

Karen Kwan proposes the following substitute bill:

Sexual Crimes Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

House Sponsor:

LONG TITLE

General Description:

This bill addresses sexual crimes.

Highlighted Provisions:

This bill:

▸ 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 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 or pubescent; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-3-203.13**, as last amended by Laws of Utah 2022, Chapter 181

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

42 **76-10-1301**, as last amended by Laws of Utah 2022, Chapter 124

43

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

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

46 **76-3-203.13 . Enhanced penalty for unlawful sexual contact with a student.**

47 (1) [~~A person~~] An actor convicted of a sexual offense described in Section 76-5-401.1 or

48 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of

49 the sexual offense, the actor:

50 (a) was 18 years old or older;

51 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as

52 that position is defined in Subsection [~~76-5-404.1(1)(a)(iv)(S)] 76-5-404.1(1)(a)(v)(S);~~

53 and

54 (c) committed the offense against an individual who at the time of the offense was

55 enrolled as a student at the school where the actor was employed or was acting as a

56 volunteer.

57 (2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of

58 one classification higher than the offense of which the [~~person~~] actor was convicted.

59 Section 2. Section **76-5-401.1** is amended to read:

60 **76-5-401.1 . Sexual abuse of a minor -- Penalties -- Limitations.**

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

62 (i) "Female breast" means the undeveloped, partially developed, or developed breast

- 63 of a female individual.
- 64 (ii) "Indecent liberties" means:
- 65 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or
- 66 female breast;
- 67 (B) causing any part of an individual's body to touch the actor's or another's
- 68 genitals, pubic area, anus, buttocks, or female breast;
- 69 (C) simulating or pretending to engage in sexual intercourse with another
- 70 individual, including genital-genital, oral-genital, anal-genital, or oral-anal
- 71 intercourse; or
- 72 (D) causing an individual to simulate or pretend to engage in sexual intercourse
- 73 with the actor or another, including genital-genital, oral-genital, anal-genital, or
- 74 oral-anal intercourse.
- 75 [(ii)] (iii) "Minor" means an individual who is 14 years old or older, but younger than
- 76 16 years old, at the time the sexual activity described in Subsection (2) occurred.
- 77 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 78 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
- 79 commits sexual abuse of a minor if the actor:
- 80 (i) is four years or more older than the minor; and
- 81 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or
- 82 with the intent to arouse or gratify the sexual desire of any individual:
- 83 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
- 84 (B) touches the female breast of a [~~female~~]minor; or
- 85 (C) otherwise takes indecent liberties with the minor.
- 86 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
- 87 relevant element of a violation of Subsection (2)(a).
- 88 (3) A violation of Subsection (2)(a) is:
- 89 (a) a class A misdemeanor; and
- 90 (b) not subject to registration under Subsection 77-41-102(19)(a)(viii) on a first offense
- 91 if the offender was younger than 21 years old at the time of the offense.
- 92 (4) The offenses referred to in Subsection (2)(a) are:
- 93 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
- 94 (b) rape, in violation of Section 76-5-402;
- 95 (c) object rape, in violation of Section 76-5-402.2;
- 96 (d) forcible sodomy, in violation of Section 76-5-403;

- 97 (e) aggravated sexual assault, in violation of Section 76-5-405; or
98 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

99 Section 3. Section **76-5-401.2** is amended to read:

100 **76-5-401.2 . Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**

101 **Limitations.**

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

- 103 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
104 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
105 [~~(ii)~~] (iii) "Minor" means an individual who is 16 years old or older, but younger than
106 18 years old, at the time the sexual conduct described in Subsection (2) occurred.

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

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

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

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

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

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

115 and

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

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

118 (i) has sexual intercourse with the minor;

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

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

124 (B) causes the penetration with the intent to cause substantial emotional or bodily
125 pain to any individual or with the intent to arouse or gratify the sexual desire of
126 any individual; or

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

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

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

- 131 (C) otherwise takes indecent liberties with the minor.
- 132 (c)(i) Any touching, even if accomplished through clothing, is sufficient to constitute
133 the relevant element of a violation of Subsection (2)(a).
- 134 (ii) Any penetration, however slight, is sufficient to constitute the relevant element
135 under Subsection (2)(b)(i).
- 136 (iii) Any touching, however slight, is sufficient to constitute the relevant element
137 under Subsection (2)(b)(ii).
- 138 (3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
- 139 (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- 140 (4) The offenses referred to in Subsection (2)(a) are:
- 141 (a) rape, in violation of Section 76-5-402;
- 142 (b) object rape, in violation of Section 76-5-402.2;
- 143 (c) forcible sodomy, in violation of Section 76-5-403;
- 144 (d) forcible sexual abuse, in violation of Section 76-5-404;
- 145 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 146 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
- 147 Section 4. Section **76-5-404** is amended to read:
- 148 **76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.**
- 149 (1)(a) As used in this section[, "indecent"] :
- 150 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 151 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
- 152 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 153 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
154 commits forcible sexual abuse if:
- 155 (i) without the consent of the individual, the actor:
- 156 (A) touches the anus, buttocks, pubic area, or any part of the genitals of another
157 individual;
- 158 (B) touches the female breast of another individual[~~who is female~~]; or
- 159 (C) otherwise takes indecent liberties with another individual;
- 160 (ii) the actor intends to:
- 161 (A) cause substantial emotional or bodily pain to any individual; or
- 162 (B) arouse or gratify the sexual desire of any individual; and
- 163 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
164 older.

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

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

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

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

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

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

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

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

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

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

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

186 (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section
187 76-3-406.

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

189 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**

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

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

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

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

194 ~~[(iii)]~~ (iv) "Indecent liberties" means the same as that term is defined in Section
195 76-5-401.1.

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

197 (A) an adoptive parent;

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

- 199 (C) an aunt;
- 200 (D) a babysitter;
- 201 (E) a coach;
- 202 (F) a cohabitant of a parent if the cohabitant is an adult;
- 203 (G) a counselor;
- 204 (H) a doctor or physician;
- 205 (I) an employer;
- 206 (J) a foster parent;
- 207 (K) a grandparent;
- 208 (L) a legal guardian;
- 209 (M) a natural parent;
- 210 (N) a recreational leader who is an adult;
- 211 (O) a religious leader;
- 212 (P) a sibling or a stepsibling who is an adult;
- 213 (Q) a scout leader who is an adult;
- 214 (R) a stepparent;
- 215 (S) a teacher or any other individual employed by or volunteering at a public or
- 216 private elementary school or secondary school, and who is 18 years old or
- 217 older;
- 218 (T) an instructor, professor, or teaching assistant at a public or private institution
- 219 of higher education;
- 220 (U) an uncle;
- 221 (V) a youth leader who is an adult; or
- 222 (W) any individual in a position of authority, other than those individuals listed in
- 223 Subsections ~~[(1)(a)(iv)(A)]~~ (1)(a)(v)(A) through (V), which enables the
- 224 individual to exercise undue influence over the child.
- 225 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 226 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
- 227 commits sexual abuse of a child if the actor:
- 228 (i)(A) touches, whether over or under the clothing, the buttocks or pubic area of a
- 229 child;
- 230 (B) touches, whether over or under the clothing, the female breast of a ~~[female-]~~
- 231 child;
- 232 (C) touches the anus or genitals of a child over the clothing; or

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

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

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

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

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

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

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

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

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

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

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

246 Section 6. Section **76-5-412.2** is amended to read:

247 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**

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

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

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

251 [~~(ii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section
252 76-5-401.1.

253 [~~(iii)~~] (iv) "Person in custody" means the same as that term is defined in Section
254 76-5-412.

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

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

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

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

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

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

265 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
266 intent to cause substantial emotional or bodily pain to another individual or with the

- 267 intent to arouse or gratify the sexual desire of any individual:
- 268 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in
- 269 custody;
- 270 (ii) touching the female breast of a[~~female~~] person in custody; or
- 271 (iii) otherwise taking indecent liberties with a person in custody.
- 272 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 273 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years
- 274 old, a violation of Subsection (2) is a third degree felony.
- 275 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
- 276 penalty under another provision of state law than is provided under this Subsection (3),
- 277 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
- 278 offense.
- 279 (4)(a) It is not a defense to the commission of, or attempt to commit, the offense
- 280 described in Subsection (2) if the person in custody is younger than 18 years old, that
- 281 the actor:
- 282 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
- 283 the alleged offense; or
- 284 (ii) was unaware of the true age of the person in custody.
- 285 (b) Consent of the person in custody is not a defense to any violation or attempted
- 286 violation of Subsection (2).
- 287 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 288 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 289 Section 7. Section **76-5-413.2** is amended to read:
- 290 **76-5-413.2 . Custodial sexual misconduct with a youth receiving state services --**
- 291 **Penalties -- Defenses and limitations.**
- 292 (1)(a) As used in this section:
- 293 (i) "Actor" means the same as that term is defined in Section 76-5-413.
- 294 (ii) "Department" means the same as that term is defined in Section 76-5-413.
- 295 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 296 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section
- 297 76-5-401.1.
- 298 [~~(iv)~~] (v) "Juvenile court" means the same as that term is defined in Section 76-5-413.
- 299 [~~(v)~~] (vi) "Private provider or contractor" means the same as that term is defined in
- 300 Section 76-5-413.

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

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 custodial sexual misconduct with a youth receiving state services if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 335 (i) sexual abuse of a child, in violation of Section 76-5-404.1;
 336 (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;
 337 (k) aggravated sexual assault, in violation of Section 76-5-405; or
 338 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).

339 (5)(a) It is not a defense to the commission of, or an attempt to commit, the offense
 340 described in Subsection (2) if the youth receiving state services is younger than 18
 341 years old, that the actor:

- 342 (i) mistakenly believed the youth receiving state services to be 18 years old or older
 343 at the time of the alleged offense; or
 344 (ii) was unaware of the true age of the youth receiving state services.
 345 (b) Consent of the youth receiving state services is not a defense to any violation or
 346 attempted violation of Subsection (2).

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

349 Section 8. Section **76-5b-103** is amended to read:

350 **76-5b-103 . Definitions.**

351 As used in this chapter:

- 352 (1) "Child sexual abuse material" means any visual depiction, including any live
 353 performance, photograph, film, video, picture, or computer or computer-generated
 354 image, picture, or video, whether made or produced by electronic, mechanical, or other
 355 means, of sexually explicit conduct, where:
 356 (a) the production of the visual depiction involves the use of a minor engaging in,
 357 observing, or being used for sexually explicit conduct;
 358 (b) the visual depiction is:
 359 (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or
 360 (ii) artificially generated and depicts an individual with substantial characteristics of a
 361 minor engaging in, observing, or being used for sexually explicit conduct; or
 362 (c) the visual depiction has been created, adapted, or modified to appear that an
 363 identifiable minor is engaging in, observing, or being used for sexually explicit
 364 conduct.
 365 (2) "Children's Justice Center" means a facility or satellite office established under the
 366 Children's Justice Center Program described in Section 67-5b-102.
 367 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,
 368 give, grant admission to, provide access to, or otherwise transfer.

- 369 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a
370 female individual.
- 371 [~~(3)~~] (5) "Identifiable minor" means an individual:
- 372 (a)(i) who was a minor at the time the visual depiction was created, adapted, or
373 modified; or
- 374 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
375 depiction; and
- 376 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
377 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 378 [~~(4)~~] (6) "Identifiable vulnerable adult" means an individual:
- 379 (a)(i) who was a vulnerable adult at the time the visual depiction was created,
380 adapted, or modified; or
- 381 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
382 the visual depiction; and
- 383 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
384 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 385 [~~(5)~~] (7) "Lacks capacity to consent" means the same as that term is defined in Section
386 76-5-111.4.
- 387 [~~(6)~~] (8) "Live performance" means any act, play, dance, pantomime, song, or other activity
388 performed by live actors in person.
- 389 [~~(7)~~] (9) "Minor" means an individual who is younger than 18 years old.
- 390 [~~(8)~~] (10) "Nudity or partial nudity" means any state of dress or undress in which the human
391 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
392 areola, is less than completely and opaquely covered.
- 393 [~~(9)~~] (11) "Produce" means:
- 394 (a) the photographing, filming, taping, directing, producing, creating, designing, or
395 composing of child sexual abuse material or vulnerable adult sexual abuse material; or
- 396 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,
397 directing, producing, creating, designing, or composing of child sexual abuse
398 material or vulnerable adult sexual abuse material.
- 399 [~~(10)~~] (12) "Sexually explicit conduct" means actual or simulated:
- 400 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
401 whether between individuals of the same or opposite sex;
- 402 (b) masturbation;

- 403 (c) bestiality;
- 404 (d) sadistic or masochistic activities;
- 405 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
- 406 individual;
- 407 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
- 408 arousal of any individual;
- 409 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 410 (h) the ~~[explicit representation of the]~~ visual depiction of defecation or urination [
 411 functions] for the purpose of causing sexual arousal of any individual.

412 ~~[(11)]~~ (13) "Simulated sexually explicit conduct" means a feigned or pretended act of

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

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

415 ~~[(12)]~~ (14) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111

416 (1).

417 ~~[(13)]~~ (15) "Vulnerable adult sexual abuse material" means any visual depiction, including

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

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

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

421 (a) the production of the visual depiction involves the use of a vulnerable adult engaging

422 in sexually explicit conduct;

423 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or

424 (c) the visual depiction has been created, adapted, or modified to appear that an

425 identifiable vulnerable adult is engaging in sexually explicit conduct.

426 Section 9. Section **76-5b-201** is amended to read:

427 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**

- 428 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 429 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses[
 430 ~~or intentionally]~~ views, accesses with the intent to view, or maintains access with the
 431 intent to view, child sexual abuse material.
- 432 (3)(a) A violation of Subsection (2) is a second degree felony.
- 433 (b) It is a separate offense under this section:
- 434 (i) for each minor depicted in the child sexual abuse material; and
- 435 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 436 (4) For a charge of violating this section, it is an affirmative defense that:

- 437 (a) the defendant:
- 438 (i) did not solicit the child sexual abuse material from the minor depicted in the child
- 439 sexual abuse material;
- 440 (ii) is not more than two years older than the minor depicted in the child sexual abuse
- 441 material; and
- 442 (iii) upon request of a law enforcement agent or the minor depicted in the child
- 443 sexual abuse material, removes from an electronic device or destroys the child
- 444 sexual abuse material and all copies of the child sexual abuse material in the
- 445 defendant's possession; and
- 446 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,
- 447 Sexual Offenses.
- 448 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
- 449 actual identity of the identifiable minor is not required.
- 450 (6) The following are not criminally or civilly liable under this section when acting in good
- 451 faith compliance with Section 77-4-201:
- 452 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 453 the scope of employment, for the good faith performance of:
- 454 (i) reporting or data preservation duties required under federal or state law; or
- 455 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
- 456 material on tangible or intangible property, or of detecting and reporting the
- 457 presence of child sexual abuse material on the property;
- 458 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
- 459 independent contractor who is contracted with a law enforcement agency, acting
- 460 within the scope of a criminal investigation;
- 461 (c) an employee of a court who may be required to view child sexual abuse material
- 462 during the course of and within the scope of the employee's employment;
- 463 (d) a juror who may be required to view child sexual abuse material during the course of
- 464 the individual's service as a juror;
- 465 (e) an attorney or employee of an attorney who is required to view child sexual abuse
- 466 material during the course of a judicial process and while acting within the scope of
- 467 employment;
- 468 (f) an employee of the Department of Health and Human Services who is required to
- 469 view child sexual abuse material within the scope of the employee's employment;[-or]
- 470 (g) an employee, independent contractor, or designated interviewer of a Children's

471 Justice Center, who is required to view child sexual abuse material within the scope
 472 of the employee's, independent contractor's, or designated interviewer's scope of
 473 employment or assignment; or

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

478 Section 10. Section **76-5b-201.1** is amended to read:

479 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

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

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

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

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

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

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

487 ~~[(c)]~~ (b) is the minor's parent or legal guardian and knowingly consents to or permits the
 488 minor to be sexually exploited as described in Subsection (2)(a)~~[(b)]~~ or Section
 489 76-5b-201.

490 (3)(a) Except as provided in Subsection (3)(b)~~[(c)]~~, a violation of Subsection (2) is a
 491 first degree felony.

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

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

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

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

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

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

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

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

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

- 505 (a) an entity or an employee, director, officer, or agent of an entity when acting within
 506 the scope of employment, for the good faith performance of:
 507 (i) reporting or data preservation duties required under federal or state law; or
 508 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
 509 material on tangible or intangible property, or of detecting and reporting the
 510 presence of child sexual abuse material on the property;
- 511 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
 512 independent contractor who is contracted with a law enforcement agency, acting
 513 within the scope of a criminal investigation;
- 514 (c) an employee of a court who may be required to view child sexual abuse material
 515 during the course of and within the scope of the employee's employment;
- 516 (d) a juror who may be required to view child sexual abuse material during the course of
 517 the individual's service as a juror;
- 518 (e) an attorney or employee of an attorney who is required to view child sexual abuse
 519 material during the course of a judicial process and while acting within the scope of
 520 employment;
- 521 (f) an employee of the Department of Health and Human Services who is required to
 522 view child sexual abuse material within the scope of the employee's employment;~~[-or]~~
- 523 (g) an employee, independent contractor, or designated interviewer of a Children's
 524 Justice Center, who is required to view child sexual abuse material within the scope
 525 of the employee's, independent contractor's, or designated interviewer's scope of
 526 employment or assignment; or
- 527 ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope
 528 of the attorney's responsibility to represent the Department of Health and Human
 529 Services, including the divisions and offices within the Department of Health and
 530 Human Services.

531 Section 11. Section **76-10-1301** is amended to read:

532 **76-10-1301 . Definitions.**

533 As used in this part:

- 534 (1) "Child" is an individual younger than 18 years old.
- 535 (2) "Female breast" means the undeveloped, partially developed, or developed breast of a
 536 female individual.
- 537 ~~[(2)]~~ (3) "Place of prostitution" means a place or business where prostitution or promotion
 538 of prostitution is arranged, regularly carried on, or attempted by one or more individuals

539 under the control, management, or supervision of another.

540 [~~(3)~~] (4) "Prostitute" or "prostituted individual" means an individual engaged in an activity
541 described in Subsection 76-10-1302(1) or 76-10-1313(1)(a), (c), (d), or (f).

542 [~~(4)~~] (5) "Public place" means a place to which the public or any substantial group of the
543 public has access.

544 [~~(5)~~] (6) "Sexual activity" means, regardless of the gender of either participant:

545 (a) an act of masturbation, sexual intercourse, or any sexual act involving the genitals of
546 one individual and the mouth or anus of another individual; or

547 (b) the touching of the genitals, female breast, or anus of one individual with any other
548 body part of another individual with the intent to sexually arouse or gratify either
549 individual.

550 Section 12. **Effective Date.**

551 This bill takes effect on May 7, 2025.