

Anthony E. Loubet proposes the following substitute bill:

Sexual Crimes Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

House Sponsor: Anthony E. Loubet

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 for certain offenses;
- 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:

None

Utah Code Sections Affected:

AMENDS:

76-3-203.13, as last amended by Laws of Utah 2022, Chapter 181**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**76-5b-203**, as last amended by Laws of Utah 2024, Chapter 127**76-10-1301**, as last amended by Laws of Utah 2022, Chapter 124

*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]~~ An actor 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]~~ actor was convicted.

Section 2. 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 3. 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 4. 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 5. 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:

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

233 child;

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

235 (D) otherwise takes indecent liberties with a child whether over or under the

236 clothing; and

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

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

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

240 (b) Any touching, however slight, is sufficient to constitute the relevant element of a

241 violation of Subsection (2)(a).

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

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

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

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

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

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

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

249 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**

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

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

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

253 [~~(ii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section

254 76-5-401.1.

255 [~~(iii)~~] (iv) "Person in custody" means the same as that term is defined in Section

256 76-5-412.

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

258 Section 76-5-412.

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

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

261 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not

262 amounting to commission of, or an attempt to commit, an offense under

263 Subsection 76-5-412(4); and

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

265 (B) a reasonable person in the actor's position should have known under the

266 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 7. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

334 (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 8. 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:
 - (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or
 - (ii) artificially generated and depicts an individual with substantial characteristics of a minor engaging in, observing, or being used for sexually explicit conduct; or
 - (c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in, observing, or being used for sexually explicit conduct.
- (2) "Children's Justice Center" means a facility or satellite office established under the Children's Justice Center Program described in Section 67-5b-102.

- 369 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,
370 give, grant admission to, provide access to, or otherwise transfer.
- 371 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a
372 female individual.
- 373 ~~[(3)]~~ (5) "Identifiable minor" means an individual:
- 374 (a)(i) who was a minor at the time the visual depiction was created, adapted, or
375 modified; or
- 376 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
377 depiction; and
- 378 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
379 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 380 ~~[(4)]~~ (6) "Identifiable vulnerable adult" means an individual:
- 381 (a)(i) who was a vulnerable adult at the time the visual depiction was created,
382 adapted, or modified; or
- 383 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying
384 the visual depiction; and
- 385 (b) who is recognizable as an actual individual by the individual's face, likeness, or other
386 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 387 ~~[(5)]~~ (7) "Lacks capacity to consent" means the same as that term is defined in Section
388 76-5-111.4.
- 389 ~~[(6)]~~ (8) "Live performance" means any act, play, dance, pantomime, song, or other activity
390 performed by live actors in person.
- 391 ~~[(7)]~~ (9) "Minor" means an individual who is younger than 18 years old.
- 392 ~~[(8)]~~ (10) "Nudity or partial nudity" means any state of dress or undress in which the human
393 genitals, pubic region, buttocks, or the female breast, at a point below the top of the
394 areola, is less than completely and opaquely covered.
- 395 ~~[(9)]~~ (11) "Produce" means:
- 396 (a) the photographing, filming, taping, directing, producing, creating, designing, or
397 composing of child sexual abuse material or vulnerable adult sexual abuse material; or
- 398 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,
399 directing, producing, creating, designing, or composing of child sexual abuse
400 material or vulnerable adult sexual abuse material.
- 401 ~~[(10)]~~ (12) "Sexually explicit conduct" means actual or simulated:
- 402 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,

- whether between individuals of the same or opposite sex;
- (b) masturbation;
- (c) bestiality;
- (d) sadistic or masochistic activities;
- (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any individual;
- (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any individual;
- (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- (h) the ~~[explicit representation of the]~~ visual depiction of defecation or urination [functions] for the purpose of causing sexual arousal of any individual.

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

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

~~[(13)]~~ (15) "Vulnerable adult sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, 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 vulnerable adult engaging in sexually explicit conduct;
- (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
- (c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Section 9. 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

- 437 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 438 (4) For a charge of violating this section, it is an affirmative defense that:
- 439 (a) the defendant:
- 440 (i) did not solicit the child sexual abuse material from the minor depicted in the child
- 441 sexual abuse material;
- 442 (ii) is not more than two years older than the minor depicted in the child sexual abuse
- 443 material; and
- 444 (iii) upon request of a law enforcement agent or the minor depicted in the child
- 445 sexual abuse material, removes from an electronic device or destroys the child
- 446 sexual abuse material and all copies of the child sexual abuse material in the
- 447 defendant's possession; and
- 448 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,
- 449 Sexual Offenses.
- 450 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
- 451 actual identity of the identifiable minor is not required.
- 452 (6) The following are not criminally or civilly liable under this section when acting in good
- 453 faith compliance with Section 77-4-201:
- 454 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 455 the scope of employment, for the good faith performance of:
- 456 (i) reporting or data preservation duties required under federal or state law; or
- 457 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
- 458 material on tangible or intangible property, or of detecting and reporting the
- 459 presence of child sexual abuse material on the property;
- 460 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
- 461 independent contractor who is contracted with a law enforcement agency, acting
- 462 within the scope of a criminal investigation;
- 463 (c) an employee of a court who may be required to view child sexual abuse material
- 464 during the course of and within the scope of the employee's employment;
- 465 (d) a juror who may be required to view child sexual abuse material during the course of
- 466 the individual's service as a juror;
- 467 (e) an attorney or employee of an attorney who is required to view child sexual abuse
- 468 material during the course of a judicial process and while acting within the scope of
- 469 employment;
- 470 (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;~~[-or]~~
(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 10. 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)]~~ (1) ~~[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;[-or]
 - (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 11. Section **76-5b-203** is amended to read:

76-5b-203 . Distribution of an intimate image -- Penalty.

- (1)(a) As used in this section:
- (i) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image, picture, or video, whether made or produced by electronic, mechanical, or other means, that depicts:

- 539 (A) exposed human male or female genitals or pubic area, with less than an
540 opaque covering;
- 541 (B) a female breast with less than an opaque covering, or any portion of the
542 female breast below the top of the areola; or
- 543 (C) the individual engaged in any sexually explicit conduct.
- 544 (ii) "Sexually explicit conduct" means actual or simulated:
- 545 (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or
546 oral-anal, whether between individuals of the same or opposite sex;
- 547 (B) masturbation;
- 548 (C) bestiality;
- 549 (D) sadistic or masochistic activities;
- 550 (E) exhibition of the genitals, pubic region, buttocks, or female breast of any
551 individual;
- 552 (F) visual depiction of nudity or partial nudity;
- 553 (G) fondling or touching of the genitals, pubic region, buttocks, or female breast;
554 or
- 555 (H) ~~[explicit representation of the]~~ visual depiction of defecation or urination [
556 functions] for the purpose of causing sexual arousal of any individual.
- 557 (iii) "Simulated sexually explicit conduct" means a feigned or pretended act of
558 sexually explicit conduct that duplicates, within the perception of an average
559 person, the appearance of an actual act of sexually explicit conduct.
- 560 (iv) "Single criminal episode" means the same as that term is defined in Section
561 76-1-401.
- 562 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 563 (2)(a) An actor commits the offense of distribution of an intimate image if:
- 564 (i) the actor knowingly or intentionally distributes to a third party, or knowingly
565 duplicates or copies an intimate image of an individual who is 18 years old or
566 older and knows or should know that the distribution, duplication or copying
567 would cause a reasonable person to suffer emotional distress or harm;
- 568 (ii) the actor has not received consent from the individual depicted in the image to
569 distribute the intimate image;
- 570 (iii) the intimate image was created by or provided to the actor under circumstances
571 in which the individual depicted in the image has a reasonable expectation of
572 privacy; and

(iv) except as provided in Subsection (2)(b), actual emotional distress or harm is caused to the individual depicted in the image as a result of the distribution.

(b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a) if:

(i) the individual depicted in the intimate image was the victim of a crime;

(ii) the intimate image was provided to law enforcement as part of an investigation or prosecution of a crime committed against the victim;

(iii) the intimate image was distributed without a legitimate law enforcement or investigative purpose by an individual who had access to the intimate image due to the individual's association with the investigation or prosecution described in Subsection (2)(b)(ii); and

(iv) the victim is incapacitated or deceased.

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

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony on a second or subsequent conviction for an offense under this section that does not arise from a single criminal episode.

(4) This section does not apply to:

(a) except as provided in Section 76-5b-203.5:

(i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

(iv) court proceedings or any other judicial proceeding; or

(v) lawful and generally accepted medical practices and procedures;

(b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image;

(c) an intimate image that is portrayed in a lawful commercial setting; or

(d) an intimate image that is related to a matter of public concern or interest.

(5)(a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(i) the distribution of an intimate image by the Internet service provider occurs only

607 incidentally through the provider's function of:

608 (A) transmitting or routing data from one person to another person; or

609 (B) providing a connection between one person and another person;

610 (ii) the provider does not intentionally aid or abet in the distribution of the intimate
611 image; and

612 (iii) the provider does not knowingly receive from or through a person who
613 distributes the intimate image a fee greater than the fee generally charged by the
614 provider, as a specific condition for permitting the person to distribute the intimate
615 image.

616 (b) This section does not apply to a hosting company, as defined in Section 76-10-1230,
617 if:

618 (i) the distribution of an intimate image by the hosting company occurs only
619 incidentally through the hosting company's function of providing data storage
620 space or data caching to a person;

621 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
622 of the intimate image; and

623 (iii) the hosting company does not knowingly receive from or through a person who
624 distributes the intimate image a fee greater than the fee generally charged by the
625 provider, as a specific condition for permitting the person to distribute, store, or
626 cache the intimate image.

627 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
628 section if it complies with Section 76-10-1231.

629 Section 12. Section **76-10-1301** is amended to read:

630 **76-10-1301 . Definitions.**

631 As used in this part:

632 (1) "Child" is an individual younger than 18 years old.

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

635 [(2)] (3) "Place of prostitution" means a place or business where prostitution or promotion
636 of prostitution is arranged, regularly carried on, or attempted by one or more individuals
637 under the control, management, or supervision of another.

638 [(3)] (4) "Prostitute" or "prostituted individual" means an individual engaged in an activity
639 described in Subsection 76-10-1302(1) or 76-10-1313(1)(a), (c), (d), or (f).

640 [(4)] (5) "Public place" means a place to which the public or any substantial group of the

641 public has access.

642 [~~(5)~~] (6) "Sexual activity" means, regardless of the gender of either participant:

643 (a) an act of masturbation, sexual intercourse, or any sexual act involving the genitals of

644 one individual and the mouth or anus of another individual; or

645 (b) the touching of the genitals, female breast, or anus of one individual with any other

646 body part of another individual with the intent to sexually arouse or gratify either

647 individual.

648 Section 13. **Effective Date.**

649 This bill takes effect on May 7, 2025.