

Michael K. McKell proposes the following substitute bill:

Sexual Offense Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen L. Whyte

Senate Sponsor: Michael K. McKell

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

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

Utah Code Sections affected by Coordination Clause:

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

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

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

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

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

(a) was 18 years old or older;

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

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

volunteer.

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

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

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

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

- (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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (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:

- 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 second or third degree felony~~[-of the second or third degree]~~,
116 or an attempted offense, which attempt is a second or third degree felony~~[-of the~~
117 ~~second or third degree]~~, described in Chapter 5, 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)

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

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

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

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

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

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

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

(ii) "Indecent liberties" means:

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

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

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

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

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

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

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

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

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

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

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

(C) otherwise takes indecent liberties with the minor.

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

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

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

(a) a class A misdemeanor; and

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

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

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

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

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

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

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

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

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

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

Limitations.

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

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

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

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

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

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

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

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

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

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

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

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

(i) has sexual intercourse with the minor;

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

- (iii)(A) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body; and
- (B) causes the penetration with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual; or
- (iv) with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual:
 - (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
 - (B) touches the female breast of a [female]-minor; or
 - (C) otherwise takes indecent liberties with the minor.

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

(ii) Any penetration, however slight, is sufficient to constitute the relevant element under Subsection (2)(b)(i).

(iii) Any touching, however slight, is sufficient to constitute the relevant element under Subsection (2)(b)(ii).

(3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

(b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.

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

- (a) rape, in violation of Section 76-5-402;
- (b) object rape, in violation of Section 76-5-402.2;
- (c) forcible sodomy, in violation of Section 76-5-403;
- (d) forcible sexual abuse, in violation of Section 76-5-404;
- (e) aggravated sexual assault, in violation of Section 76-5-405; or
- (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

Section 6. Section **76-5-404** is amended to read:

76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.

(1)(a) As used in this section[, "~~indecent~~"] :

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

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

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

(2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits forcible sexual abuse if:

(i) without the consent of the individual, the actor:

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

(B) touches the female breast of another individual~~[-who is female]~~; or

(C) otherwise takes indecent liberties with another individual;

(ii) the actor intends to:

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

(B) arouse or gratify the sexual desire of any individual; and

(iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or older.

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

(3)(a) A violation of Subsection (2) is a second degree felony~~[-of the second degree]~~, punishable by a term of imprisonment of not less than one year nor more than 15 years.

(b)(i) Notwithstanding Subsection (3)(a) and except as provided in Subsection (3)(b)(ii), a violation of Subsection (2) is a first degree felony~~[-of the first degree]~~, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the ~~[defendant]~~ actor caused serious bodily injury to the victim.

(ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser term than the term described in Subsection (3)(b)(i) 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:

(A) 10 years and which may be for life; or

(B) six years and which may be for life.

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

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

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

(c) forcible sodomy, in violation of Section 76-5-403; or

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

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

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

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

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

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

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

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

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

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

(A) an adoptive parent;

(B) an athletic manager who is an adult;

(C) an aunt;

(D) a babysitter;

(E) a coach;

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

(G) a counselor;

(H) a doctor or physician;

(I) an employer;

(J) a foster parent;

(K) a grandparent;

(L) a legal guardian;

(M) a natural parent;

(N) a recreational leader who is an adult;

(O) a religious leader;

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

(Q) a scout leader who is an adult;

(R) a stepparent;

(S) a teacher or any other individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years old or older;

(T) an instructor, professor, or teaching assistant at a public or private institution of higher education;

(U) an uncle;

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

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

- Subsections ~~[(1)(a)(iv)(A)]~~ (1)(a)(v)(A) through (V), which enables the individual to exercise undue influence over the child.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits sexual abuse of a child if the actor:
- (i)(A) touches, whether over or under the clothing, the buttocks or pubic area of a child;
 - (B) touches, whether over or under the clothing, the female breast of a ~~[female-]~~ child;
 - (C) touches the anus or genitals of a child over the clothing; or
 - (D) otherwise takes indecent liberties with a child whether over or under the clothing; and
- (ii) the actor's conduct is with intent to:
- (A) cause substantial emotional or bodily pain to any individual; or
 - (B) arouse or gratify the sexual desire of any individual.
- (b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).
- (3) A violation of Subsection (2) is a second degree felony.
- (4) The offenses referred to in Subsection (2)(a) are:
- (a) rape of a child, in violation of Section 76-5-402.1;
 - (b) object rape of a child, in violation of Section 76-5-402.3;
 - (c) sodomy on a child, in violation of Section 76-5-403.1; or
 - (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- Section 8. Section **76-5-412.2** is amended to read:
- 76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**
- (1)(a) As used in this section:
- (i) "Actor" means the same as that term is defined in Section 76-5-412.
 - (ii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
 - ~~[(ii)]~~ (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
 - ~~[(iii)]~~ (iv) "Person in custody" means the same as that term is defined in Section 76-5-412.
 - ~~[(iv)]~~ (v) "Private provider or contractor" means the same as that term is defined in Section 76-5-412.

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

(2)(a) An actor commits custodial sexual misconduct if:

(i) the actor commits any of the acts under Subsection (2)(b) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection 76-5-412(4); and

(ii)(A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

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

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

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

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

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

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

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

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

described in Subsection (2) if the person in custody is younger than 18 years old, that the actor:

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

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

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

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

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

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

Penalties -- Defenses and limitations.

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

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

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

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

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

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

~~[(v)]~~ (vi) "Private provider or contractor" means the same as that term is defined in Section 76-5-413.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

years old, that the actor:

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

at the time of the alleged offense; or

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

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

attempted violation of Subsection (2).

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

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

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

76-5b-103 . Definitions.

As used in this chapter:

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

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

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

means, of sexually explicit conduct, where:

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

observing, or being used for sexually explicit conduct;

(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:

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

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

- (c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;
- (d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;
- (e) an attorney or employee of an attorney who is required to view child sexual abuse material during the course of a judicial process and while acting within the scope of employment;
- (f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment;
- (g) an employee, independent contractor, or designated interviewer of a Children's Justice Center, who is required to view child sexual abuse material within the scope of the employee's, independent contractor's, or designated interviewer's scope of employment or assignment; or
- ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

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

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

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

material depicts an individual who is:]

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

[(ii) pubescent.]

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

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

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

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

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

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;

(b) a law enforcement officer, a civilian employee of a law enforcement agency, or an independent contractor who is contracted with a law enforcement agency, acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child sexual abuse material during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment;

(g) an employee, independent contractor, or designated interviewer of a Children's Justice Center, who is required to view child sexual abuse material within the scope of the employee's, independent contractor's, or designated interviewer's scope of employment or assignment; or

~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human

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

Section 13. **Effective Date.**

This bill takes effect on May 7, 2025.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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