, however slight, of the genital or anal opening of  
 200 the minor by any foreign object, substance, instrument, or device, including a  
 201 part of the human body; and  
 202 (B) causes the penetration with the intent to cause substantial emotional or bodily  
 203 pain to any individual or with the intent to arouse or gratify the sexual desire of  
 204 any individual; or  
 205 (iv) with the intent to cause substantial emotional or bodily pain to any individual or  
 206 with the intent to arouse or gratify the sexual desire of any individual:  
 207 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;  
 208 (B) touches the female breast of a [~~female~~]minor; or  
 209 (C) otherwise takes indecent liberties with the minor.
- 210 (c)(i) Any touching, even if accomplished through clothing, is sufficient to constitute  
 211 the relevant element of a violation of Subsection (2)(a).  
 212 (ii) Any penetration, however slight, is sufficient to constitute the relevant element  
 213 under Subsection (2)(b)(i).  
 214 (iii) Any touching, however slight, is sufficient to constitute the relevant element  
 215 under Subsection (2)(b)(ii).
- 216 (3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.  
 217 (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- 218 (4) The offenses referred to in Subsection (2)(a) are:  
 219 (a) rape, in violation of Section 76-5-402;  
 220 (b) object rape, in violation of Section 76-5-402.2;  
 221 (c) forcible sodomy, in violation of Section 76-5-403;  
 222 (d) forcible sexual abuse, in violation of Section 76-5-404;  
 223 (e) aggravated sexual assault, in violation of Section 76-5-405; or  
 224 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
- 225 Section 6. Section **76-5-404** is amended to read:  
 226 **76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.**
- 227 (1)(a) As used in this section[~~, "indecent"~~] :  
 228 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.  
 229 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.  
 230 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 231 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor  
 232 commits forcible sexual abuse if:

- 233 (i) without the consent of the individual, the actor:
- 234 (A) touches the anus, buttocks, pubic area, or any part of the genitals of another
- 235 individual;
- 236 (B) touches the female breast of another individual~~[-who is female]~~; or
- 237 (C) otherwise takes indecent liberties with another individual;
- 238 (ii) the actor intends to:
- 239 (A) cause substantial emotional or bodily pain to any individual; or
- 240 (B) arouse or gratify the sexual desire of any individual; and
- 241 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
- 242 older.
- 243 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
- 244 relevant element of a violation of Subsection (2)(a).
- 245 (3)(a) A violation of Subsection (2) is a second degree felony~~[-of the second degree]~~,
- 246 punishable by a term of imprisonment of not less than one year nor more than 15
- 247 years.
- 248 (b)(i) Notwithstanding Subsection (3)(a) and except as provided in Subsection
- 249 (3)(b)(ii), a violation of Subsection (2) is a first degree felony~~[-of the first degree]~~,
- 250 punishable by a term of imprisonment for 15 years and which may be for life, if
- 251 the trier of fact finds that during the course of the commission of the forcible
- 252 sexual abuse the ~~[defendant]~~ actor caused serious bodily injury to the victim.
- 253 (ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser
- 254 term than the term described in Subsection (3)(b)(i) is in the interests of justice
- 255 and states the reasons for this finding on the record, the court may impose a term
- 256 of imprisonment of not less than:
- 257 (A) 10 years and which may be for life; or
- 258 (B) six years and which may be for life.
- 259 (4) The offenses referred to in Subsection (2)(a) are:
- 260 (a) rape, in violation of Section 76-5-402;
- 261 (b) object rape, in violation of Section 76-5-402.2;
- 262 (c) forcible sodomy, in violation of Section 76-5-403; or
- 263 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 264 (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section
- 265 76-3-406.
- 266 Section 7. Section **76-5-404.1** is amended to read:



267 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**

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

269 (i) "Adult" means an individual 18 years old or older.

270 (ii) "Child" means an individual younger than 14 years old.

271 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.272 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section

273 76-5-401.1.

274 [~~(iv)~~] (v) "Position of special trust" means:

275 (A) an adoptive parent;

276 (B) an athletic manager who is an adult;

277 (C) an aunt;

278 (D) a babysitter;

279 (E) a coach;

280 (F) a cohabitant of a parent if the cohabitant is an adult;

281 (G) a counselor;

282 (H) a doctor or physician;

283 (I) an employer;

284 (J) a foster parent;

285 (K) a grandparent;

286 (L) a legal guardian;

287 (M) a natural parent;

288 (N) a recreational leader who is an adult;

289 (O) a religious leader;

290 (P) a sibling or a stepsibling who is an adult;

291 (Q) a scout leader who is an adult;

292 (R) a stepparent;

293 (S) a teacher or any other individual employed by or volunteering at a public or

294 private elementary school or secondary school, and who is 18 years old or

295 older;

296 (T) an instructor, professor, or teaching assistant at a public or private institution

297 of higher education;

298 (U) an uncle;

299 (V) a youth leader who is an adult; or

300 (W) any individual in a position of authority, other than those individuals listed in

301 Subsections [~~(1)(a)(iv)(A)~~] (1)(a)(v)(A) through (V), which enables the  
 302 individual to exercise undue influence over the child.

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

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

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

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

310 (C) touches the anus or genitals of a child over the clothing; or

311 (D) otherwise takes indecent liberties with a child whether over or under the  
 312 clothing; and

313 (ii) the actor's conduct is with intent to:

314 (A) cause substantial emotional or bodily pain to any individual; or

315 (B) arouse or gratify the sexual desire of any individual.

316 (b) Any touching, however slight, is sufficient to constitute the relevant element of a  
 317 violation of Subsection (2)(a).

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

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

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

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

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

323 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).

324 Section 8. Section **76-5-412.2** is amended to read:

325 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**

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

327 (i) "Actor" means the same as that term is defined in Section 76-5-412.

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

329 [~~(iii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section  
 330 76-5-401.1.

331 [~~(iv)~~] (iv) "Person in custody" means the same as that term is defined in Section  
 332 76-5-412.

333 [~~(v)~~] (v) "Private provider or contractor" means the same as that term is defined in  
 334 Section 76-5-412.

- 335 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 336 (2)(a) An actor commits custodial sexual misconduct if:
- 337 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not
- 338 amounting to commission of, or an attempt to commit, an offense under
- 339 Subsection 76-5-412(4); and
- 340 (ii)(A) the actor knows that the individual is a person in custody; or
- 341 (B) a reasonable person in the actor's position should have known under the
- 342 circumstances that the individual was a person in custody.
- 343 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
- 344 intent to cause substantial emotional or bodily pain to another individual or with the
- 345 intent to arouse or gratify the sexual desire of any individual:
- 346 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in
- 347 custody;
- 348 (ii) touching the female breast of a [~~female~~]person in custody; or
- 349 (iii) otherwise taking indecent liberties with a person in custody.
- 350 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 351 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years
- 352 old, a violation of Subsection (2) is a third degree felony.
- 353 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
- 354 penalty under another provision of state law than is provided under this Subsection (3),
- 355 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
- 356 offense.
- 357 (4)(a) It is not a defense to the commission of, or attempt to commit, the offense
- 358 described in Subsection (2) if the person in custody is younger than 18 years old, that
- 359 the actor:
- 360 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
- 361 the alleged offense; or
- 362 (ii) was unaware of the true age of the person in custody.
- 363 (b) Consent of the person in custody is not a defense to any violation or attempted
- 364 violation of Subsection (2).
- 365 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 366 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 367 Section 9. Section **76-5-413.2** is amended to read:
- 368 **76-5-413.2 . Custodial sexual misconduct with a youth receiving state services --**

369 **Penalties -- Defenses and limitations.**

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

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

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

373 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.374 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section  
375 76-5-401.1.376 [~~(iv)~~] (v) "Juvenile court" means the same as that term is defined in Section 76-5-413.377 [~~(v)~~] (vi) "Private provider or contractor" means the same as that term is defined in  
378 Section 76-5-413.379 [~~(vi)~~] (vii) "Youth receiving state services" means the same as that term is defined in  
380 Section 76-5-413.

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

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

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

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

386 (B) a reasonable person in the actor's position should have known under the  
387 circumstances that the individual was a youth receiving state services.388 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the  
389 intent to cause substantial emotional or bodily pain to any individual or with the  
390 intent to arouse or gratify the sexual desire of any individual:391 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth  
392 receiving state services;393 (ii) touching the female breast of a [~~female~~] youth receiving state services; or

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

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

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

398 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger  
399 than 18 years old, a violation of Subsection (2) is a third degree felony.400 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater  
401 penalty under another provision of state law than is provided under this Subsection (3),  
402 this Subsection (3) does not prohibit prosecution and sentencing for the more serious

403 offense.

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

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

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

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

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

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

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

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

412 (h) forcible sexual abuse, in violation of Section 76-5-404;

413 (i) sexual abuse of a child, in violation of Section 76-5-404.1;

414 (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;

415 (k) aggravated sexual assault, in violation of Section 76-5-405; or

416 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).

417 (5)(a) It is not a defense to the commission of, or an attempt to commit, the offense

418 described in Subsection (2) if the youth receiving state services is younger than 18

419 years old, that the actor:

420 (i) mistakenly believed the youth receiving state services to be 18 years old or older

421 at the time of the alleged offense; or

422 (ii) was unaware of the true age of the youth receiving state services.

423 (b) Consent of the youth receiving state services is not a defense to any violation or

424 attempted violation of Subsection (2).

425 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the

426 result of compulsion, as the defense is described in Subsection 76-2-302(1).

427 Section 10. Section **76-5b-103** is amended to read:

428 **76-5b-103 . Definitions.**

429 As used in this chapter:

430 (1) "Child sexual abuse material" means any visual depiction, including any live

431 performance, photograph, film, video, picture, or computer or computer-generated

432 image, picture, or video, whether made or produced by electronic, mechanical, or other

433 means, of sexually explicit conduct, where:

434 (a) the production of the visual depiction involves the use of a minor engaging in,

435 observing, or being used for sexually explicit conduct;

436 (b) the visual depiction is:

- 437 (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or  
438 (ii) artificially generated and depicts an individual with substantial characteristics of a  
439 minor engaging in, observing, or being used for sexually explicit conduct; or  
440 (c) the visual depiction has been created, adapted, or modified to appear that an  
441 identifiable minor is engaging, observing, or being used for in sexually explicit  
442 conduct.
- 443 (2) "Children's Justice Center" means a facility or satellite office established under the  
444 Children's Justice Center Program described in Section 67-5b-102.
- 445 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,  
446 give, grant admission to, provide access to, or otherwise transfer.
- 447 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a  
448 female individual.
- 449 [~~(3)~~] (5) "Identifiable minor" means an individual:  
450 (a)(i) who was a minor at the time the visual depiction was created, adapted, or  
451 modified; or  
452 (ii) whose image as a minor was used in creating, adapting, or modifying the visual  
453 depiction; and  
454 (b) who is recognizable as an actual individual by the individual's face, likeness, or other  
455 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 456 [~~(4)~~] (6) "Identifiable vulnerable adult" means an individual:  
457 (a)(i) who was a vulnerable adult at the time the visual depiction was created,  
458 adapted, or modified; or  
459 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying  
460 the visual depiction; and  
461 (b) who is recognizable as an actual individual by the individual's face, likeness, or other  
462 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 463 [~~(5)~~] (7) "Lacks capacity to consent" means the same as that term is defined in Section  
464 76-5-111.4.
- 465 [~~(6)~~] (8) "Live performance" means any act, play, dance, pantomime, song, or other activity  
466 performed by live actors in person.
- 467 [~~(7)~~] (9) "Minor" means an individual who is younger than 18 years old.
- 468 [~~(8)~~] (10) "Nudity or partial nudity" means any state of dress or undress in which the human  
469 genitals, pubic region, buttocks, or the female breast, at a point below the top of the  
470 areola, is less than completely and opaquely covered.

471 ~~[(9)]~~ (11) "Produce" means:

- 472 (a) the photographing, filming, taping, directing, producing, creating, designing, or  
473 composing of child sexual abuse material or vulnerable adult sexual abuse material; or  
474 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,  
475 directing, producing, creating, designing, or composing of child sexual abuse  
476 material or vulnerable adult sexual abuse material.

477 ~~[(10)]~~ (12) "Sexually explicit conduct" means actual or simulated:

- 478 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,  
479 whether between individuals of the same or opposite sex;  
480 (b) masturbation;  
481 (c) bestiality;  
482 (d) sadistic or masochistic activities;  
483 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any  
484 individual;  
485 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual  
486 arousal of any individual;  
487 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or  
488 (h) the ~~[explicit representation]~~ visual depiction of ~~[the-]~~defecation or urination ~~[functions]~~  
489 for the purpose of causing sexual arousal of any individual.

490 ~~[(11)]~~ (13) "Simulated sexually explicit conduct" means a feigned or pretended act of  
491 sexually explicit conduct which duplicates, within the perception of an average person,  
492 the appearance of an actual act of sexually explicit conduct.

493 ~~[(12)]~~ (14) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111  
494 (1).

495 ~~[(13)]~~ (15) "Vulnerable adult sexual abuse material" means any visual depiction, including  
496 any live performance, photograph, film, video, picture, or computer or  
497 computer-generated image or picture, whether made or produced by electronic,  
498 mechanical, or other means, of sexually explicit conduct, where:

- 499 (a) the production of the visual depiction involves the use of a vulnerable adult engaging  
500 in sexually explicit conduct;  
501 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or  
502 (c) the visual depiction has been created, adapted, or modified to appear that an  
503 identifiable vulnerable adult is engaging in sexually explicit conduct.

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

505 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**

- 506 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 507 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses[  
508 ~~or intentionally~~], views, accesses with the intent to view, or maintains access with the  
509 intent to view, child sexual abuse material.
- 510 (3)(a) A violation of Subsection (2) is a second degree felony.
- 511 (b) It is a separate offense under this section:
- 512 (i) for each minor depicted in the child sexual abuse material; and
- 513 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 514 (4) For a charge of violating this section, it is an affirmative defense that:
- 515 (a) the defendant:
- 516 (i) did not solicit the child sexual abuse material from the minor depicted in the child  
517 sexual abuse material;
- 518 (ii) is not more than two years older than the minor depicted in the child sexual abuse  
519 material; and
- 520 (iii) upon request of a law enforcement agent or the minor depicted in the child  
521 sexual abuse material, removes from an electronic device or destroys the child  
522 sexual abuse material and all copies of the child sexual abuse material in the  
523 defendant's possession; and
- 524 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,  
525 Sexual Offenses.
- 526 (5) In proving a violation of this section in relation to an identifiable minor, proof of the  
527 actual identity of the identifiable minor is not required.
- 528 (6) The following are not criminally or civilly liable under this section when acting in good  
529 faith compliance with Section 77-4-201:
- 530 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
531 the scope of employment, for the good faith performance of:
- 532 (i) reporting or data preservation duties required under federal or state law; or
- 533 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse  
534 material on tangible or intangible property, or of detecting and reporting the  
535 presence of child sexual abuse material on the property;
- 536 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an  
537 independent contractor who is contracted with a law enforcement agency, acting  
538 within the scope of a criminal investigation;



- 539 (c) an employee of a court who may be required to view child sexual abuse material  
 540 during the course of and within the scope of the employee's employment;
- 541 (d) a juror who may be required to view child sexual abuse material during the course of  
 542 the individual's service as a juror;
- 543 (e) an attorney or employee of an attorney who is required to view child sexual abuse  
 544 material during the course of a judicial process and while acting within the scope of  
 545 employment;
- 546 (f) an employee of the Department of Health and Human Services who is required to  
 547 view child sexual abuse material within the scope of the employee's employment;
- 548 (g) an employee, independent contractor, or designated interviewer of a Children's  
 549 Justice Center, who is required to view child sexual abuse material within the scope  
 550 of the employee's, independent contractor's, or designated interviewer's scope of  
 551 employment or assignment; or
- 552 ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope  
 553 of the attorney's responsibility to represent the Department of Health and Human  
 554 Services, including the divisions and offices within the Department of Health and  
 555 Human Services.

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

557 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

- 558 (1) ~~[As used in this section:]~~
- 559 ~~[(a) "Physical abuse" or "physically abused" means the same as the term "physical~~  
 560 ~~abuse" is defined in Section 80-1-102.]~~
- 561 ~~[(b) The terms-] Terms~~ defined in Section 76-1-101.5 apply to this section.
- 562 (2) An actor commits aggravated sexual exploitation of a minor if the actor:
- 563 (a) ~~[intentionally]~~ knowingly distributes or produces child sexual abuse material; or
- 564 ~~[(b) knowingly produces child sexual abuse material; or]~~
- 565 ~~[(e)]~~ (b) is the minor's parent or legal guardian and knowingly consents to or permits the  
 566 minor to be sexually exploited as described in Subsection (2)(a) ~~[or (b)]~~ or Section  
 567 76-5b-201.
- 568 (3)(a) Except as provided in Subsection (3)(b) ~~[or (e)]~~, a violation of Subsection (2) is a  
 569 first degree felony.
- 570 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection  
 571 (2) is a second degree felony.
- 572 ~~[(e) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse~~

- 573 material depicts an individual who is:]  
574 [(i) 14 years old or older; or]  
575 [(ii) pubescent.]
- 576 (4) It is a separate offense under this section:  
577 (a) for each minor depicted in the child sexual abuse material; and  
578 (b) for each time the same minor is depicted in different child sexual abuse material.
- 579 (5) In proving a violation of this section in relation to an identifiable minor, proof of the  
580 actual identity of the identifiable minor is not required.
- 581 (6) The following are not criminally or civilly liable under this section when acting in good  
582 faith compliance with Section 77-4-201:  
583 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
584 the scope of employment, for the good faith performance of:  
585 (i) reporting or data preservation duties required under federal or state law; or  
586 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse  
587 material on tangible or intangible property, or of detecting and reporting the  
588 presence of child sexual abuse material on the property;
- 589 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an  
590 independent contractor who is contracted with a law enforcement agency, acting  
591 within the scope of a criminal investigation;
- 592 (c) an employee of a court who may be required to view child sexual abuse material  
593 during the course of and within the scope of the employee's employment;
- 594 (d) a juror who may be required to view child sexual abuse material during the course of  
595 the individual's service as a juror;
- 596 (e) an attorney or employee of an attorney who is required to view child sexual abuse  
597 material during the course of a judicial process and while acting within the scope of  
598 employment;
- 599 (f) an employee of the Department of Health and Human Services who is required to  
600 view child sexual abuse material within the scope of the employee's employment;
- 601 (g) an employee, independent contractor, or designated interviewer of a Children's  
602 Justice Center, who is required to view child sexual abuse material within the scope  
603 of the employee's, independent contractor's, or designated interviewer's scope of  
604 employment or assignment; or
- 605 [~~g~~] (h) an attorney who is required to view child sexual abuse material within the scope  
606 of the attorney's responsibility to represent the Department of Health and Human

607 Services, including the divisions and offices within the Department of Health and  
608 Human Services.

609 Section 13. **Effective Date.**

610 This bill takes effect on May 7, 2025.

611 Section 14. **Coordinating H.B. 207 with H.B. 78.**

612 If H.B. 207, Sexual Offense Revisions, and H.B. 78, Criminal Offenses

613 Amendments, both pass and become law, the Legislature intends that, on May 7, 2025:

614 (1) Subsection 76-3-406(2) in H.B. 78 be amended to read:

615 "(2) Except as provided in Subsection (3), a court may not grant probation, suspend the  
616 execution or imposition of a sentence, enter a judgment for a lower category of offense, or  
617 order hospitalization, if the effect of which would in any way shorten the prison sentence for:

618 (a) an actor who commits a capital felony or a first degree felony, or attempts to commit a  
619 capital felony or a first degree felony, that is:

620 (i) aggravated child abuse as described in Section 76-5-109.2;

621 (ii) aggravated murder as described in Section 76-5-202;

622 (iii) murder as described in Section 76-5-203;

623 (iv) child kidnapping as described in Section 76-5-301.1;

624 (v) aggravated kidnapping as described in Subsection 76-5-302(3)(b);

625 (vi) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);

626 (vii) rape of a child as described in Section 76-5-402.1;

627 (viii) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);

628 (ix) object rape of a child as described in Section 76-5-402.3;

629 (x) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);

630 (xi) sodomy on a child as described in Section 76-5-403.1;

631 (xii) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);

632 (xiii) aggravated sexual abuse of a child as described in Section 76-5-404.3; or

633 (xiv) aggravated sexual assault as described in Section 76-5-405; or

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

636 (2) change the reference "Subsection (2)" to "Subsection (2)(a)" in Subsection 76-3-406(3)  
637 in H.B. 78.