

Sexual Crimes Amendments
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Karen Kwan

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LONG TITLE

General Description:

This bill addresses sexual crimes and the sentencing for sexual crimes.

Highlighted Provisions:

This bill:

- ▶ amends sentencing provisions for repeat and habitual sex offenders;
- ▶ provides a definition of a female breast for 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;
- ▶ expands the definition of "sexually 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 or pubescent; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31 **76-3-203.13**, as last amended by Laws of Utah 2022, Chapter 181
 32 **76-3-407**, as last amended by Laws of Utah 2023, Chapter 457
 33 **76-5-401.1**, as last amended by Laws of Utah 2024, Chapter 234
 34 **76-5-401.2**, as last amended by Laws of Utah 2022, Chapter 181
 35 **76-5-404**, as last amended by Laws of Utah 2022, Chapter 181
 36 **76-5-404.1**, as last amended by Laws of Utah 2024, Chapters 96, 97
 37 **76-5-412.2**, as enacted by Laws of Utah 2022, Chapter 181
 38 **76-5-413.2**, as enacted by Laws of Utah 2022, Chapter 181
 39 **76-5b-103**, as last amended by Laws of Utah 2024, Chapters 127, 142
 40 **76-5b-201**, as last amended by Laws of Utah 2024, Chapter 142
 41 **76-5b-201.1**, as last amended by Laws of Utah 2024, Chapter 142

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

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

45 **76-3-203.13 . Enhanced penalty for unlawful sexual contact with a student.**

- 46 (1) [~~A person~~] An actor convicted of a sexual offense described in Section 76-5-401.1 or
 47 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of
 48 the sexual offense, the actor:
 49 (a) was 18 years old or older;
 50 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as
 51 that position is defined in Subsection [~~76-5-404.1(1)(a)(iv)(S)~~] 76-5-404.1(1)(a)(v)(S);
 52 and
 53 (c) committed the offense against an individual who at the time of the offense was
 54 enrolled as a student at the school where the actor was employed or was acting as a
 55 volunteer.

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

58 Section 2. Section **76-3-407** is amended to read:

59 **76-3-407 . Repeat and habitual sex offenders -- Additional prison term for prior**
 60 **felony convictions.**

61 (1) As used in this section:

- 62 (a) "Prior sexual offense" means:
 63 (i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;
 64 (ii) sexual exploitation of a minor, Section 76-5b-201;

- 65 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 66 (iv) a felony offense of enticing a minor, Section 76-4-401;
- 67 (v) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
- 68 (iv); or
- 69 (vi) an offense in another state, territory, or district of the United States that, if
- 70 committed in Utah, would constitute an offense described in Subsections (1)(a)(i)
- 71 through (v).
- 72 (b) "Sexual offense" means:
- 73 (i) an offense that is a second or third degree felony~~[-of the second or third degree]~~,
- 74 or an attempted offense, which attempt is a second or third degree felony~~[-of the~~
- 75 ~~second or third degree]~~, described in Chapter 5, Part 4, Sexual Offenses;
- 76 (ii) sexual exploitation of a minor, Section 76-5b-201;
- 77 (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 78 (iv) a felony offense of enticing a minor, Section 76-4-401;
- 79 (v) a felony attempt to commit an offense described in Subsections (1)(b)(ii) through
- 80 (iv); or
- 81 (vi) an offense in another state, territory, or district of the United States that, if
- 82 committed in Utah, would constitute an offense described in Subsections (1)(b)(i)
- 83 through (v).
- 84 (2) Notwithstanding any other provision of law, the minimum and maximum penalty for a
- 85 sexual offense is increased by five years for each conviction of the defendant for a prior
- 86 sexual offense that arose from a separate criminal episode, if the trier of fact finds that:
- 87 (a) the defendant was convicted of a prior sexual offense; and
- 88 (b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a)
- 89 before the defendant was convicted of the sexual offense for which the defendant is
- 90 being sentenced.
- 91 (3) The increased~~[-maximum]~~ term described in Subsection (2) shall be in addition to, and
- 92 consecutive to, any other prison term served by the defendant.

93 Section 3. Section **76-5-401.1** is amended to read:

94 **76-5-401.1 . Sexual abuse of a minor -- Penalties -- Limitations.**

- 95 (1)(a) As used in this section:
- 96 (i) "Female breast" means the undeveloped, partially developed, or developed breast
- 97 of a female individual.
- 98 (ii) "Indecent liberties" means:

- 99 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or
 100 female breast;
- 101 (B) causing any part of an individual's body to touch the actor's or another's
 102 genitals, pubic area, anus, buttocks, or female breast;
- 103 (C) simulating or pretending to engage in sexual intercourse with another
 104 individual, including genital-genital, oral-genital, anal-genital, or oral-anal
 105 intercourse; or
- 106 (D) causing an individual to simulate or pretend to engage in sexual intercourse
 107 with the actor or another, including genital-genital, oral-genital, anal-genital, or
 108 oral-anal intercourse.

109 ~~[(ii)]~~ (iii) "Minor" means an individual who is 14 years old or older, but younger than
 110 16 years old, at the time the sexual activity described in Subsection (2) occurred.

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

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

- 114 (i) is four years or more older than the minor; and
- 115 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or
 116 with the intent to arouse or gratify the sexual desire of any individual:
- 117 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
- 118 (B) touches the female breast of a [~~female~~]minor; or
- 119 (C) otherwise takes indecent liberties with the minor.

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

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

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

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

- 127 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
- 128 (b) rape, in violation of Section 76-5-402;
- 129 (c) object rape, in violation of Section 76-5-402.2;
- 130 (d) forcible sodomy, in violation of Section 76-5-403;
- 131 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 132 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

133 Section 4. Section **76-5-401.2** is amended to read:

134 **76-5-401.2 . Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**

135 **Limitations.**

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

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

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

139 [(ii)] (iii) "Minor" means an individual who is 16 years old or older, but younger than
140 18 years old, at the time the sexual conduct described in Subsection (2) occurred.

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

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

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

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

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

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

149 and

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

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

152 (i) has sexual intercourse with the minor;

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

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

158 (B) causes the penetration with the intent to cause substantial emotional or bodily
159 pain to any individual or with the intent to arouse or gratify the sexual desire of
160 any individual; or

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

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

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

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

166 (c)(i) Any touching, even if accomplished through clothing, is sufficient to constitute

- 167 the relevant element of a violation of Subsection (2)(a).
- 168 (ii) Any penetration, however slight, is sufficient to constitute the relevant element
169 under Subsection (2)(b)(i).
- 170 (iii) Any touching, however slight, is sufficient to constitute the relevant element
171 under Subsection (2)(b)(ii).
- 172 (3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
- 173 (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- 174 (4) The offenses referred to in Subsection (2)(a) are:
- 175 (a) rape, in violation of Section 76-5-402;
- 176 (b) object rape, in violation of Section 76-5-402.2;
- 177 (c) forcible sodomy, in violation of Section 76-5-403;
- 178 (d) forcible sexual abuse, in violation of Section 76-5-404;
- 179 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 180 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
- 181 Section 5. Section **76-5-404** is amended to read:
- 182 **76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.**
- 183 (1)(a) As used in this section[~~,"indecent"~~] :
- 184 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 185 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
- 186 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 187 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
188 commits forcible sexual abuse if:
- 189 (i) without the consent of the individual, the actor:
- 190 (A) touches the anus, buttocks, pubic area, or any part of the genitals of another
191 individual;
- 192 (B) touches the female breast of another individual[~~who is female~~]; or
- 193 (C) otherwise takes indecent liberties with another individual;
- 194 (ii) the actor intends to:
- 195 (A) cause substantial emotional or bodily pain to any individual; or
- 196 (B) arouse or gratify the sexual desire of any individual; and
- 197 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
198 older.
- 199 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
200 relevant element of a violation of Subsection (2)(a).

- 201 (3)(a) A violation of Subsection (2) is a second degree felony~~[-of the second degree]~~,
 202 punishable by a term of imprisonment of not less than one year nor more than 15
 203 years.
- 204 (b)(i) Notwithstanding Subsection (3)(a) and except as provided in Subsection
 205 (3)(b)(ii), a violation of Subsection (2) is a first degree felony~~[-of the first degree]~~,
 206 punishable by a term of imprisonment for 15 years and which may be for life, if
 207 the trier of fact finds that during the course of the commission of the forcible
 208 sexual abuse the ~~[defendant]~~ actor caused serious bodily injury to the victim.
- 209 (ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser
 210 term than the term described in Subsection (3)(b)(i) is in the interests of justice
 211 and states the reasons for this finding on the record, the court may impose a term
 212 of imprisonment of not less than:
- 213 (A) 10 years and which may be for life; or
 214 (B) six years and which may be for life.
- 215 (4) The offenses referred to in Subsection (2)(a) are:
- 216 (a) rape, in violation of Section 76-5-402;
 217 (b) object rape, in violation of Section 76-5-402.2;
 218 (c) forcible sodomy, in violation of Section 76-5-403; or
 219 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 220 (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section
 221 76-3-406.

222 Section 6. Section **76-5-404.1** is amended to read:

223 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**

- 224 (1)(a) As used in this section:
- 225 (i) "Adult" means an individual 18 years old or older.
 226 (ii) "Child" means an individual younger than 14 years old.
 227 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
 228 ~~[(iii)]~~ (iv) "Indecent liberties" means the same as that term is defined in Section
 229 76-5-401.1.
 230 ~~[(iv)]~~ (v) "Position of special trust" means:
 231 (A) an adoptive parent;
 232 (B) an athletic manager who is an adult;
 233 (C) an aunt;
 234 (D) a babysitter;

- 235 (E) a coach;
- 236 (F) a cohabitant of a parent if the cohabitant is an adult;
- 237 (G) a counselor;
- 238 (H) a doctor or physician;
- 239 (I) an employer;
- 240 (J) a foster parent;
- 241 (K) a grandparent;
- 242 (L) a legal guardian;
- 243 (M) a natural parent;
- 244 (N) a recreational leader who is an adult;
- 245 (O) a religious leader;
- 246 (P) a sibling or a stepsibling who is an adult;
- 247 (Q) a scout leader who is an adult;
- 248 (R) a stepparent;
- 249 (S) a teacher or any other individual employed by or volunteering at a public or
- 250 private elementary school or secondary school, and who is 18 years old or
- 251 older;
- 252 (T) an instructor, professor, or teaching assistant at a public or private institution
- 253 of higher education;
- 254 (U) an uncle;
- 255 (V) a youth leader who is an adult; or
- 256 (W) any individual in a position of authority, other than those individuals listed in
- 257 Subsections [~~(1)(a)(iv)(A)~~] (1)(a)(v)(A) through (V), which enables the
- 258 individual to exercise undue influence over the child.

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

260 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor

261 commits sexual abuse of a child if the actor:

- 262 (i)(A) touches, whether over or under the clothing, the buttocks or pubic area of a
- 263 child;
- 264 (B) touches, whether over or under the clothing, the female breast of a [~~female~~]
- 265 child;
- 266 (C) touches the anus or genitals of a child over the clothing; or
- 267 (D) otherwise takes indecent liberties with a child whether over or under the
- 268 clothing; and

- 269 (ii) the actor's conduct is with intent to:
- 270 (A) cause substantial emotional or bodily pain to any individual; or
- 271 (B) arouse or gratify the sexual desire of any individual.
- 272 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
- 273 violation of Subsection (2)(a).
- 274 (3) A violation of Subsection (2) is a second degree felony.
- 275 (4) The offenses referred to in Subsection (2)(a) are:
- 276 (a) rape of a child, in violation of Section 76-5-402.1;
- 277 (b) object rape of a child, in violation of Section 76-5-402.3;
- 278 (c) sodomy on a child, in violation of Section 76-5-403.1; or
- 279 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 280 Section 7. Section **76-5-412.2** is amended to read:
- 281 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**
- 282 (1)(a) As used in this section:
- 283 (i) "Actor" means the same as that term is defined in Section 76-5-412.
- 284 (ii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 285 [~~(ii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section
- 286 76-5-401.1.
- 287 [~~(iii)~~] (iv) "Person in custody" means the same as that term is defined in Section
- 288 76-5-412.
- 289 [~~(iv)~~] (v) "Private provider or contractor" means the same as that term is defined in
- 290 Section 76-5-412.
- 291 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 292 (2)(a) An actor commits custodial sexual misconduct if:
- 293 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not
- 294 amounting to commission of, or an attempt to commit, an offense under
- 295 Subsection 76-5-412(4); and
- 296 (ii)(A) the actor knows that the individual is a person in custody; or
- 297 (B) a reasonable person in the actor's position should have known under the
- 298 circumstances that the individual was a person in custody.
- 299 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
- 300 intent to cause substantial emotional or bodily pain to another individual or with the
- 301 intent to arouse or gratify the sexual desire of any individual:
- 302 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in

- 303 custody;
- 304 (ii) touching the female breast of a[~~female~~] person in custody; or
- 305 (iii) otherwise taking indecent liberties with a person in custody.
- 306 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 307 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years
- 308 old, a violation of Subsection (2) is a third degree felony.
- 309 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
- 310 penalty under another provision of state law than is provided under this Subsection (3),
- 311 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
- 312 offense.
- 313 (4)(a) It is not a defense to the commission of, or attempt to commit, the offense
- 314 described in Subsection (2) if the person in custody is younger than 18 years old, that
- 315 the actor:
- 316 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
- 317 the alleged offense; or
- 318 (ii) was unaware of the true age of the person in custody.
- 319 (b) Consent of the person in custody is not a defense to any violation or attempted
- 320 violation of Subsection (2).
- 321 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 322 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 323 Section 8. Section **76-5-413.2** is amended to read:
- 324 **76-5-413.2 . Custodial sexual misconduct with a youth receiving state services --**
- 325 **Penalties -- Defenses and limitations.**
- 326 (1)(a) As used in this section:
- 327 (i) "Actor" means the same as that term is defined in Section 76-5-413.
- 328 (ii) "Department" means the same as that term is defined in Section 76-5-413.
- 329 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 330 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section
- 331 76-5-401.1.
- 332 [~~(iv)~~] (v) "Juvenile court" means the same as that term is defined in Section 76-5-413.
- 333 [~~(v)~~] (vi) "Private provider or contractor" means the same as that term is defined in
- 334 Section 76-5-413.
- 335 [~~(vi)~~] (vii) "Youth receiving state services" means the same as that term is defined in
- 336 Section 76-5-413.

- 337 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 338 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
339 commits custodial sexual misconduct with a youth receiving state services if:
- 340 (i) the actor commits any of the acts described in Subsection (2)(b); and
341 (ii)(A) the actor knows that the individual is a youth receiving state services; or
342 (B) a reasonable person in the actor's position should have known under the
343 circumstances that the individual was a youth receiving state services.
- 344 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
345 intent to cause substantial emotional or bodily pain to any individual or with the
346 intent to arouse or gratify the sexual desire of any individual:
- 347 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth
348 receiving state services;
349 (ii) touching the female breast of a [~~female~~] youth receiving state services; or
350 (iii) otherwise taking indecent liberties with a youth receiving state services.
- 351 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
352 relevant element of a violation of Subsection (2)(a).
- 353 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 354 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
355 than 18 years old, a violation of Subsection (2) is a third degree felony.
- 356 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
357 penalty under another provision of state law than is provided under this Subsection (3),
358 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
359 offense.
- 360 (4) The offenses referred to in Subsection (2) are:
- 361 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
362 (b) rape, in violation of Section 76-5-402;
363 (c) rape of a child, in violation of Section 76-5-402.1;
364 (d) object rape, in violation of Section 76-5-402.2;
365 (e) object rape of a child, in violation of Section 76-5-402.3;
366 (f) forcible sodomy, in violation of Section 76-5-403;
367 (g) sodomy on a child, in violation of Section 76-5-403.1;
368 (h) forcible sexual abuse, in violation of Section 76-5-404;
369 (i) sexual abuse of a child, in violation of Section 76-5-404.1;
370 (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;

- 371 (k) aggravated sexual assault, in violation of Section 76-5-405; or
372 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
373 (5)(a) It is not a defense to the commission of, or an attempt to commit, the offense
374 described in Subsection (2) if the youth receiving state services is younger than 18
375 years old, that the actor:
- 376 (i) mistakenly believed the youth receiving state services to be 18 years old or older
377 at the time of the alleged offense; or
 - 378 (ii) was unaware of the true age of the youth receiving state services.
- 379 (b) Consent of the youth receiving state services is not a defense to any violation or
380 attempted violation of Subsection (2).
- 381 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
382 result of compulsion, as the defense is described in Subsection 76-2-302(1).

383 Section 9. Section **76-5b-103** is amended to read:

384 **76-5b-103 . Definitions.**

385 As used in this chapter:

- 386 (1) "Child sexual abuse material" means any visual depiction, including any live
387 performance, photograph, film, video, picture, or computer or computer-generated
388 image, picture, or video, whether made or produced by electronic, mechanical, or other
389 means, of sexually explicit conduct, where:
- 390 (a) the production of the visual depiction involves the use of a minor engaging in,
391 observing, or being used for sexually explicit conduct;
 - 392 (b) the visual depiction is:
 - 393 (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or
 - 394 (ii) artificially generated and depicts an individual with substantial characteristics of a
395 minor engaging in, observing, or being used for sexually explicit conduct; or
 - 396 (c) the visual depiction has been created, adapted, or modified to appear that an
397 identifiable minor is engaging in, observing, or being used for sexually explicit
398 conduct.
- 399 (2) "Children's Justice Center" means a facility or satellite office established under the
400 Children's Justice Center Program described in Section 67-5b-102.
- 401 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,
402 give, grant admission to, provide access to, or otherwise transfer.
- 403 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a
404 female individual.

- 405 [~~(3)~~] (5) "Identifiable minor" means an individual:
- 406 (a)(i) who was a minor at the time the visual depiction was created, adapted, or
- 407 modified; or
- 408 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
- 409 depiction; and
- 410 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
- 411 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 412 [~~(4)~~] (6) "Identifiable vulnerable adult" means an individual:
- 413 (a)(i) who was a vulnerable adult at the time the visual depiction was created,
- 414 adapted, or modified; or
- 415 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
- 416 the visual depiction; and
- 417 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
- 418 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 419 [~~(5)~~] (7) "Lacks capacity to consent" means the same as that term is defined in Section
- 420 76-5-111.4.
- 421 [~~(6)~~] (8) "Live performance" means any act, play, dance, pantomime, song, or other activity
- 422 performed by live actors in person.
- 423 [~~(7)~~] (9) "Minor" means an individual who is younger than 18 years old.
- 424 [~~(8)~~] (10) "Nudity or partial nudity" means any state of dress or undress in which the human
- 425 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
- 426 areola, is less than completely and opaquely covered.
- 427 [~~(9)~~] (11) "Produce" means:
- 428 (a) the photographing, filming, taping, directing, producing, creating, designing, or
- 429 composing of child sexual abuse material or vulnerable adult sexual abuse material; or
- 430 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,
- 431 directing, producing, creating, designing, or composing of child sexual abuse
- 432 material or vulnerable adult sexual abuse material.
- 433 [~~(10)~~] (12) "Sexually explicit conduct" means actual or simulated:
- 434 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
- 435 whether between individuals of the same or opposite sex;
- 436 (b) masturbation;
- 437 (c) bestiality;
- 438 (d) sadistic or masochistic activities;

- 439 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
440 individual;
- 441 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
442 arousal of any individual;
- 443 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 444 (h) the ~~[explicit representation of the]~~ visual depiction of defecation or urination [
445 functions] for the purpose of causing sexual arousal of any individual.
- 446 [(11)] (13) "Simulated sexually explicit conduct" means a feigned or pretended act of
447 sexually explicit conduct which duplicates, within the perception of an average person,
448 the appearance of an actual act of sexually explicit conduct.
- 449 [(12)] (14) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111
450 (1).
- 451 [(13)] (15) "Vulnerable adult sexual abuse material" means any visual depiction, including
452 any live performance, photograph, film, video, picture, or computer or
453 computer-generated image or picture, whether made or produced by electronic,
454 mechanical, or other means, of sexually explicit conduct, where:
- 455 (a) the production of the visual depiction involves the use of a vulnerable adult engaging
456 in sexually explicit conduct;
- 457 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
- 458 (c) the visual depiction has been created, adapted, or modified to appear that an
459 identifiable vulnerable adult is engaging in sexually explicit conduct.
- 460 Section 10. Section **76-5b-201** is amended to read:
- 461 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**
- 462 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 463 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses[
464 ~~or intentionally]~~ , views, accesses with the intent to view, or maintains access with the
465 intent to view, child sexual abuse material.
- 466 (3)(a) A violation of Subsection (2) is a second degree felony.
- 467 (b) It is a separate offense under this section:
- 468 (i) for each minor depicted in the child sexual abuse material; and
- 469 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 470 (4) For a charge of violating this section, it is an affirmative defense that:
- 471 (a) the defendant:
- 472 (i) did not solicit the child sexual abuse material from the minor depicted in the child

- 473 sexual abuse material;
- 474 (ii) is not more than two years older than the minor depicted in the child sexual abuse
475 material; and
- 476 (iii) upon request of a law enforcement agent or the minor depicted in the child
477 sexual abuse material, removes from an electronic device or destroys the child
478 sexual abuse material and all copies of the child sexual abuse material in the
479 defendant's possession; and
- 480 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,
481 Sexual Offenses.
- 482 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
483 actual identity of the identifiable minor is not required.
- 484 (6) The following are not criminally or civilly liable under this section when acting in good
485 faith compliance with Section 77-4-201:
- 486 (a) an entity or an employee, director, officer, or agent of an entity when acting within
487 the scope of employment, for the good faith performance of:
- 488 (i) reporting or data preservation duties required under federal or state law; or
489 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
490 material on tangible or intangible property, or of detecting and reporting the
491 presence of child sexual abuse material on the property;
- 492 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
493 independent contractor who is contracted with a law enforcement agency, acting
494 within the scope of a criminal investigation;
- 495 (c) an employee of a court who may be required to view child sexual abuse material
496 during the course of and within the scope of the employee's employment;
- 497 (d) a juror who may be required to view child sexual abuse material during the course of
498 the individual's service as a juror;
- 499 (e) an attorney or employee of an attorney who is required to view child sexual abuse
500 material during the course of a judicial process and while acting within the scope of
501 employment;
- 502 (f) an employee of the Department of Health and Human Services who is required to
503 view child sexual abuse material within the scope of the employee's employment;[~~or~~]
- 504 (g) an employee, independent contractor, or designated interviewer of a Children's
505 Justice Center, within the scope of the employee's, independent contractor's, or
506 designated interviewer's scope of employment or assignment; or

507 ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope
 508 of the attorney's responsibility to represent the Department of Health and Human
 509 Services, including the divisions and offices within the Department of Health and
 510 Human Services.

511 Section 11. Section **76-5b-201.1** is amended to read:

512 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

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

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

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

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

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

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

520 ~~[(e)]~~ (b) is the minor's parent or legal guardian and knowingly consents to or permits the
 521 minor to be sexually exploited as described in Subsection (2)(a)~~[-or (b)]~~ or Section
 522 76-5b-201.

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

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

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

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

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

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

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

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

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

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

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

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

- 541 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
542 material on tangible or intangible property, or of detecting and reporting the
543 presence of child sexual abuse material on the property;
- 544 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
545 independent contractor who is contracted with a law enforcement agency, acting
546 within the scope of a criminal investigation;
- 547 (c) an employee of a court who may be required to view child sexual abuse material
548 during the course of and within the scope of the employee's employment;
- 549 (d) a juror who may be required to view child sexual abuse material during the course of
550 the individual's service as a juror;
- 551 (e) an attorney or employee of an attorney who is required to view child sexual abuse
552 material during the course of a judicial process and while acting within the scope of
553 employment;
- 554 (f) an employee of the Department of Health and Human Services who is required to
555 view child sexual abuse material within the scope of the employee's employment;[-or]
- 556 (g) an employee, independent contractor, or designated interviewer of a Children's
557 Justice Center, within the scope of the employee's, independent contractor's, or
558 designated interviewer's scope of employment or assignment; or
- 559 [~~g~~] (h) an attorney who is required to view child sexual abuse material within the scope
560 of the attorney's responsibility to represent the Department of Health and Human
561 Services, including the divisions and offices within the Department of Health and
562 Human Services.

563 Section 12. **Effective Date.**

564 This bill takes effect on May 7, 2025.