Child Sexual Abuse Material Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ariel Defay

Senate Sponsor: Calvin R. Musselman

LONG TITLE

General Description:

This bill addresses offenses related to child sexual abuse material.

Highlighted Provisions:

This bill:

- defines the term of "apparent child sexual abuse material" to address material created or generated by artificial intelligence that depicts realistic minors;
- defines the term of "obscene child sexual abuse material";
- amends the definition of "child sexual abuse material" to remove artificially generated material;
- creates standalone offenses for:
  - possession of apparent child sexual abuse material;
  - distribution of apparent child sexual abuse material in certain circumstances; and
  - producing, distributing, receiving, or possessing with intent to distribute, obscene child sexual abuse material; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-7-215, as last amended by Laws of Utah 2025, Chapter 173

17-72-301, as renumbered and amended by Laws of Utah 2025, First Special Session, Chapter 13

26B-1-234, as last amended by Laws of Utah 2023, Chapter 231 and renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-120, as last amended by Laws of Utah 2025, Chapter 63

H.B. 289

53-29-202, as enacted by Laws of Utah 2025, Chapter 291
53-29-203, as enacted by Laws of Utah 2025, Chapter 291
53-29-205, as enacted by Laws of Utah 2025, Chapter 291
63G-2-103, as last amended by Laws of Utah 2025, First Special Session, Chapter 17
63M-7-404.5, as enacted by Laws of Utah 2024, Chapter 208
67-5-21, as last amended by Laws of Utah 2023, Chapter 231
76-3-203.5, as last amended by Laws of Utah 2025, Chapters 173, 174, 208, and 284
76-3-407, as last amended by Laws of Utah 2025, Chapters 173, 223
76-5b-103, as last amended by Laws of Utah 2025, Chapters 223, 320
76-5b-206, as renumbered and amended by Laws of Utah 2025, Chapter 173
76-5b-301, as renumbered and amended by Laws of Utah 2011, Chapter 320
76-5d-202, as renumbered and amended by Laws of Utah 2025, Chapters 173, 174
76-17-401, as renumbered and amended by Laws of Utah 2025, Chapter 173
77-4-201, as enacted by Laws of Utah 2023, Chapter 231
77-11a-101, as last amended by Laws of Utah 2024, Chapter 80
80-1-102, as last amended by Laws of Utah 2025, Chapter 426
81-9-402, as last amended by Laws of Utah 2025, Chapter 426
81-13-203, as renumbered and amended by Laws of Utah 2025, Chapter 426

ENACTS:

76-5b-207, Utah Code Annotated 1953
76-5b-208, Utah Code Annotated 1953
76-5b-209, Utah Code Annotated 1953

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

Section 1. Section **9-7-215** is amended to read:

9-7-215 . Internet and online access policy required.

(1) As used in this section:

(a) "Apparent child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(a)~~] (b) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(b)~~] (c) "Harmful to minors" means the same as that term is defined in Section 76-5c-101.

[~~(c)~~] (d) "Obscene" means the same as that term is defined in 20 U.S.C. Sec. 9101.

(e) "Obscene child sexual abuse material" means the same as that term is defined in

Section 76-5b-103.

[~~(d)~~] (f) "Technology protection measure" means a technology that blocks or filters [~~Internet~~] internet access to visual depictions.

(2) State funds may not be provided to any public library that provides public access to the [~~Internet~~] internet unless the library:

(a)(i) has in place a policy of [~~Internet~~] internet safety for minors, including the operation of a technology protection measure:

(A) with respect to any computer or other device while connected to the [~~Internet~~] internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are child sexual abuse materials, apparent child sexual abuse materials, obscene child sexual abuse materials, harmful to minors, or obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(a)(i) during any use by a minor of a computer or other device that is connected to the [~~Internet~~] internet through a network provided by the library, including a wireless network; and

(b)(i) has in place a policy of [~~Internet~~] internet safety, including the operation of a technology protection measure:

(A) with respect to any computer or other device while connected to the [~~Internet~~] internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are child sexual abuse materials, apparent child sexual abuse materials, obscene child sexual abuse materials, harmful to minors, or obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(b)(i) during any use of a computer or other device that is connected to the [~~Internet~~] internet through a network provided by the library, including a wireless network.

(3) This section does not prohibit a public library from limiting [~~Internet~~] internet access or otherwise protecting against materials other than the materials specified in this section.

(4) An administrator, supervisor, or other representative of a public library may disable a technology protection measure described in Subsection (2):

(a) at the request of a library patron who is not a minor; and

(b) to enable access for research or other lawful purposes.

Section 2. Section **17-72-301** is amended to read:

17-72-301 . General duties.

(1) The sheriff shall:

(a) preserve the peace;

(b) make all lawful arrests;

(c)(i) attend in person or by deputy:

(A) the Supreme Court and the Court of Appeals when required; or

(B) when the court is held within the sheriff's county, all courts of record, and court commissioner and referee sessions held within the sheriff's county;

(ii) obey a court's lawful orders and directions; and

(iii) comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

(d) upon request of the juvenile court, aid the court in maintaining order during hearings and transport a minor to and from youth corrections facilities, other institutions, or other designated places;

(e) attend county justice courts if the judge finds that the matter before the court requires the sheriff's attendance for security, transportation, and escort of prisoners in the sheriff's custody, or for the custody of jurors;

(f) command the aid of as many inhabitants of the sheriff's county as the sheriff considers necessary in the execution of duties described in this section;

(g) take charge of and keep the county jail and prisoners in the county jail as described in Part 4, County Jails, and Part 5, Responsibility for Prisoners;

(h)(i) receive and safely keep all prisoners committed to the sheriff's custody;

(ii) file and preserve the commitments of prisoners; and

(iii) record the name, age, place of birth, and description of each prisoner;

(i) release on the record all attachments of real property when the attachment the sheriff receives has been released or discharged;

(j) endorse on all process and notices the year, month, day, hour, and minute of reception, and, upon payment of fees, issue a certificate to the individual delivering process or notice showing the names of the parties, title of paper, and the time of receipt;

(k) serve all process and notices as prescribed by Part 7, Process Service and Duty to the Court, or any other provision of law;

(l)(i) if the sheriff makes service of process or notice, certify on the process or notices the manner, time, and place of service; or

(ii) if the sheriff fails to make service, certify the reason upon the process or notice, and return them without delay;

(m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public land within the sheriff's county;

(n) perform as required by any contracts between the county and private contractors for management, maintenance, operation, and construction of county jails entered into under the authority of Section 17-65-405;

(o) manage and direct search and rescue services in the sheriff's county, including emergency medical responders and other related incident response activities;

(p) obtain saliva DNA specimens as required under Section 53-10-404;

(q) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender;

(r) as applicable, select a representative of law enforcement to serve as a member of a child protection team, as defined in Section 80-1-102;

(s) appoint a county security chief in accordance with Section 53-22-103 and ensure the county security chief fulfills the county security chief's duties;

(t) ensure that a prisoner who is awaiting trial, sentencing, or disposition of criminal charges has:

(i) a private and confidential space to review discovery and other evidence or documents related to the prisoner's criminal case with the prisoner's counsel; and

(ii) the means to access and review discovery and other evidence or documents related to the prisoner's criminal case, with or without the prisoner's counsel, including the means to access and review digital, audio, video, or other technological evidence or documents; and

(u) perform any other duties that are required by law.

(2)(a) Violation of Subsection (1)(j) is a class C misdemeanor.

(b) Violation of any other subsection under Subsection (1) is a class A misdemeanor.

(3)(a) A prisoner may access or review discovery, evidence, or other documents under Subsection (1)(t) with:

(i) technology provided by the jail; or

(ii) technology, including a computer, that is approved by the jail and is provided by

the prisoner's counsel.

(b) If a prisoner's counsel leaves discovery, evidence, or other documents with the prisoner at the jail, the prisoner's counsel shall ensure that the discovery, evidence, or other documents does not include:

(i) any visual depiction of an individual who is younger than 18 years old;

(ii) any personal identifying information of an individual other than the prisoner;

(iii) any financial information of a person other than the prisoner;

(iv) any child sexual abuse material as defined in Section 76-5b-103;

(v) any apparent child sexual abuse material as defined in Section 76-5b-103;

(vi) any obscene child sexual abuse material as defined in Section 76-5b-103;

[~~(v)~~] (vii) any intimate image as defined in Section 76-5b-203; or

[~~(vi)~~] (viii) any visual depiction or information for which possession is prohibited, by policy, at the jail.

Section 3. Section **26B-1-234** is amended to read:

26B-1-234 . Handling of child sexual abuse material.

(1) As used in this section:

(a) "Apparent child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(a)~~] (b) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

(c) "Obscene child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(b)~~] (d) "Secure" means to prevent and prohibit access, electronic upload, transmission, or transfer of an image.

(2) The department or a division within the department may not retain child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material longer than is necessary to comply with the requirements of this section.

(3) When the department or a division within the department obtains child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material as a result of an employee unlawfully viewing child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, the department or division shall consult with and follow the guidance of the Division of Human Resource Management regarding personnel action and local law enforcement regarding retention of the child sexual abuse material, apparent child sexual abuse material, or obscene child

sexual abuse material.

(4) When the department or a division within the department obtains child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material as a result of a report or an investigation, the department or division shall immediately secure the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, or the electronic device if the child sexual abuse material[-] , apparent child sexual abuse material, or obscene child sexual abuse material is digital, and contact the law enforcement office that has jurisdiction over the area where the division's case is located.

Section 4. Section **26B-2-120** is amended to read:

26B-2-120 . Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a)(i) "Applicant" means an individual who is associated with a certification, contract, or licensee with the department under this part and has direct access, including:

(A) an adoptive parent or prospective adoptive parent, including an applicant for an adoption in accordance with Section 78B-6-128;

(B) a foster parent or prospective foster parent;

(C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(D) an individual who transports a child for a youth transportation company;

(E) an individual who provides certified peer support, as defined in Section 26B-5-610;

(F) an individual who provides peer supports, has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder;

(G) an individual who has lived experience with the services provided by the department, and uses that lived experience to provide support, guidance, or services to promote resiliency and recovery;

(H) an individual who is identified as a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in the practice of mental health therapy, as defined in Section 58-60-102;

(I) an individual, other than the child or vulnerable adult receiving the service, who is 12 years old or older and resides in a home, that is licensed or certified

by the division;

(J) an individual who is 12 years old or older and is associated with a certification, contract, or licensee with the department under this part and has or will likely have direct access;

(K) a foster home licensee that submits an application for an annual background screening as required by Subsection 26B-2-105(4)(d)(iii); or

(L) a short-term relief care provider.

(ii) "Applicant" does not include:

(A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services;

(B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services;

(C) a parent of a person receiving services from the Division of Services for People with Disabilities, if the parent provides direct care to and resides with the person, including if the parent provides direct care to and resides with the person [~~pursuant to~~] in accordance with a court order; or

(D) an individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule adopted by the Department of Health and Human Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and who is not a program director or a member, as defined by Section 26B-2-105, of the program.

(b) "Application" means a background check application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Criminal finding" means a record of:

(i) an arrest for a criminal offense;

(ii) a warrant for a criminal arrest;

(iii) charges for a criminal offense; or

(iv) a criminal conviction.

(e) "Direct access" means that an individual has, or likely will have:

(i) contact with or access to a child or vulnerable adult by which the individual will have the opportunity for personal communication or touch with the child or vulnerable adult; or

(ii) an opportunity to view medical, financial, or other confidential personal

identifying information of the child, the child's parent or legal guardian, or the vulnerable adult.

(f)(i) "Direct access qualified" means that the applicant has an eligible determination by the office within the license and renewal time period; and

(ii) no more than 180 days have passed since the date on which the applicant's association with a certification, contract, or licensee with the department expires.

(g) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(h) "Licensee" means an individual or a human services program licensed by the division.

(i) "Non-criminal finding" means a record maintained in:

(i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;

(ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(iv) juvenile court arrest, adjudication, and disposition records;

(v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry; or

(vi) a state child abuse or neglect registry.

(j) "Office" means the Office of Background Processing within the department.

(k) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license or other government-issued identification;

(vi) social security number;

(vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to the office:

(a) personal identifying information;

(b) a fee established by the office under Section 63J-1-504;

(c) a disclosure form, specified by the office, for consent for:

(i) an initial background check upon association with a certification, contract, or licensee with the department;

(ii) ongoing monitoring of fingerprints and registries until no longer associated with a certification, contract, or licensee with the department for 180 days;

(iii) a background check when the office determines that reasonable cause exists; and

(iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(c) and (4);

(d) if an applicant resided outside of the United States and its territories during the five years immediately [~~preceding~~] before the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories; and

(e) an application showing an applicant's association with a certification, contract, or a licensee with the department, for the purpose of the office tracking the direct access qualified status of the applicant, which expires 180 days after the date on which the applicant is no longer associated with a certification, contract, or a licensee with the department.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant before the office grants or denies direct access qualified status to an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Division of Child and Family Services' Licensing Information System

described in Section 80-2-1002;

(iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry for an applicant 18 years old or older;

(v) search the Division of Child and Family Services' Management Information System in Section 80-2-1001, if the applicant is:

(A) a prospective foster or adoptive parent;

(B) an employee of a congregate care program; or

(C) an adult who lives in a foster home.

(vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404 or 80-3-504; and

(viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) may conduct all or portions of a background check in connection with determining whether an applicant is direct access qualified, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(c) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(d) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant is associated with more than one certification, contract, or licensee with the department;

(e) shall notify the bureau when a direct access qualified individual has not been associated with a certification, contract, or licensee with the department for a period of 180 days;

(f) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information

the office reviews under this Subsection (3);

(g) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any applicant working in a congregate care program, shall:

(i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately [~~preceding~~] before the day on which the application is submitted to the office; and

(h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4)(a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice that an individual who has direct access qualified status will no longer be associated with a certification, contract, or licensee with the department, the bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access qualified status to an applicant who, within three years from the date on which the office conducts the background check, was convicted of:

(i) a felony or misdemeanor involving conduct that constitutes any of the following:

(A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(B) a violation of any pornography law, [~~including sexual~~] or an offense involving exploitation of a minor[~~ or~~] as described in Section 76-5b-201, aggravated sexual exploitation of a minor as described in Section 76-5b-201.2, possession of apparent child sexual abuse material as described in Section 76-5b-207, distribution of apparent child sexual abuse material as described in Section 76-5b-208, or unlawful activity regarding obscene material depicting the sexual abuse of a minor as described in Section 76-5b-209;

(C) sexual solicitation or prostitution;

(D) a violent offense committed in the presence of a child, as described in Section 76-3-203.10;

(E) an offense included in Title 76, Chapter 5, Part 1, 2, 3, 4, or 7;

(F) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act, other than Section 76-5b-206;

(G) an offense included in Title 76, Chapter 7, Offenses Against the Family;

(H) an offense included in Title 76, Chapter 12, Part 3, Privacy Offenses;

(I) an offense included in Title 76, Chapter 15, Part 3, Weapons of Mass Destruction;

(J) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;

(K) aggravated arson, as described in Section 76-6-103;

(L) aggravated burglary, as described in Section 76-6-203;

(M) aggravated exploitation of prostitution, as described in Section 76-5d-208;

(N) aggravated robbery, as described in Section 76-6-302;

(O) endangering persons in a human services program, as described in Section 26B-2-113;

(P) failure to report, as described in Section 80-2-609;

(Q) identity fraud crime, as described in Section 76-6-1102;

(R) riot, as described in Section 76-9-101; or

(S) threatening with or using a dangerous weapon in a fight or quarrel, as described in Section 76-11-207; or

(ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).

(b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider or a mental health professional, if the applicant provides services in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

(ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in accordance with Subsection (7).

(c) Subject to Subsection (5)(d), the office shall deny direct access qualified status to an applicant who:

(i) a court order prohibits from having direct access to a child or vulnerable adult; or

(ii) is an applicant for a congregate care program and:

(A) is subject to an open investigation for a non-criminal finding; or

(B) has a supported non-criminal finding, excluding a supported finding for dependency, as defined in Section 80-1-102, within three years from the date on which the office conducts the background check.

(d)(i) Subsection (5)(c) does not apply retrospectively for congregate care program employees who have an approved background screening on or before July 1, 2025; or

(ii) notwithstanding Subsection (5)(c)(ii)(A), the division may grant temporary direct access qualified status to an applicant subject to a condition that the applicant is directly supervised at all times.

(6) The office shall conduct a comprehensive review of an applicant's background check if

the applicant:

(a) has a felony or class A misdemeanor conviction that is more than three years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a);

(b) has a felony charge or conviction that is no more than 10 years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);

(c) has a felony charge or conviction that is more than 10 years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of the felony charge or conviction;

(d) has a class B misdemeanor or class C misdemeanor conviction that is more than three years and no more than 10 years from the date on which the office conducts the background check for an offense described in Subsection (5)(a);

(e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10 years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a), with criminal or non-criminal findings after the date of conviction;

(f) has a misdemeanor charge or conviction that is no more than three years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);

(g) has a misdemeanor charge or conviction that is more than three years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of charge or conviction;

(h) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5)(a);

(i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;

(j) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(i) under 28 years old; or

(ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is

currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);

(k) has a pending charge for an offense described in Subsection (5)(a);

(l) has a supported finding that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(m) has a supported finding that occurred more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002, with criminal or non-criminal findings after the date of the listing;

(n) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(o) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210, with criminal or non-criminal findings after the date of the listing;

(p) has a substantiated finding that occurred no more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or

(q) has a substantiated finding that occurred more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of the listing.

(7)(a) The comprehensive review shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical, mental, or financial harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;

(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and

(ix) if the background check of an applicant is being conducted for the purpose of giving direct access qualified status to an applicant seeking a position in a congregate care program or to become a prospective foster or adoptive parent, any listing in the Division of Child and Family Services' Management Information System described in Section 80-2-1001.

(b) At the conclusion of the comprehensive review, the office shall deny direct access qualified status to an applicant if the office finds the approval would likely create a risk of harm to a child or vulnerable adult.

(8) The office shall grant direct access qualified status to an applicant who is not denied under this section.

(9)(a) The office may conditionally grant direct access qualified status to an applicant, for a maximum of 60 days after the day on which the office sends written notice, without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise grant direct access qualified status to the applicant under this section.

(b) The office may conditionally grant direct access qualified status to an applicant, for a maximum of one year after the day on which the office sends written notice, without requiring that the applicant be directly supervised if the office:

(i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and

(ii) would otherwise grant direct access qualified status to the applicant under this section.

(c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall grant or deny direct access qualified status to the applicant in accordance with this section.

(10)(a) Each time an applicant is associated with a licensee, the department shall review the current status of the applicant's background check to ensure the applicant is still eligible for direct access qualified status in accordance with this section.

(b) A licensee may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:

(i) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(ii) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;

(iii) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or

(iv) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.

(c) Notwithstanding any other provision of this section, an applicant who is denied direct access qualified status shall not have direct access to a child or vulnerable adult unless the office grants direct access qualified status to the applicant through a subsequent application in accordance with this section.

(11) If the office denies direct access qualified status to an applicant, the applicant may request a hearing in the department's Office of Administrative Hearings to challenge the office's decision.

(12)(a) This Subsection (12) applies to an applicant associated with a certification, contract, or licensee serving adults only.

(b) A program director or a member, as defined in Section 26B-2-105, of the licensee shall comply with this section.

(c) The office shall conduct a comprehensive review for an applicant if:

(i) the applicant is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

(C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and

(ii) within three years from the date on which the office conducts the background check, the applicant has a felony or misdemeanor charge or conviction or a non-criminal finding.

(13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate care program, an applicant seeking to provide a prospective foster home, an applicant seeking to provide a prospective adoptive home, and each adult living in the home of the prospective foster or prospective adoptive home.

(b) As federally required, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately [~~preceding~~] before the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) except for applicants seeking a position in a congregate care program, check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster or adoptive home resided in the five years immediately [~~preceding~~] before the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(c) The requirements described in Subsection (13)(b) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsections (5), (6), and (7).

(d) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

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

(C) child abandonment, as described in Section 76-5-109.3;

(D) child torture, as described in Section 76-5-109.4;

(E) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

(F) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(G) intentional aggravated abuse of a vulnerable adult, as described in Section 76-5-111;

(H) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

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

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

(K) manslaughter, as described in Section 76-5-205;

(L) child abuse homicide, as described in Section 76-5-208;

(M) homicide by assault, as described in Section 76-5-209;

(N) kidnapping, as described in Section 76-5-301;

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

(P) aggravated kidnapping, as described in Section 76-5-302;

(Q) human trafficking of a child, as described in Section 76-5-308.5;

(R) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, other than Section 76-5-417, 76-5-418, or 76-5-419;

(S) sexual exploitation of a minor, as described in [~~Title 76, Chapter 5b, Sexual Exploitation Act~~] Section 76-5b-201;

(T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;

(U) possession of apparent child sexual abuse material, as described in Section 76-5b-207;

(V) distribution of apparent child sexual abuse material, as described in Section 76-5b-208;

(W) unlawful activity regarding obscene material depicting the sexual abuse of a minor, as described in Section 76-5b-209;

[~~(U)~~] (X) aggravated arson, as described in Section 76-6-103;

[~~(V)~~] (Y) aggravated burglary, as described in Section 76-6-203;

[~~(W)~~] (Z) aggravated robbery, as described in Section 76-6-302;

[~~(X)~~] (AA) incest, as described in Section 76-7-102; or

[~~(Y)~~] (BB) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (13)(d)(i).

(e) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status to an applicant if, within the five years from the date on which the office conducts the background check, the applicant was convicted of a felony

involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(f) In addition to the circumstances described in Subsection (6), the office shall conduct a comprehensive review of an applicant's background check under this section if the applicant:

(i) has an offense described in Subsection (5)(a);

(ii) has an infraction conviction entered on a date that is no more than three years before the date on which the office conducts the background check;

(iii) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(iv) has a listing in the Division of Aging and Adult Services' vulnerable adult, neglect, or exploitation database described in Section 26B-2-210;

(v) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or

(vi) has a listing on the registry check described in Subsection (13)(b) as having a substantiated or supported finding of a severe type of child abuse or neglect, as defined in Section 80-1-102.

(14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:

(a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6), (7), and (13); and

(b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services for purposes of granting or denying direct access qualified status to an applicant.

Section 5. Section **53-29-202** is amended to read:

53-29-202 . Registrable offenses -- Status as a sex offender, kidnap offender, and child abuse offender established.

(1) An individual is an offender described in Subsection (2) and subject to the requirements, restrictions, and penalties described in this chapter if the individual:

(a) has been convicted in this state of:

(i) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);

(ii) child torture under Section 76-5-109.4;

(iii) a felony or class A misdemeanor violation of enticing a minor under Section 76-5-417;

(iv) sexual exploitation of a vulnerable adult under Section 76-5b-202;

(v) human trafficking for sexual exploitation under Section 76-5-308.1;

(vi) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);

(vii) aggravated human trafficking for sexual exploitation under Section 76-5-310;

(viii) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;

(ix) unlawful sexual activity with a minor under Section 76-5-401, except as provided in Subsection 76-5-401(3)(b) or (c);

(x) sexual abuse of a minor under Section 76-5-401.1, on the individual's first offense unless the individual was younger than 21 years old at the time of the offense then on the individual's second offense;

(xi) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

(xii) rape under Section 76-5-402;

(xiii) rape of a child under Section 76-5-402.1;

(xiv) object rape under Section 76-5-402.2;

(xv) object rape of a child under Section 76-5-402.3;

(xvi) a felony violation of forcible sodomy under Section 76-5-403;

(xvii) sodomy on a child under Section 76-5-403.1;

(xviii) forcible sexual abuse under Section 76-5-404;

(xix) sexual abuse of a child under Section 76-5-404.1;

(xx) aggravated sexual abuse of a child under Section 76-5-404.3;

(xxi) aggravated sexual assault under Section 76-5-405;

(xxii) custodial sexual relations under Section 76-5-412, if the victim in custody is

younger than 18 years old and the offense is committed on or after May 10, 2011;

(xxiii) sexual exploitation of a minor under Section 76-5b-201;

(xxiv) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(xxv) sexual extortion or aggravated sexual extortion under Section 76-5b-204;

(xxvi) possession of apparent child sexual abuse material under Section 76-5b-207;

(xxvii) distribution of apparent child sexual abuse material under Section 76-5b-208;

(xxviii) unlawful activity regarding obscene material depicting the sexual abuse of a minor under Section 76-5b-209;

[~~(xxvi)~~] (xxix) incest under Section 76-7-102;

[~~(xxvii)~~] (xxx) lewdness under Section 76-5-419, if the individual has been convicted of the offense four or more times;

[~~(xxviii)~~] (xxxi) sexual battery under Section 76-5-418, if the individual has been convicted of the offense four or more times;

[~~(xxix)~~] (xxxii) any combination of convictions of lewdness under Section 76-5-419, and of sexual battery under Section 76-5-418, that total four or more convictions;

[~~(xxx)~~] (xxxiii) lewdness involving a child under Section 76-5-420;

[~~(xxxi)~~] (xxxiv) a felony or class A misdemeanor violation of:

(A) voyeurism under Section 76-12-306;

(B) recorded or photographed voyeurism under Section 76-12-307; or

(C) distribution of images obtained through voyeurism under Section 76-12-308;

[~~(xxxii)~~] (xxxv) aggravated exploitation of prostitution under Section 76-5d-208;

[~~(xxxiii)~~] (xxxvi) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;

[~~(xxxiv)~~] (xxxvii) child kidnapping under Section 76-5-301.1, if the offender was not the natural parent of the child victim;

[~~(xxxv)~~] (xxxviii) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

[~~(xxxvi)~~] (xxxix) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

[~~(xxxvii)~~] (xl) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

[~~(xxxviii)~~] (xli) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

[~~(xxxix)~~] (xlii) aggravated human trafficking for labor under Section 76-5-310, if the

offender was not the natural parent of the child victim;

[~~(xl)~~] (xliii) aggravated human smuggling under Section 76-5-310.1, if the offender was not the natural parent of the child victim;

[~~(xli)~~] (xliv) human trafficking of a vulnerable adult for labor under Section 76-5-311, if the offender was not the natural parent of the child victim; or

[~~(xlii)~~] (xlv) attempting, soliciting, or conspiring to commit a felony violation of an offense listed in Subsections (1)(a)(i) through [~~(xl)~~] (xliii);

(b)(i) has been convicted of a criminal offense, or an attempt, solicitation, or conspiracy to commit a criminal offense in an external jurisdiction that is substantially equivalent to the offense listed in Subsection (1)(a); and

(ii)(A) is a Utah resident; or

(B) is not a Utah resident and is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(c)(i)(A) is required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense;

(B) is ordered by a court to register on a registry for individuals who have committed an offense listed in Subsection (1)(a) or a substantially equivalent offense; or

(C) would be required to register on a registry in an external jurisdiction for individuals who have committed an offense listed in Subsection (1)(a), or a substantially equivalent offense, if residing in the external jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and

(ii) is in this state for a total of 10 days in a 12-month period, regardless of whether the individual intends to permanently reside in this state;

(d)(i)(A) is a nonresident regularly employed or working in this state; or

(B) [~~who~~]is a student in this state; and

(ii)(A) is convicted of an offense listed in Subsection (1)(a) or a substantially equivalent offense in an external jurisdiction; or

(B) is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in

Subsection (1)(a);

(e) is found not guilty by reason of insanity in this state or in an external jurisdiction of an offense listed in Subsection (1)(a) or a substantially equivalent offense; or

(f)(i) is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (1)(a); and

(ii) has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

(B) the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

(2) Subject to Subsection (3), an individual is:

(a) a child abuse offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsection (1)(a)(i) through (ii); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsection (1)(a)(i) through (ii) or a substantially equivalent offense;

(b) a sex offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections (1)(a)(iii) through [~~(xxxii)~~] (xxxv); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections (1)(a)(iii) through [~~(xxxii)~~] (xxxv) or a substantially equivalent offense; or

(c) a kidnap offender if the individual:

(i) has committed, attempted, solicited, or conspired to commit an offense described in Subsections [~~(1)(a)(xxxiii) through (xli)~~] (1)(a)(xxxvi) through (xliv); or

(ii) meets a requirement described in Subsections (1)(b) through (e) for an offense described in Subsections [~~(1)(a)(xxxiii) through (xli) ~~] (1)(a)(xxxvi) through (xliv) or a substantially equivalent offense.

(3) An individual who has committed a registrable offense described in Subsection (1)(d)(ii)(B) in an external jurisdiction that is not substantially equivalent to an offense

described in Subsection (1)(a) and is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence is a child abuse offender, sex offender, or kidnap offender based on the individual's status on the registry in the individual's state of residence.

(4) Notwithstanding Subsection 53-29-101(4)(a), a plea of guilty or nolo contendere to a charge of sexual battery or lewdness that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction even if the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 6. Section **53-29-203** is amended to read:

53-29-203 . Registration lengths -- 10 years -- Lifetime.

(1) Except as provided in Subsection (2), (3), or (4), an individual who commits a registrable offense is required to register on the registry for:

(a) 10 years after the day on which the offender's sentence for the offense has been terminated if the registrable offense is for:

(i) a felony or class A misdemeanor violation of enticing a minor under Section 76-5-417, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(a)(ii) through (xxiv);

(ii) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);

(iii) child torture under Section 76-5-109.4;

(iv) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;

(v) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;

(vi) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;

(vii) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a), if the offender was not the natural parent of the child victim;

(viii) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;

(ix) aggravated human smuggling under Section 76-5-310.1;

(x) human trafficking of a vulnerable adult for labor under Section 76-5-311;

(xi) a felony violation of unlawful sexual activity with a minor under Section 76-5-401;

(xii) sexual abuse of a minor under Section 76-5-401.1;

(xiii) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;

(xiv) forcible sexual abuse under Section 76-5-404;

(xv) custodial sexual relations under Section 76-5-412;

(xvi) sexual exploitation of a vulnerable adult under Section 76-5b-202;

(xvii) sexual extortion under Subsection 76-5b-204(2)(a);

(xviii) incest under Section 76-7-102;

(xix) four to seven convictions of lewdness under Section 76-5-419;

(xx) four to seven convictions of sexual battery under Section 76-5-418;

(xxi) any combination of convictions of lewdness under Section 76-5-419, and of sexual battery under Section 76-5-418, that total four to seven convictions;

(xxii) lewdness involving a child under Section 76-5-420;

(xxiii) a felony or class A misdemeanor violation of:

(A) voyeurism under Section 76-12-306;

(B) recorded or photographed voyeurism under Section 76-12-307; or

(C) distribution of images obtained through voyeurism under Section 76-12-308;

(xxiv) aggravated exploitation of prostitution under Section 76-5d-208, committed on or before May 9, 2011;

(xxv) attempting, soliciting, or conspiring to commit an offense listed in Subsections(1)(a)(i) through (xxiv) if the attempt, solicitation, or conspiracy is a registrable offense; or

(xxvi) attempting, soliciting, or conspiring to commit:

(A) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

(B) human trafficking for sexual exploitation under Section 76-5-308.1, if the offender was not the natural parent of the child victim;

(C) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b), if the offender was not the natural parent of the child victim;

(D) aggravated human trafficking for sexual exploitation under Section 76-5-310, if the offender was not the natural parent of the child victim;

(E) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311, if the offender was not the natural parent of the child victim;

(F) forcible sodomy under Section 76-5-403;

(G) sexual abuse of a child under Section 76-5-404.1;

(H) sexual exploitation of a minor under Section 76-5b-201;

(I) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(J) aggravated sexual extortion under Subsection 76-5b-204(2)(b);[~~or~~]

(K) possession of apparent child sexual abuse material under Section 76-5b-207;

(L) distribution of apparent child sexual abuse material under Section 76-5b-208;

(M) unlawful activity regarding obscene material depicting the sexual abuse of a minor under Section 76-5b-209; or

[~~(K)~~] (N) aggravated exploitation of prostitution under Section 76-5d-208, on or after May 10, 2011; or

(b) the offender's lifetime if the registrable offense is:

(i) a conviction for an offense described in Subsection (1)(a), if the offender has, at the time of conviction for the offense:

(A) previously been convicted of an offense described in Subsection (1)(a), or a substantially equivalent offense in an external jurisdiction; or

(B) previously been required to register as an offender for an offense described in Subsection (1)(a) committed as a juvenile;

(ii) a following offense, including attempting, soliciting, or conspiring to commit a felony violation of:

(A) child kidnapping under Section 76-5-301.1, if the offender was not the natural parent of the child victim;

(B) rape under Section 76-5-402;

(C) rape of a child under Section 76-5-402.1;

(D) object rape under Section 76-5-402.2;

(E) object rape of a child under Section 76-5-402.3;

(F) sodomy on a child under Section 76-5-403.1;

(G) aggravated sexual abuse of a child under Section 76-5-404.3; or

(H) aggravated sexual assault under Section 76-5-405;

(iii) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;

(iv) human trafficking for sexual exploitation under Section 76-5-308.1, if the offender was not the natural parent of the child victim;

(v) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b), if the offender was not the natural parent of the child victim;

(vi) aggravated human trafficking for sexual exploitation under Section 76-5-310, if the offender was not the natural parent of the child victim;

(vii) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311, if the offender was not the natural parent of the child victim;

(viii) forcible sodomy under Section 76-5-403;

(ix) sexual abuse of a child under Section 76-5-404.1;

(x) sexual exploitation of a minor under Section 76-5b-201;

(xi) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(xii) aggravated sexual extortion under Subsection 76-5b-204(2)(b);

(xiii) aggravated exploitation of prostitution under Section 76-5d-208, on or after May 10, 2011; or

(xiv) a felony violation of enticing a minor under Section 76-5-417, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(b)(ii) through (xiii).

(2) An individual who qualifies as an offender based on a conviction in an external jurisdiction for a registrable offense, or a substantially equivalent offense, and is on an external jurisdiction's sex, kidnap, and child abuse registry, or an equivalent registry, is required to register on the registry for the time period required by the external jurisdiction.

(3)(a) If the sentencing court at any time after an offender is convicted of an offense requiring lifetime registration described in Subsection (1)(b), and after considering the factors described in Subsection (3)(b), determines that the offender was under 21 years old at the time the offense was committed and the offense did not involve force or coercion, the requirement that the offender register for the offender's lifetime does not apply and the offender shall register for 10 years after the day on which the offender's sentence for the offense has been terminated.

(b) In determining whether an offense committed by an offender involves force or coercion under Subsection (3)(a), the sentencing court shall consider:

(i) the age of the victim;

(ii) the vulnerability of the victim;

(iii) the physical, mental, psychological, or emotional harm the victim suffered from the offense;

(iv) whether the offender used fraud or deception to commit the offense;

(v) if any child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, as [~~that term is~~] those terms are defined in Section 76-5b-103, was:

(A) distributed to the victim by the offender; or

(B) distributed, produced, or possessed by the offender at the time of the offense, that involved force or coercion against a victim depicted in the child sexual abuse material; and

(vi) any other factor the sentencing court determines is relevant.

(4) Except for an individual who is adjudicated for a registrable offense and is an offender who meets the requirements under Subsection 53-29-202(1)(f), an individual who is under 18 years old and commits a registrable offense after May 3, 2023, is not subject to registration requirements under this chapter unless the offender:

(a) is charged by criminal information in juvenile court under Section 80-6-503;

(b) is bound over to district court in accordance with Section 80-6-504; and

(c) is convicted of a registrable offense.

(5) An offender subject to the 10-year or lifetime registration requirements under Subsection (1) may petition the court for an order of removal from the registry in accordance with Section 53-29-204, 53-29-205, or 53-29-206.

Section 7. Section **53-29-205** is amended to read:

53-29-205 . Ten-year petition for removal from registry -- Eligibility.

(1) An offender who is required to register on the registry for a registrable offense described in Subsection (3) subject to a 10-year registration period as described in Section 53-29-203 is eligible to petition the court under Section 53-29-207 for an order of removal from the registry at a 10-year after entrance into the community period described in Subsection (2) if:

(a) the offender has not been convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent 10-year period after the date described in Subsection (2), as evidenced by a certificate of eligibility issued by the bureau;

(b) the offender successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense; and

(c) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense.

(2) An offender who qualifies under Subsection (1) may petition the court under Section 53-29-207 for an order of removal from the registry if 10 years have passed after the later of the following events in which the offender entered into the community:

(a) the day on which the offender was placed on probation;

(b) the day on which the offender was released from incarceration to parole;

(c) the day on which the offender's sentence was terminated without parole;

(d) the day on which the offender entered a community-based residential program; or

(e) for a minor, as defined in Section 80-1-102, the day on which the division's custody of the offender was terminated.

(3) The offenses that qualify for a 10-year petition for an order of removal from the registry referenced in Subsection (1) are:

(a) a felony violation of enticing a minor under Section 76-5-417, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (3)(b) through (v);

(b) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);

(c) child torture under Section 76-5-109.4;

(d) human trafficking for labor under Section 76-5-308;

(e) human smuggling under Section 76-5-308.3;

(f) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);

(g) aggravated human trafficking for labor under Section 76-5-310;

(h) aggravated human smuggling under Section 76-5-310.1;

(i) human trafficking of a vulnerable adult for labor under Section 76-5-311;

(j) a felony violation of unlawful sexual activity with a minor under Section 76-5-401, if, at the time of the offense, the offender is more than 10 years older than the victim;

(k) sexual abuse of a minor under Section 76-5-401.1, if, at the time of the offense, the offender is more than 10 years older than the victim;

(l) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2, if, at the time of the offense, the offender is more than 15 years older than the victim;

(m) forcible sexual abuse under Section 76-5-404;

(n) custodial sexual relations under Section 76-5-412, if the victim in custody is younger than 18 years old and the offense is committed on or after May 10, 2011;

(o) sexual exploitation of a vulnerable adult under Section 76-5b-202;

(p) sexual extortion under Subsection 76-5b-204(2)(a);

(q) incest under Section 76-7-102;

(r) four or more convictions of lewdness under Section 76-5-419;

(s) four or more convictions of sexual battery under Section 76-5-418;

(t) any combination of convictions of lewdness under Section 76-5-419, and of sexual battery under Section 76-5-418, that total four or more convictions;

(u) lewdness involving a child under Section 76-5-420;

(v) a felony violation of:

(i) recorded or photographed voyeurism under Section 76-12-307; or

(ii) distribution of images obtained through voyeurism under Section 76-12-308;

(w) aggravated exploitation of prostitution under Section 76-5d-208, committed on or before May 9, 2011;

(x) attempting, soliciting, or conspiring to commit an offense listed in Subsections (3)(a) through (v) if the attempt, solicitation, or conspiracy is a registrable offense;

(y) attempting, soliciting, or conspiring to commit:

(i) human trafficking for sexual exploitation under Section 76-5-308.1;

(ii) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);

(iii) aggravated human trafficking for sexual exploitation under Section 76-5-310;

(iv) human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;

(v) aggravated kidnapping under Section 76-5-302, except if the offender is a natural parent of the victim;

(vi) forcible sodomy under Section 76-5-403;

(vii) sexual abuse of a child under Section 76-5-404.1;

(viii) sexual exploitation of a minor under Section 76-5b-201;

(ix) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(x) aggravated sexual extortion under Subsection 76-5b-204(2)(b);[~~or~~]

(xi) possession of apparent child sexual abuse material under Section 76-5b-207;

(xii) distribution of apparent child sexual abuse material under Section 76-5b-208;

(xiii) unlawful activity regarding obscene material depicting the sexual abuse of a minor under Section 76-5b-209; or

[~~(xi)~~] (xiv) aggravated exploitation of prostitution under Section 76-5d-208, on or after May 10, 2011; or

(z) an offense described in Subsection 53-29-203(1)(b) that would otherwise be subject to a 20-year petition for removal as described in Section 53-29-206, if:

(i) the sentencing court determines that the offender was under 21 years old at the time the offense was committed; and

(ii) the offense did not involve force or coercion as described in Subsection 53-29-203(3).

(4) An individual who is as an offender under Section 53-29-202 based on a conviction in an external jurisdiction for a registrable offense, or a substantially equivalent offense, and is required to register on the external jurisdiction's sex, kidnap, or child abuse offender registry, or an equivalent registry, may petition for removal from the registry in accordance with the requirements of this section if the individual:

(a) does not have a lifetime registration requirement on the external jurisdiction's sex, kidnap, or child abuse offender registry, or an equivalent registry;

(b) meets the requirements described in Subsections (1)(a) through (c);

(c) has resided in this state for at least 183 days in a year for two consecutive years;

(d) intends to primarily reside in this state; and

(e) has received an order from a court in the external jurisdiction where the offender was initially required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, that authorizes the offender to be removed from the Sex, Kidnap, and Child Abuse Offender Registry.

Section 8. Section **63G-2-103** is amended to read:

63G-2-103 . Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chief administrative officer" means the chief administrative officer of a governmental entity who is responsible to fulfill the duties described in Section 63A-12-103.

(3) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(4) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(5)(a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(6)(a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(7) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(8) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(9) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, special district office, or special service district office, but does not include judges.

(10) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(11) "Government audit agency" means any governmental entity that conducts an audit.

(12)(a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the Utah Board of Higher Education, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices **Ĥ→ [~~[~~]pursuant to[~~]~~]~~in accordance~~ ~~]~~ ←Ĥ**

Ĥ→ [~~**with**~~] **←Ĥ** Section 63G-2-701, this chapter shall apply to the political subdivision to the

extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (12)(a) that is funded or established by the government to carry out the public's business;

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking, except for the Water District Water Development Council created [~~pursuant to~~] in accordance with Section 11-13-228;

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

(iv) an association as defined in Section 53G-7-1101;

(v) the Utah Independent Redistricting Commission; and

(vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53H-10-202.

(13) "Government Records Office" means the same as that term is defined in Section 63A-12-201.

(14) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(15) "Individual" means a human being.

(16)(a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) **Ĥ→ [~~[~~]Initial contact reports do[~~]~~~~"Initial contact report" does~~]** ←**Ĥ** not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (16)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(c) **Ĥ→ [~~[~~]Initial contact reports do[~~]~~~~"Initial contact report" does~~]** ←**Ĥ** not include accident reports, as that term is described in Title 41, Chapter 6a, Part 4, Accident Responsibilities.

(17) "Legislative body" means the Legislature.

(18) "Notice of compliance" means a statement confirming that a governmental entity has complied with an order of the director of the Government Records Office.

(19) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

(20) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(21) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

(22) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

(23) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

(24) "Reasonable search" means a search that is:

(a) reasonable in scope and intensity; and

(b) not unreasonably burdensome for the government entity.

(25)(a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not include:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the

originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar ;

(x) a note prepared by the originator for the originator's own use or for the sole use of an individual for whom the originator is working;

(xi) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xii) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function;

(xiii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, [~~provided that~~] if the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiv) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-63-706(2)(e)(ii);

(xv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205;

(xvi) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

(xvii) apparent child sexual abuse material, as defined by Section 76-5b-103;

[~~(xvii)~~] (xviii) child sexual abuse material, as defined by Section 76-5b-103;

(xix) obscene child sexual abuse material, as defined in Section 76-5b-103;

[~~(xviii)~~] (xx) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:

(A) a Senate or House Ethics Committee;

(B) the Independent Legislative Ethics Commission;

(C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or

(D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201;

[~~(xix)~~] (xxi) confidential communication described in Section 58-60-102, 58-61-102, or 58-61-702;

[~~(xx)~~] (xxii) any item described in Subsection (25)(a) that is:

(A) described in Subsection 63G-2-305(17), (18), or (23)(b); and

(B) shared between any of the following entities:

(I) the Division of Risk Management;

(II) the Office of the Attorney General;

(III) the governor's office; or

(IV) the Legislature;

[~~(xxi)~~] (xxiii) the email address that a candidate for elective office provides to a filing officer under Subsection 20A-9-201(5)(c)(ii) or 20A-9-203(4)(c)(iv); or

[~~(xxii)~~] (xxiv) except as provided in Sections 31A-16-105, 31A-16-107.5, and 27a-3-303, an investment policy, or information related to an investment policy, provided to the insurance commissioner as described in Title 31A, Chapter 18, Investments.

(26) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(27) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of

records.

(28) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(29) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education described in Section 53H-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(30) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(31) "State archivist" means the director of the state archives.

(32) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 9. Section **63M-7-404.5** is amended to read:

63M-7-404.5 . Juvenile disposition guidelines.

(1) The sentencing commission shall establish and maintain juvenile disposition guidelines that:

(a) respond to public comment;

(b) relate dispositional practices and rehabilitative resources;

(c) increase equity in disposition orders;

(d) better define responsibility for disposition orders; and

(e) enhance the discretion of the juvenile court while preserving the role of the Youth Parole Authority.

(2) The juvenile disposition guidelines shall address how to appropriately respond to negative and positive behavior of juveniles who are:

(a) nonjudicially adjusted;

(b) placed on diversion;

(c) placed on probation;

(d) placed on community supervision;

(e) placed in an out-of-home placement; or

(f) placed in a secure care facility.

(3) The juvenile disposition guidelines shall include:

(a) other sanctions and incentives including:

(i) recommended responses that are swift and certain;

(ii) a continuum of community-based options for juveniles living at home;

(iii) recommended responses that target the juvenile's criminogenic risk and needs; and

(iv) recommended incentives for compliance, including earned discharge credits;

(b) a recommendation that, when a juvenile court interacts with a juvenile described in Subsection (2), the juvenile court shall consider:

(i) the seriousness of the negative and positive behavior of the juvenile;

(ii) the juvenile's conduct postadjudication; and

(iii) the juvenile's delinquency history; and

(c) appropriate sanctions for a juvenile who commits sexual exploitation of a minor as described in Section 76-5b-201, [~~or~~]aggravated sexual exploitation of a minor as described in Section 76-5b-201.1, possession of apparent child sexual abuse material as described in Section 76-5b-207, distribution of apparent child sexual abuse material as described in Section 76-5b-208, or unlawful activity regarding obscene material depicting the sexual abuse of a minor under Section 76-5b-209, including the application of aggravating and mitigating factors specific to the offense.

Section 10. Section **67-5-21** is amended to read:

67-5-21 . Internet Crimes Against Children (ICAC) unit creation -- Duties -- Employment of staff.

(1) There is created within the Office of the Attorney General the Internet Crimes Against Children (ICAC) unit to investigate and prosecute cases involving child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material as those terms are defined in Section 76-5b-103, and cases involving enticing minors over the [~~Internet~~] internet into illegal sexual acts.

(2) The attorney general may employ investigators, prosecutors, and necessary support staff

for the unit created under Subsection (1).

Section 11. Section **76-3-203.5** is amended to read:

76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) arson as described in Section 76-6-102;

(B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);

(C) criminal mischief as described in Section 76-6-106;

(D) aggravated arson as described in Section 76-6-103;

(E) assault by prisoner as described in Section 76-5-102.5;

(F) disarming a police officer as described in Section 76-5-102.8;

(G) aggravated assault as described in Section 76-5-103;

(H) aggravated assault by prisoner as described in Section 76-5-103.5;

(I) mayhem as described in Section 76-5-105;

(J) stalking as described in Subsection 76-5-106.5(2);

(K) threat of terrorism as described in Section 76-5-107.3;

(L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);

(M) child torture as described in Section 76-5-109.4;

(N) commission of domestic violence in the presence of a child as described in Section 76-5-114;

(O) abuse or neglect of a child with a disability as described in Section 76-5-110;

(P) abuse or exploitation of a vulnerable adult as described in Section 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;

(Q) endangerment of a child or vulnerable adult as described in Section 76-5-112.5;

(R) an offense described in Chapter 5, Part 2, Criminal Homicide;

(S) kidnapping as described in Section 76-5-301;

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

(U) aggravated kidnapping as described in Section 76-5-302;

(V) rape as described in Section 76-5-402;

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

(X) object rape as described in Section 76-5-402.2;

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

(Z) forcible sodomy as described in Section 76-5-403;

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

(BB) forcible sexual abuse as described in Section 76-5-404;

(CC) sexual abuse of a child as described in Section 76-5-404.1;

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

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

(FF) sexual exploitation of a minor as described in Section 76-5b-201;

(GG) aggravated sexual exploitation of a minor as described in Section 76-5b-201.1;

(HH) sexual exploitation of a vulnerable adult as described in Section 76-5b-202;

(II) possession of apparent child sexual abuse material as described in Section 76-5b-207;

(JJ) distribution of apparent child sexual abuse material as described in Section 76-5b-208;

(KK) unlawful activity regarding obscene material depicting the sexual abuse of a minor as described in Section 76-5b-209;

[~~(II)~~] (LL) aggravated exploitation of prostitution as described in Subsection 76-5d-208(2)(a);

[~~(JJ)~~] (MM) burglary as described in Subsection 76-6-202(3)(b);

[~~(KK)~~] (NN) aggravated burglary as described in Section 76-6-203;

[~~(LL)~~] (OO) robbery as described in Section 76-6-301;

[~~(MM)~~] (PP) aggravated robbery as described in Section 76-6-302;

[~~(NN)~~] (QQ) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or (1)(a)(ii);

[~~(OO)~~] (RR) tampering with a witness as described in Section 76-8-508;

[~~(PP)~~] (SS) retaliation against a witness, victim, or informant as described in Section 76-8-508.3;

[~~(QQ)~~] (TT) tampering or retaliating against a juror as described in Subsection 76-8-508.5(2)(a)(iii);

[~~(RR)~~] (UU) extortion to dismiss a criminal proceeding as described in Subsection 76-6-406(1)(a)(i), (ii), or (ix);

[~~(SS)~~] (VV) bus hijacking as described in Section 76-9-1502;

[~~(TT)~~] (WW) assault with intent to commit bus hijacking as described in Section 76-9-1503;

[~~(UU)~~] (XX) purchase or possession of a dangerous weapon by a restricted person as described in Section 76-11-305 or 76-11-306;

[~~(VV)~~] (YY) unlawful delivery of explosive, chemical, or incendiary devices as described in Section 76-15-209;

[~~(WW)~~] (ZZ) unlawful conduct involving an explosive, chemical, or incendiary device as described in Section 76-15-210;

[~~(XX)~~] (AAA) unlawful conduct involving an explosive, chemical, or incendiary part as described in Section 76-15-211;

[~~(YY)~~] (BBB) unlawful discharge of a firearm or hurling of a missile into a bus or terminal as described in Section 76-9-1504; and

[~~(ZZ)~~] (CCC) felony discharge of a firearm as described in Section 76-11-210.

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide

notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b)(i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days [~~prior to~~] before trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c)(i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred [~~prior to~~] before January 1, 1970, the burden is on the prosecution to establish by a preponderance of the

evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5)(a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b)(i) Notwithstanding Subsection (5)(a) and except as provided in Subsection (5)(b)(ii), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(ii) The "violent felony" offense defined in Subsection (1)(c) does not include any felony sexual offense violation of:

(A) enticing a minor, Section 76-5-417;

(B) lewdness, Section 76-5-419; or

(C) lewdness involving a child, Section 76-5-420.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 12. Section **76-3-407** is amended to read:

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

(1) As used in this section:

(a)(i) "Prior sexual offense" means:

(A) a felony offense described in Chapter 5, Part 4, Sexual Offenses;

(B) sexual exploitation of a minor, Section 76-5b-201;

(C) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

(D) possession of apparent child sexual abuse material, Section 76-5b-207;

(E) distribution of apparent child sexual abuse material, Section 76-5b-208;

(F) unlawful activity regarding obscene material depicting the sexual abuse of a minor, Section 76-5b-209;

[~~(D)~~] (G) a felony attempt to commit an offense described in Subsections (1)(a)(i)(A) through [~~(C)~~] (F); or

[~~(E)~~] (H) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i)(A) through [~~(D)~~] (G).

(ii) "Prior sexual offense" does not include:

(A) lewdness, as described in Section 76-5-419; or

(B) lewdness involving a child, as described in Section 76-5-420.

(b)(i) "Sexual offense" means:

(A) an offense that is a second or third degree felony, or an attempted offense, which attempt is a second or third degree felony, described in Chapter 5, Part 4, Sexual Offenses;

(B) sexual exploitation of a minor, Section 76-5b-201;

(C) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

(D) possession of apparent child sexual abuse material, Section 76-5b-207;

(E) distribution of apparent child sexual abuse material, Section 76-5b-208;

(F) unlawful activity regarding obscene material depicting the sexual abuse of a minor, Section 76-5b-209;

[~~(D)~~] (G) a felony attempt to commit an offense described in Subsections (1)(b)(i)(B) [~~and (C)~~] through (F); or

[~~(E)~~] (H) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i)(A) through [~~(D)~~] (G).

(ii) "Sexual offense" does not include:

(A) lewdness, as described in Section 76-5-419; or

(B) lewdness involving a child, as described in Section 76-5-420.

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

(a) the defendant was convicted of a prior sexual offense; and

(b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a) before the defendant committed the sexual offense for which the defendant is being sentenced.

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

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

Section 13. Section **76-5b-103** is amended to read:

76-5b-103 . Definitions.

As used in this chapter:

(1) "Apparent child sexual abuse material" means a visual depiction, generated or created through the use of artificial intelligence or generative artificial intelligence, or any other means, of a minor engaging in, observing, or being used for sexually explicit conduct where the minor in the visual depiction:

(a)(i) has prepubescent features; or

(ii) appears to be a minor under 12 years old; and

(b) is sufficiently similar to a real minor such that it would lead a reasonable person viewing the depiction to conclude that the depiction is of a real minor.

(2) "Artificial intelligence" means the same as that term is defined in Section 20A-11-1104.

[~~(1)~~] (3) "Child sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, or 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)~~] (4) "Children's Justice Center" means a facility or satellite office established under the

Children's Justice Center Program described in Section 67-5b-102.

[~~(3)~~] (5) "Distribute" means, with or without consideration, to sell, exhibit, display, provide, give, grant admission to, provide access to, or otherwise transfer.

[~~(4)~~] (6) "Female breast" means the undeveloped, partially developed, or developed breast of a female individual.

(7) "Generative artificial intelligence" means the same as that term is defined in Section 20A-11-1104.

[~~(5)~~] (8) "Identifiable minor" means an individual:

(a)(i) who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual individual by the individual's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

[~~(6)~~] (9) "Identifiable vulnerable adult" means an individual:

(a)(i) who was a vulnerable adult at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual individual by the individual's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

[~~(7)~~] (10) "Lacks capacity to consent" means the same as that term is defined in Section 76-5-111.4.

[~~(8)~~] (11) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

[~~(9)~~] (12) "Minor" means an individual who is younger than 18 years old.

[~~(10)~~] (13) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(14) "Obscene child sexual abuse material" means a visual depiction of any kind that:

(a) depicts a minor engaging in, observing, or being used for sexually explicit conduct; and

(b) the average individual, applying contemporary community standards, finds that, taken as a whole, the visual depiction:

(i) appeals to prurient interest in sex;

(ii) is patently offensive; and

(iii) does not have serious literary, artistic, political, or scientific value.

[~~(11)~~] (15) "Produce" means:

(a) the photographing, filming, taping, directing, producing, creating, designing, or composing of apparent child sexual abuse material, child sexual abuse material, obscene child sexual abuse material, or vulnerable adult sexual abuse material; or

(b) the securing or hiring of individuals to engage in the photographing, filming, taping, directing, producing, creating, designing, or composing of apparent child sexual abuse material, child sexual abuse material, obscene child sexual abuse material, or vulnerable adult sexual abuse material.

[~~(12)~~] (16) "Sexually explicit conduct" means actual or simulated:

(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 visual depiction of defecation or urination for the purpose of causing sexual arousal of any individual.

[~~(13)~~] (17) "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.

[~~(14)~~] (18) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111(1).

[~~(15)~~] (19) "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 14. Section **76-5b-206** is amended to read:

76-5b-206 . Failure to report child sexual abuse material by a computer technician.

(1)(a) As used in this section, "computer technician" means an individual who in the course and scope of the individual's employment for compensation installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.

(b) Terms defined in Sections 76-1-101.5 and 76-5b-103 apply to this section.

(2) An actor commits failure to report child sexual abuse material by a computer technician if:

(a) the actor is a computer technician;

(b) in the actor's course of employment for compensation the actor views an image on a computer or other electronic device that:

(i) is child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material;

(ii) appears to be child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material; or

(iii) the actor reasonably believes is child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material; and

(c) the actor willfully fails to immediately report the finding of the image to:

(i) a state or local law enforcement agency;

(ii) the Cyber Tip Line at the National Center for Missing and Exploited Children; or

(iii) an employee designated by the employer of the computer technician in accordance with Subsection (7).

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

(4) The identity of the computer technician who reports an image that is or appears to be child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material shall be confidential, except as necessary for the criminal investigation and the judicial process.

(5)(a) If a computer technician makes or does not make a report under this section and is

acting in good faith, the technician is immune from any criminal or civil liability related to reporting or not reporting the image.

(b) Good faith described in Subsection (5)(a) may be presumed from a computer technician's previous course of conduct when the computer technician has made appropriate reports.

(6) It is a defense to prosecution under this section that the computer technician did not report the image because the computer technician reasonably believed the image did not depict an individual younger than 18 years old.

(7)(a) An employer of a computer technician may implement a procedure that requires:

(i) the computer technician report an image as is required under Subsection (2) to an employee designated by the employer to receive the report of the image; and

(ii) the designated employee to immediately forward the report provided by the computer technician to an agency described in Subsection (2)(c)(i).

(b) Compliance by the computer technician and the designated employee with the reporting process under Subsection (7)(a) is compliance with the reporting requirement of Subsection (2)(c) and establishes immunity under Subsection (5)(a).

(8) This section does not apply to an [~~Internet~~] 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 the provider reports the image in compliance with 18 U.S.C. 2258A or a successor federal statute that requires reporting by a provider of an image of child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material.

Section 15. Section **76-5b-207** is enacted to read:

76-5b-207 . Possession of apparent child sexual abuse material.

(1) Terms defined in Sections 76-1-101.5 and 76-5b-103 apply to this section.

(2) An actor commits possession of apparent child sexual abuse material if the actor intentionally or knowingly possesses, views, accesses with intent view, or maintains access with intent to view apparent child sexual abuse material.

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

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

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

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

(5) For a charge of violating this section, it is an affirmative defense that:

(a) the defendant:

(i) is not more than two years older than the minor depicted in the apparent child sexual abuse material; and

(ii) upon request of a law enforcement officer removes from an electronic device or destroys the apparent child sexual abuse material and all copies of the apparent child sexual abuse material in the defendant's possession; and

(b) the apparent child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses.

(6) In proving a violation of this section, proof that the minor depicted in the apparent child sexual abuse material is a real minor that exists is not required.

(7) 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 apparent child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of apparent 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 apparent 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 apparent 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 apparent 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 apparent child sexual abuse material within the scope of the employee's employment;

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

(h) an attorney who is required to view apparent 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 16. Section **76-5b-208** is enacted to read:

76-5b-208 . Distribution or production of apparent child sexual abuse material.

(1) Terms defined in Sections 76-1-101.5 and 76-5b-103 apply to this section.

(2) An actor commits distribution of apparent child sexual abuse material if the actor intentionally:

(a) distributes apparent child sexual abuse material; or

(b) produces apparent child sexual abuse material.

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a first degree felony.

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

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

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

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

(5) In proving a violation of this section, proof that the minor depicted in the apparent child sexual abuse material is a real minor that exists 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 apparent child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of apparent 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 apparent 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 apparent 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 apparent 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 apparent child sexual abuse material within the scope of the employee's employment;

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

(h) an attorney who is required to view apparent 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 17. Section **76-5b-209** is enacted to read:

76-5b-209 . Unlawful activity regarding obscene material depicting the sexual abuse of a minor.

(1) Terms defined in Sections 76-1-101.5 and 76-5b-103 apply to this section.

(2) Under circumstances not amounting to an offense under Section 76-5b-201 or Ĥ→ [~~76-5b-201.2~~] 76-5b-201.1 ←Ĥ , an actor commits unlawful activity regarding obscene material depicting the sexual abuse of a minor if the actor intentionally or knowingly:

(a) produces obscene child sexual abuse material;

(b) distributes obscene child sexual abuse material;

(c) receives obscene child sexual abuse material; or

(d) possesses obscene child sexual abuse material with the intent to distribute the obscene child sexual abuse material.

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

(4) For a charge of violating this section, it is an affirmative defense that:

(a) the defendant:

(i) did not solicit the obscene child sexual abuse material from any minor depicted in the child sexual abuse material;

(ii) is not more than two years older than any minor depicted in the obscene child sexual abuse material; and

(iii) upon request of a law enforcement officer or any minor depicted in the obscene child sexual abuse material, removes from an electronic device or destroys the obscene child sexual abuse material and all copies of the obscene child sexual abuse material in the defendant's possession; and

(b) the obscene child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses.

(5) 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 obscene child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of obscene 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 obscene 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 obscene 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 obscene 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 obscene child sexual abuse material within the scope of the employee's employment;

(g) an employee, independent contractor, or designated interviewer of a Children's

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

(h) an attorney who is required to view obscene 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 18. Section **76-5b-301** is amended to read:

76-5b-301 . Determination whether material violates chapter.

(1) In determining whether material is in violation of this chapter, the material need not be considered as a whole, but may be examined by the trier of fact in part only.

(2) [~~It~~] Unless specifically provided in an offense, it is not an element [~~of the offense of sexual exploitation of a minor~~] for an offense described in this chapter that the applicable material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

[~~(3) It is not an element of the offense of sexual exploitation of a vulnerable adult that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.~~]

Section 19. Section **76-5d-202** is amended to read:

76-5d-202 . Engaging in prostitution.

(1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.

(2) An actor commits the offense of engaging in prostitution if the actor:

(a) is 18 years old or older; and

(b) engages in sexual activity with another individual in exchange for receiving a fee, or the functional equivalent of a fee.

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(b) A violation of Subsection (2) is a class A misdemeanor if the actor has previously been convicted of:

(i) a violation of Subsection (2);

(ii) a local ordinance adopted in accordance with Section 76-5d-102 addressing the same or similar type of violation to the violation described in Subsection (2); or

(iii) a criminal violation in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to the violation described in Subsection (2).

(4) A prosecutor may not prosecute an actor for a violation of Subsection (2) if the actor engages in a violation of Subsection (2) at or near the time the actor witnesses or is a victim of any of the following offenses, or an attempt to commit any of the following offenses, and the actor reports the offense or attempt to law enforcement in good faith:

(a) assault as described in Section 76-5-102;

(b) aggravated assault as described in Section 76-5-103;

(c) mayhem as described in Section 76-5-105;

(d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault as described in Chapter 5, Part 2, Criminal Homicide;

(e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child as described in Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(f) rape as described in Section 76-5-402;

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

(h) object rape as described in Section 76-5-402.2;

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

(j) forcible sodomy as described in Section 76-5-403;

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

(l) forcible sexual abuse as described in Section 76-5-404;

(m) sexual abuse of a child as described in Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;

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

(o) sexual exploitation of a minor as described in Section 76-5b-201;

(p) aggravated sexual exploitation of a minor as described in Section 76-5b-201.1;

(q) sexual exploitation of a vulnerable adult as described in Section 76-5b-202;

(r) possession of apparent child sexual abuse material as described in Section 76-5b-207;

(s) distribution of apparent child sexual abuse material as described in Section 76-5b-208;

(t) unlawful activity regarding obscene material depicting the sexual abuse of a minor as described in Section 76-5b-209;

[~~(r)~~] (u) burglary of a dwelling as described in Subsection 76-6-202(3)(b);

[~~(s)~~] (v) aggravated burglary as described in Section 76-6-203;

[~~(t)~~] (w) robbery as described in Section 76-6-301;

[~~(u)~~] (x) aggravated robbery as described in Section 76-6-302; or

[~~(v)~~] (y) theft by extortion as described in Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i) or (ii).

(5) A violation under this section that is a class A misdemeanor may be prosecuted by an attorney of a city or a town as well as by prosecutors authorized in the code to prosecute a violation under this section.

Section 20. Section **76-17-401** is amended to read:

76-17-401 . Definitions.

As used in this part:

(1)(a) "Enterprise" means an individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and a union or group of individuals associated in fact although not a legal entity.

(b) "Enterprise" includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct that constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes an individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct that would constitute an offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act that would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by an authority or is classified as a misdemeanor or a felony:

(a) an act prohibited by the criminal provisions under Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) an act prohibited by the criminal provisions under Title 19, Environmental Quality

Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain under Title 23A, Wildlife Resources Act, or Section 23A-5-311;

(d) false claims for medical benefits, kickbacks, or other acts prohibited under Title 26B, Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;

(e) an act prohibited by the criminal provisions under Title 32B, Chapter 4, Criminal Offenses and Procedure Act;

(f) unlawful marking of pistol or revolver under Section 53-5a-105;

(g) alteration of number or mark on pistol or revolver under Section 53-5a-106;

(h) an act prohibited by the criminal provisions under Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(i) an act prohibited by the criminal provisions under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(j) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform Securities Act;

(k) an act prohibited by the criminal provisions under Title 63G, Chapter 6a, Utah Procurement Code;

(l) assault under Section 76-5-102;

(m) aggravated assault under Section 76-5-103;

(n) a threat of terrorism under Section 76-5-107.3;

(o) a criminal homicide offense under Section 76-5-201;

(p) kidnapping under Section 76-5-301;

(q) aggravated kidnapping under Section 76-5-302;

(r) human trafficking for labor under Section 76-5-308;

(s) human trafficking for sexual exploitation under Section 76-5-308.1;

(t) human smuggling under Section 76-5-308.3;

(u) human trafficking of a child under Section76-5-308.5;

(v) benefiting from trafficking and human smuggling under Section 76-5-309;

(w) aggravated human trafficking under Section 76-5-310;

(x) sexual exploitation of a minor under Section 76-5b-201;

(y) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(z) sexual extortion under Section 76-5b-204;

(aa) possession of apparent child sexual abuse material under Section 76-5b-207;

(bb) distribution of apparent child sexual abuse material under Section 76-5b-208;

(cc) unlawful activity regarding obscene material depicting the sexual abuse of a minor under Section 76-5b-209;

[~~(aa)~~] (dd) arson under Section 76-6-102;

[~~(bb)~~] (ee) aggravated arson under Section76-6-103;

[~~(cc)~~] (ff) causing a catastrophe under Section 76-6-105;

[~~(dd)~~] (gg) burglary under Section 76-6-202;

[~~(ee)~~] (hh) aggravated burglary under Section 76-6-203;

[~~(ff)~~] (ii) burglary of a vehicle under Section 76-6-204;

[~~(gg)~~] (jj) manufacture or possession of an instrument for burglary or theft under Section 76-6-205;

[~~(hh)~~] (kk) robbery under Section 76-6-301;

[~~(ii)~~] (ll) aggravated robbery under Section 76-6-302;

[~~(jj)~~] (mm) theft under Section 76-6-404;

[~~(kk)~~] (nn) theft by deception under Section 76-6-405;

[~~(ll)~~] (oo) theft by extortion under Section 76-6-406;

[~~(mm)~~] (pp) receiving stolen property under Section 76-6-408;

[~~(nn)~~] (qq) theft of services under Section 76-6-409;

[~~(oo)~~] (rr) forgery under Section 76-6-501;

[~~(pp)~~] (ss) unlawful use of financial transaction card under Section 76-6-506.2;

[~~(qq)~~] (tt) unlawful acquisition, possession, or transfer of financial transaction card under Section 76-6-506.3;

[~~(rr)~~] (uu) financial transaction card offenses under Section 76-6-506.6;

[~~(ss)~~] (vv) deceptive business practices under Section 76-6-507;

[~~(tt)~~] (ww) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods under Section 76-6-508;

[~~(uu)~~] (xx) bribery of a labor official under Section 76-6-509;

[~~(vv)~~] (yy) defrauding creditors under Section 76-6-511;

[~~(ww)~~] (zz) acceptance of deposit by insolvent financial institution under Section 76-6-512;

[~~(xx)~~] (aaa) unlawful dealing with property by fiduciary under Section 76-6-513;

[~~(yy)~~] (bbb) unlawful influence of a contest under Section 76-6-514;

[~~(zz)~~] (ccc) making a false credit report under Section 76-6-517;

[~~(aaa)~~] (ddd) criminal simulation under Section 76-6-518;

[~~(bbb)~~] (eee) criminal usury under Section 76-6-520;

[~~(ccc)~~] (fff) insurance fraud under Section 76-6-521;

[~~(ddd)~~] (ggg) retail theft under Section 76-6-602;

[~~(eee)~~] (hhh) computer crimes under Section 76-6-703;

[~~(fff)~~] (iii) identity fraud under Section 76-6-1102;

[~~(ggg)~~] (jjj) mortgage fraud under Section 76-6-1203;

[~~(hhh)~~] (kkk) sale of a child under Section 76-7-203;

[~~(iii)~~] (lll) bribery or offering a bribe under Section 76-8-103;

[~~(jjj)~~] (mmm) threat to influence official or political action under Section 76-8-104;

[~~(kkk)~~] (nnn) receiving bribe or bribery by public servant under Section 76-8-105;

[~~(lll)~~] (ooo) receiving bribe for endorsement of person as a public servant under Section 76-8-106;

[~~(mmm)~~] (ppp) bribery for endorsement of person as public servant under Section 76-8-106.1;

[~~(nnn)~~] (qqq) official misconduct based on unauthorized act or failure of duty under Section 76-8-201;

[~~(ooo)~~] (rrr) official misconduct concerning inside information under Section 76-8-202;

[~~(ppp)~~] (sss) obstruction of justice in a criminal investigation or proceeding under Section 76-8-306;

[~~(qqq)~~] (ttt) acceptance of bribe or bribery to prevent criminal prosecution under Section 76-8-308;

[~~(rrr)~~] (uuu) harboring or concealing offender who has escaped from official custody under Section 76-8-309.2;

[~~(sss)~~] (vvv) making a false or inconsistent material statement under Section 76-8-502;

[~~(ttt)~~] (www) making a false or inconsistent statement under Section 76-8-503;

[~~(uuu)~~] (xxx) making a written false statement under Section 76-8-504;

[~~(vvv)~~] (yyy) tampering with a witness under Section 76-8-508;

[~~(www)~~] (zzz) retaliation against a witness, victim, or informant under Section 76-8-508.3;

[~~(xxx)~~] (aaaa) receiving or soliciting a bribe as a witness under Section 76-8-508.7;

[~~(yyy)~~] (bbbb) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;

[~~(zzz)~~] (cccc) tampering with evidence under Section 76-8-510.5;

[~~(aaaa)~~] (dddd) falsification or alteration of a government record under Section 76-8-511, if the record is a record described in Title 20A, Election Code, or Title 36, Chapter 11,
Lobbyist Disclosure and Regulation Act;

[~~(bbbb)~~] (eeee) public assistance fraud by an applicant for public assistance under Section 76-8-1203.1;

[~~(cccc)~~] (ffff) public assistance fraud by a recipient of public assistance under Section 76-8-1203.3;

[~~(dddd)~~] (gggg) public assistance fraud by a provider under Section 76-8-1203.5;

[~~(eeee)~~] (hhhh) fraudulently misappropriating public assistance funds under Section 76-8-1203.7;

[~~(ffff)~~] (iiii) false statement to obtain or increase unemployment compensation under Section 76-8-1301;

[~~(gggg)~~] (jjjj) false statement to prevent or reduce unemployment compensation or liability under Section 76-8-1302;

[~~(hhhh)~~] (kkkk) unlawful failure to comply with Employment Security Act requirements under Section 76-8-1303;

[~~(iiii)~~] (llll) unlawful use or disclosure of employment information under Section 76-8-1304;

[~~(jjjj)~~] (mmmm) intentionally or knowingly causing one animal to fight with another under Subsection 76-13-202(2)(d) or (3), or Section 76-13-205 or 76-13-206 concerning dog fighting;

[~~(kkkk)~~] (nnnn) soliciting, recruiting, enticing, or intimidating a minor to join a criminal street gang under Section 76-9-803;

[~~(llll)~~] (oooo) aggravated soliciting, recruiting, enticing, or intimidating a minor to join a criminal street gang under Section 76-9-803.1;

[~~(mmmm)~~] (pppp) intimidating a minor to remain in a criminal street gang under Section 76-9-803.2;

[~~(nnnn)~~] (qqqq) aggravated intimidating a minor to remain in a criminal street gang under Section 76-9-803.3;

[~~(oooo)~~] (rrrr) unlawful conduct involving an explosive, chemical, or incendiary device under Section 76-15-210;

[~~(pppp)~~] (ssss) unlawful conduct involving an explosive, chemical, or incendiary part under Section 76-15-211;

[~~(qqqq)~~] (tttt) unlawful delivery or mailing of an explosive, chemical, or incendiary device under Section 76-15-209;

[~~(rrrr)~~] (uuuu) forging or counterfeiting trademarks, trade name, or trade device under Section 76-16-302;

[~~(ssss)~~] (vvvv) selling goods under counterfeited trademark, trade name, or trade devices under Section 76-16-303;

[~~(tttt)~~] (wwww) sales in containers bearing registered trademark of substituted articles under Section 76-16-304;

[~~(uuuu)~~] (xxxx) selling or dealing with article bearing registered trademark or service mark with intent to defraud under Section 76-16-306;

[~~(vvvv)~~] (yyyy) participating in gambling under Section 76-9-1402;

[~~(wwww)~~] (zzzz) permitting gambling under Section 76-9-1403;

[~~(xxxx)~~] (aaaaa) online gambling prohibition under Section 76-9-1404;

[~~(yyyy)~~] (bbbbb) gambling promotion under Section 76-9-1405;

[~~(zzzz)~~] (ccccc) gambling fraud under Section 76-9-1406;

[~~(aaaaa)~~] (ddddd) possessing a gambling device or record under Section 76-9-1407;

[~~(bbbbb)~~] (eeeee) obtaining a benefit from a confidence game under Section 76-9-1410;

[~~(ccccc)~~] (fffff) distributing pornographic material under Section 76-5c-202;

[~~(ddddd)~~] (ggggg) aiding or abetting a minor in distributing pornographic material under Section 76-5c-203;

[~~(eeeee)~~] (hhhhh) inducing acceptance of pornographic material under Section 76-5c-204;

[~~(fffff)~~] (iiiii) distributing material harmful to minors under Section 76-5c-205;

[~~(ggggg)~~] (jjjjj) aiding or abetting a minor in distributing material harmful to minors under Section 76-5c-206;

[~~(hhhhh)~~] (kkkkk) distribution of a pornographic file for exhibition under Section 76-5c-305;

[~~(iiiii)~~] (lllll) indecent public display in the presence of a minor under Section 76-5c-207;

[~~(jjjjj)~~] (mmmmm) engaging in prostitution under Section 76-5d-202;

[~~(kkkkk)~~] (nnnnn) aiding prostitution under Section 76-5d-206;

[~~(lllll)~~] (ooooo) exploiting prostitution under Section 76-5d-207;

[~~(mmmmm)~~] (ppppp) aggravated exploitation of prostitution under Section 76-5d-208;

[~~(nnnnn)~~] (qqqqq) communications fraud under Section 76-6-525;

[~~(ooooo)~~] (rrrrr) possession of a dangerous weapon with criminal intent under Section 76-11-208;

[~~(ppppp)~~] (sssss) an act prohibited by the criminal provisions of Chapter 9, Part 16, Money Laundering and Currency Transaction Reporting;

[~~(qqqqq)~~] (ttttt) vehicle compartment for contraband under Section 76-9-1902 or 76-9-1903;

[~~(rrrrr)~~] (uuuuu) an act prohibited by the criminal provisions of the laws governing taxation in this state; or

[~~(sssss)~~] (vvvvv) an act illegal under the laws of the United States and enumerated in 18 U.S.C. Secs. 1961(1)(B), (C), and (D).

Section 21. Section **77-4-201** is amended to read:

77-4-201 . Reproduction of child sexual abuse material -- Prohibition.

(1) As used in this section:

(a) "Apparent child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(a)~~] (b) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(b)~~] (c) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.

(d) "Obscene child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(c)~~] (e) "Victim" means the same as that term is defined in Section 77-37-2.

(2) In a proceeding involving child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, the child sexual abuse material[-] , apparent child sexual abuse material, or obscene child sexual abuse material shall remain in the care, custody, and control of:

(a) a law enforcement agency; or

(b) a court.

(3)(a) In a proceeding involving child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, a court shall deny a request by a defendant to copy, photograph, duplicate, or otherwise reproduce the child sexual abuse material[-] , apparent child sexual abuse material, or obscene child sexual abuse material if the court or a law enforcement agency provides the defendant's attorney or an individual the defendant may seek to qualify as an expert an adequate opportunity to view and examine the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material.

(b) An individual described in Subsection (3)(a) may view or examine the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material only at the law enforcement agency or court that has custody and control of the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material.

(c) A defendant who is self represented:

(i) may not inspect the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material; and

(ii) may request that the court appoint counsel for the purpose of inspecting the child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material on behalf of the defendant.

(4)(a) In a proceeding involving child sexual abuse material, a victim, the victim's attorney, or an individual the victim may, upon a showing of good cause, seek to qualify as an expert, may view and examine the child sexual abuse material that depicts the victim upon a showing of good cause.

(b) An individual described in Subsection (4)(a) may not copy, photograph, duplicate, or otherwise reproduce the child sexual abuse material.

(c) An individual described in Subsection (4)(a) may view or examine the child sexual abuse material only at the law enforcement agency or court that has custody and control of the child sexual abuse material.

(d) The court or law enforcement agency may redact the child sexual abuse material described in this Subsection (4) to protect the privacy of a third party.

Section 22. Section **77-11a-101** is amended to read:

77-11a-101 . Definitions.

As used in this chapter:

(1)(a) "Agency" means an agency of this state or a political subdivision of this state.

(b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

(2) "Apparent child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

(3) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(2)~~] (4) "Claimant" means:

(a) an owner of property;

(b) an interest holder; or

(c) an individual or entity who asserts a claim to any property for which an agency seeks to forfeit.

[~~(3)~~] (5)(a) "Computer" means, except as provided in Subsection [~~(3)(c)~~] (5)(c), an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions.

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

(c) "Computer" does not mean a computer server of an [~~Internet~~] internet or electronic service provider, or the service provider's employee, if used to comply with the requirements under 18 U.S.C. Sec. 2258A.

[~~(4)~~] (6)(a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) "Contraband" includes:

(i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(ii) a computer that:

(A) contains or houses child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child sexual abuse material, apparent child sexual abuse material, or obscene child sexual abuse material; or

(B) contains the personal identifying information of another individual, as defined in Section 76-6-1101, whether that individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

[~~(5)~~] (7) "Controlled substance" means the same as that term is defined in Section 58-37-2.

[~~(6)~~] (8) "Court" means a municipal, county, or state court.

[~~(7)~~] (9) "Division of Law Enforcement" means the division within the Department of Natural Resources created under Title 79, Chapter 2, Part 7, Division of Law Enforcement.

[~~(8)~~] (10) "Evidence" means the same as that term is defined in Section 77-11c-101.

[~~(9)~~] (11) "Forfeit" means to divest a claimant of an ownership interest in property seized by

a peace officer or agency.

[~~(10)~~] (12) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time of the commission of an offense subjecting the property to seizure, and:

(i) did not have actual knowledge of the offense subjecting the property to seizure; or

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the use of the property in the commission of the offense; or

(b) acquired an ownership interest in the property and had no knowledge that the commission of the offense subjecting the property to seizure had occurred or that the property had been seized, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was an individual, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

[~~(11)~~] (13)(a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person:

(i) who holds property for the benefit of or as an agent or nominee for another person; or

(ii) who is not in substantial compliance with any statute requiring an interest in property to be:

(A) recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value; or

(B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for value.

[~~(12)~~] (14) "Law enforcement agency" means:

(a) a municipal, county, state institution of higher education, or state police force or department;

(b) a sheriff's office; or

(c) a municipal, county, or state prosecuting authority.

[~~(13)~~] (15) "Legislative body" means:

(a)(i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

[~~(14)~~] (16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of individuals who are employed by or acting under the authority of different governmental entities, including federal, state, county, or municipal governments, or any combination of federal, state, county, or municipal agencies.

(17) "Obscene child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

[~~(15)~~] (18) "Owner" means an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in property.

[~~(16)~~] (19) "Pawn or secondhand business" means the same as that term is defined in Section 13-32a-102.

[~~(17)~~] (20) "Peace officer" means an employee:

(a) of an agency;

(b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and

(c) who is authorized by the agency to seize property.

[~~(18)~~] (21)(a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection [~~(18)(a)(i).~~] (21)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection [~~(18)(a)(i)~~] (21)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property to seizure.

[~~(19)~~] (22)(a) "Property" means all property, whether real or personal, tangible or intangible.

(b) "Property" does not include contraband.

[~~(20)~~] (23) "Prosecuting attorney" means:

(a) the attorney general and an assistant attorney general;

(b) a district attorney or deputy district attorney;

(c) a county attorney or assistant county attorney; and

(d) an attorney authorized to commence an action on behalf of the state.

[~~(21)~~] (24) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

[~~(22)~~] (25) "Real property" means land, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

[~~(23)~~] (26)(a) "Seized property" means property seized by a peace officer or agency in accordance with Section 77-11a-201.

(b) "Seized property" includes property that the agency seeks to forfeit under Chapter 11b, Forfeiture of Seized Property.

Section 23. Section **80-1-102** is amended to read:

80-1-102 . Juvenile Code definitions.

Except as provided in Section 80-6-1103, as used in this title:

(1)(a) "Abuse" means:

(i)(A) nonaccidental harm of a child;

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

(E) human trafficking of a child in violation of Section 76-5-308.5; or

(ii) that a child's parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or

recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3)(a) "Adjudication" means, except as provided in Subsection (3)(b):

(i) for a delinquency petition or criminal information under Chapter 6, Juvenile Justice:

(A) a finding by the juvenile court that the facts alleged in a delinquency petition or criminal information alleging that a minor committed an offense have been proved;

(B) an admission by a minor in the juvenile court as described in Section 80-6-306; or

(C) a plea of no contest by minor in the juvenile court; or

(ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in the petition have been proved.

(b) "Adjudication" does not include:

(i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's admission; or

(ii) a finding of not competent to proceed in accordance with Section 80-6-402.

(4)(a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(6) "Board" means the Board of Juvenile Court Judges.

(7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18

years old.

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 80-3-307.

(9) "Child placing" means the same as that term is defined in Section 26B-2-101.

(10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.

(11) "Child protection team" means a team consisting of:

(a) the child welfare caseworker assigned to the case;

(b) if applicable, the child welfare caseworker who made the decision to remove the child;

(c) a representative of the school or school district where the child attends school;

(d) if applicable, the law enforcement officer who removed the child from the home;

(e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;

(g) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and

(h) any other individuals determined appropriate and necessary by the team coordinator and chair.

(12)(a) "Chronic abuse" means repeated or patterned abuse.

(b) "Chronic abuse" does not mean an isolated incident of abuse.

(13)(a) "Chronic neglect" means repeated or patterned neglect.

(b) "Chronic neglect" does not mean an isolated incident of neglect.

(14) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(15) "Commit" or "committed" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years old, to transfer custody.

(16) "Community-based program" means a nonsecure residential or nonresidential program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least restrictive setting, consistent with public safety, and operated by or under contract with the Division of Juvenile Justice and Youth Services.

(17) "Community placement" means placement of a minor in a community-based program described in Section 80-5-402.

(18) "Correctional facility" means:

(a) a county jail; or

(b) a secure correctional facility as defined in Section 64-13-1.

(19) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(21) "Dependent child" or "dependency" means a child who is without proper care through no fault of the child's parent, guardian, or custodian.

(22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a parent or a previous custodian to another person, agency, or institution.

(23) "Detention" means home detention or secure detention.

(24) "Detention facility" means a facility, established by the Division of Juvenile Justice and Youth Services in accordance with Section 80-5-501, for minors held in detention.

(25) "Detention risk assessment tool" means an evidence-based tool established under Section 80-5-203 that:

(a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and

(b) is designed to assist in making a determination of whether a minor shall be held in detention.

(26) "Developmental immaturity" means incomplete development in one or more domains that manifests as a functional limitation in the minor's present ability to:

(a) consult with counsel with a reasonable degree of rational understanding; and

(b) have a rational as well as factual understanding of the proceedings.

(27) "Disposition" means an order by a juvenile court, after the adjudication of a minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

(28) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(29) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104; and

(b) designed to prevent substance use or the onset of a mental health disorder.

(30) "Emancipated" means the same as that term is defined in Section 80-7-102.

(31) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

(33) "Formal probation" means a minor is:

(a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and

(b) subject to return to the juvenile court in accordance with Section 80-6-607.

(34) "Gender identity" means the same as that term is defined in Section 34A-5-102.

(35) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

(36) "Guardian" means a person appointed by a court to make decisions regarding a minor, including the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another individual, agency, or institution.

(37) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(38) "Harm" means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(39) "Home detention" means placement of a minor:

(a) if [~~prior to~~] before a disposition, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice and Youth Services or the juvenile court; or

(b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of

Juvenile Justice and Youth Services or the juvenile court.

(40)(a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) "Incest" includes:

(i) blood relationships of the whole or half blood, regardless of whether the relationship is legally recognized;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(41) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(42) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(43) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.

(44) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.

(45) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

(46)(a) "Intake probation" means a minor is:

(i) monitored by a juvenile probation officer; and

(ii) subject to return to the juvenile court in accordance with Section 80-6-607.

(b) "Intake probation" does not include formal probation.

(47) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(48) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(49) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(50) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice and Youth Services, or under contract with the Division of Juvenile Justice and Youth Services, that is responsible for minors taken into temporary custody under Section 80-6-201.

(51) "Legal custody" means a relationship embodying:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(52) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.

(53) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.

(54) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(55) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

(a) a child; or

(b) an individual:

(i)(A) who is at least 18 years old and younger than 21 years old; and

(B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense;

(ii)(A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(b); or

(iii)(A) who is at least 18 years old and younger than 21 years old; and

(B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(c).

(56) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-101.

(57) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-401.1.

(58)(a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;

(v) abandonment of a child through an unregulated child custody transfer under Section 81-14-203; or

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 80-3-304; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-5-115(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.

(59) "Neglected child" means a child who has been subjected to neglect.

(60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the consent in writing of:

(a) the assigned juvenile probation officer; and

(b)(i) the minor; or

(ii) the minor and the minor's parent, guardian, or custodian.

(61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

(a) understand the nature of the proceedings against the minor or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against the minor with a reasonable degree of rational understanding.

(62)(a) "Parent" means, except as provided in Section 80-3-302, an individual with a parent-child relationship to a minor under Section 81-5-201.

(b) "Parent" includes the minor's noncustodial parent as defined in Section 81-1-101.

(63) "Parole" means a conditional release of a juvenile offender from residency in secure care to live outside of secure care under the supervision of the Division of Juvenile Justice and Youth Services, or another person designated by the Division of Juvenile Justice and Youth Services.

(64) "Physical abuse" means abuse that results in physical injury or damage to a child.

(65)(a) "Probation" means a legal status created by court order, following an adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(b) "Probation" includes intake probation or formal probation.

(66) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state.

(67) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from the home until the earlier of:

(a) the day on which the shelter hearing is held under Section 80-3-301; or

(b) the day on which the child is returned home.

(68) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:

(A) removal from the child's home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

(69) "Protective supervision" means a legal status created by court order, following an adjudication on the ground of abuse, neglect, or dependency, whereby:

(a) the minor is permitted to remain in the minor's home; and

(b) supervision and assistance to correct the abuse, neglect, or dependency is provided by an agency designated by the juvenile court.

(70)(a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

(iii) is likely to continue indefinitely; and

(iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

(71)(a) "Residual parental rights and duties" means the rights and duties remaining with a parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(72) "Runaway" means a child, other than an emancipated child, who willfully leaves the home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.

(73) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour supervision and confinement of the minor.

(74) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

(75) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services:

(a) before disposition of an offense that is alleged to have been committed by the minor; or

(b) under Section 80-6-704.

(76) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

(b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and

(c) is committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

(77) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(78) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(79)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection (79)(b):

(i) if committed by an individual who is 18 years old or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by an individual who is under 18 years old:

(A) causing serious injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or

(B) sexual behavior with or upon another child that indicates a significant risk to other children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint by an educator in accordance with Section 53G-8-301 or Section 76-2-401;

(ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another individual from physical injury; or

(iii) a health care decision made for a child by a child's parent or guardian, unless, subject to Subsection (79)(c), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(c) Subsection (79)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(80)(a) "Sexual abuse" means:

(i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(ii) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(A) there is an indication of force or coercion;

(B) the children are related, as described in Subsection (40), including siblings by

marriage while the marriage exists or by adoption; or

(C) the act or attempted act constitutes unlawful sexual activity as described in Section 76-5-401.3.

(iii) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:

(A) Title 76, Chapter 5, Part 4, Sexual Offenses;

(B) child bigamy, Section 76-7-101.5;

(C) incest, Section 76-7-102;

(D) voyeurism, Section 76-12-306;

(E) recorded or photographed voyeurism, Section 76-12-307; or

(F) distribution of images obtained through voyeurism, Section 76-12-308; or

(iv) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(b) "Sexual abuse" does not include engaging in any conduct with a child that would constitute an offense described in:

(i) Section 76-5-401, unlawful sexual activity with a minor, if the alleged perpetrator of the offense is a minor; or

(ii) Section 76-5-417, enticing a minor.

(81) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any individual; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, [~~or~~]Section 76-5b-201.1, aggravated sexual exploitation of a minor, Section 76-5b-207, possession of apparent child sexual abuse material, Section 76-5b-208, distribution of apparent child sexual abuse material, or

Section 76-5b-208, unlawful activity regarding obscene material depicting the sexual abuse of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

(82) "Shelter" means the temporary care of a child in a physically unrestricted facility pending a disposition or transfer to another jurisdiction.

(83) "Shelter facility" means a nonsecure facility that provides shelter for a minor.

(84) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the Division of Child and Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that focus on:

(a) age;

(b) social factors;

(c) emotional factors;

(d) sexual factors;

(e) intellectual factors;

(f) family risk factors; and

(g) other related considerations.

(85) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(86) "Status offense" means an offense that would not be an offense but for the age of the offender.

(87) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of alcohol or other drugs or substances.

(88) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence, and separate consideration of each allegation made or identified in the case, that abuse, neglect, or dependency occurred.

(89) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or

(c) the licensing and supervision of a substitute care facility.

(90) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of each allegation made or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

(91) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(92) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in the division's or agency's custody; or

(b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(93) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(94) "Torture" means:

(a) the infliction of a serious injury upon a child in an exceptionally cruel or exceptionally depraved manner that causes the child to experience extreme physical or psychological pain or anguish; or

(b) the infliction of a serious injury, or more than one serious injury, upon a child as part of a course of conduct or over a prolonged period of time.

(95) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the child, the child's family, or others; or

(c) results in the situations described in Subsections (95)(a) and (b).

(96) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(97) "Unsupported" means a finding by the Division of Child and Family Services at the completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(98) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(99) "Without merit" means a finding at the completion of an investigation by the Division

of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

(100) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

Section 24. Section **81-9-402** is amended to read:

81-9-402 . Custody and visitation for individuals other than a parent -- Venue.

(1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.

(b) There is a rebuttable presumption that a parent's decisions are in the minor child's best interests.

(2) The presumption in Subsection (1) is rebutted and a court may grant custodial or visitation rights to an individual other than a parent if the court finds, by clear and convincing evidence, that the individual seeking custodial or visitation rights has established that:

(a) the individual has intentionally assumed the role and obligations of a parent;

(b) the individual and the minor child have formed a substantial emotional bond and created a parent-child type relationship;

(c) the individual substantially contributed emotionally or financially to the minor child's well being;

(d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;

(e) the continuation of the relationship between the individual and the minor child is in the minor child's best interest;

(f) the loss or cessation of the relationship between the individual and the minor child would substantially harm the minor child; and

(g) the parent:

(i) is absent as of the time of filing of the petition;

(ii) does not have the ability to exercise primary physical custody of the minor child as of the time of filing of the petition; or

(iii) has abused or neglected the minor child, or that another court has found that the

parent has abused or neglected the minor child.

(3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350, an individual shall file a verified petition, or a petition supported by an affidavit, for custodial or visitation rights to the minor child in the juvenile court if a matter is pending in the juvenile court, or in the district court in the county where the minor child:

(a) currently resides; or

(b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.

(4) An individual may file a petition under this section in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or visitation with a minor child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information described in Section 81-11-209.

(6) An individual may not file a petition under this section against a parent who is actively serving outside the state in any branch of the military.

(7) Notice of a petition filed [~~pursuant to~~] in accordance with this chapter shall be served in accordance with the Utah Rules of Civil Procedure on all of the following:

(a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;

(b) any individual who has court-ordered custody or visitation rights;

(c) the minor child's guardian;

(d) the guardian ad litem, if one has been appointed;

(e) an individual or agency that has physical custody of the minor child or that claims to have custody or visitation rights; and

(f) any other individual or agency that has previously appeared in any action regarding custody of or visitation with the minor child.

(8) The court may order a custody evaluation to be conducted in any proceeding brought under this section.

(9) The court may enter temporary orders in a proceeding brought under this section pending the entry of final orders.

(10) Except as provided in Subsection (11), a court may not grant custody of a minor child under this section to an individual:

(a) who is not the parent of the minor child; and

(b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no

contest to a felony or attempted felony involving conduct that constitutes any of the following:

(i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, and 76-5-114;

(ii) child abuse homicide, as described in Section 76-5-208;

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

(iv) human trafficking of a child, as described in Section 76-5-308.5;

(v) sexual abuse of a minor, as described in Section 76-5-401.1;

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

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

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

(ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;

(x) sexual exploitation of a minor, as described in Section 76-5b-201;

(xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;[~~or~~]

(xii) possession of apparent child sexual abuse material, as described in Section 76-5b-207;

(xiii) distribution of apparent child sexual abuse material, as described in Section 76-5b-208;

(xiv) unlawful activity regarding obscene material depicting the sexual abuse of a minor, as described in Section 76-5b-209; or

[~~(xii)~~] (xv) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) An individual described in Subsection (10) may only be considered for custody of a minor child if the following criteria are met by clear and convincing evidence:

(i) the individual is a relative, as defined in Section 80-3-102, of the minor child;

(ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(iii) during the 10 years before the day on which the individual files a petition with

the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;

(iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:

(A) the minor child's age;

(B) the minor child's gender;

(C) the minor child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a minor child who is 12 years old or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the individual can provide evidence of the following:

(A) the relationship with the minor child is of long duration;

(B) that an emotional bond exists with the minor child; and

(C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the minor child are met;

(vii)(A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the minor child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the individual with the disqualifying offense and the minor child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the minor child over another responsible relative or equally situated individual who does not have a

disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

Section 25. Section **81-13-203** is amended to read:

81-13-203 . Who may adopt -- Adoption of a minor child.

(1) An adult may adopt a minor child in accordance with this section and this chapter.

(2) Except as otherwise provided in this section and subject to the placement requirements described in Section 81-13-403, a minor child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) an adult who is not married.

(3) If an adult is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state, the adult may not adopt a minor child unless the individual is a relative of the minor child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

(4) A married adult who is lawfully separated from the married adult's spouse may not adopt a minor child without the consent of the married adult's spouse if the spouse is capable of giving consent.

(5) An adult may not adopt a minor child unless:

(a) the adult is at least 10 years older than the minor child; or

(b) at least one adult of a married couple is at least 10 years older than the minor child if a married couple is adopting the minor child.

(6) Except as provided in Subsection (7), an adult may not adopt a minor child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes:

(a) child abuse, as described in Section 76-5-109;

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

(c) child abandonment, as described in Section 76-5-109.3;

(d) child torture, as described in Section 76-5-109.4;

(e) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

(f) child abuse homicide, as described in Section 76-5-208;

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

(h) human trafficking of a child, as described in Section 76-5-308.5;

(i) sexual abuse of a minor, as described in Section 76-5-401.1;

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

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

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

(m) sexual abuse of a child, as described in Section 76-5-404.1;

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

(o) sexual exploitation of a minor, as described in Section 76-5b-201;

(p) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;[~~or~~]

(q) possession of apparent child sexual abuse material, as described in Section 76-5b-207;

(r) distribution of apparent child sexual abuse material, as described in Section 76-5b-208;

(s) unlawful activity regarding obscene material depicting the sexual abuse of a minor, as described in Section 76-5b-209; or

[~~(q)~~] (t) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (6).

(7)(a) As used in this Subsection (7), "disqualifying offense" means an offense listed in Subsection (6) that prevents a court from considering an adult for adoption of a minor child except as provided in this Subsection (7).

(b) An adult described in Subsection (6) may only be considered for adoption of a minor child if the following criteria are met by clear and convincing evidence:

(i) at least 10 years have elapsed from the day on which the adult is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(ii) during the 10 years before the day on which the adult files a petition with the court seeking adoption, the adult has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;

(iii) the adult can provide evidence of successful treatment or rehabilitation directly

related to the disqualifying offense;

(iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:

(A) the minor child's age;

(B) the minor child's gender;

(C) the minor child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a minor child who is 12 years old or older;

(F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the adult can provide evidence of all of the following:

(A) the relationship with the minor child is of long duration;

(B) that an emotional bond exists with the minor child; and

(C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the minor child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

(B) subject to Subsection (7)(d), a relative of the minor child, as defined in Section 80-3-102, and there is not another relative without a disqualifying offense filing an adoption petition.

(c) The adult with the disqualifying offense bears the burden of proof regarding why adoption with that adult is in the best interest of the minor child over another responsible relative or equally situated adult who does not have a disqualifying offense.

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition:

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

(ii) before the court may grant adoption to the adult who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(8) Subsections (6) and (7) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Section 26. **Effective Date.**

This bill takes effect on May 6, 2026.