

# HB0090S02 compared with HB0090S01

~~{Omitted text}~~ shows text that was in HB0090S01 but was omitted in HB0090S02  
inserted text shows text that was not in HB0090S01 but was inserted into HB0090S02

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**Sexual Offenses Amendments**  
2026 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Matthew H. Gwynn**  
Senate Sponsor: Calvin R. Musselman



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3 **LONG TITLE**

4 **General Description:**

5 This bill clarifies what constitutes a sexual offense throughout the Utah Code.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ clarifies what constitutes a sexual offense throughout the Utah Code; and
- 9 ▶ makes technical and conforming changes.

10 **Money Appropriated in this Bill:**

11 None

12 **Other Special Clauses:**

13 This bill provides a special effective date.

14 **Utah Code Sections Affected:**

15 AMENDS:

16 **16-6a-1414** , as last amended by Laws of Utah 2025, Chapter 173

17 **26B-2-120** , as last amended by Laws of Utah 2025, Chapter 63

18 **26B-4-501** , as last amended by Laws of Utah 2025, Chapters 173, 340 and 470

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- 19        **31A-21-501** , as last amended by Laws of Utah 2025, Chapters 173, 208  
20        **34-52-201** , as last amended by Laws of Utah 2025, Chapter 173  
21        **34A-5-114** , as last amended by Laws of Utah 2025, Chapters 173, 425  
22        **53-10-801** , as last amended by Laws of Utah 2025, Chapter 173  
23        **53G-8-201** , as last amended by Laws of Utah 2025, Chapter 173  
24        **57-22-5.1** , as last amended by Laws of Utah 2025, Chapter 173  
25        **59-27-105** , as last amended by Laws of Utah 2025, Chapters 173, 214  
26        **63M-7-502** , as last amended by Laws of Utah 2025, First Special Session, Chapter 9  
27        **76-2-306** , as last amended by Laws of Utah 2025, Chapter 173  
28        **76-3-203.1** , as last amended by Laws of Utah 2025, Chapters 173, 174, 178, and 208  
29        **76-3-203.12** , as last amended by Laws of Utah 2025, Chapter 173  
30        **76-3-209** , as last amended by Laws of Utah 2025, Chapter 173  
31        **76-4-102** , as last amended by Laws of Utah 2025, Chapters 173, 204  
32        **76-4-202** , as last amended by Laws of Utah 2025, Chapter 173  
33        **76-4-203** , as last amended by Laws of Utah 2025, Chapter 173  
34        **76-5-107** , as last amended by Laws of Utah 2025, Chapter 173  
35        **76-5-302** , as last amended by Laws of Utah 2025, Chapter 173  
36        **76-5b-201** , as last amended by Laws of Utah 2025, Chapters 173, 223 and 320  
37        **76-7-101** , as last amended by Laws of Utah 2025, Chapters 173, 284  
38        **77-2-9** , as last amended by Laws of Utah 2025, Chapter 173  
39        **77-7a-104** , as last amended by Laws of Utah 2025, Chapters 173, 249  
40        **77-22-2.5** , as last amended by Laws of Utah 2025, Chapter 173  
41        **77-36-1** , as last amended by Laws of Utah 2025, Chapters 173, 208 and 277  
42        **77-37-2** , as last amended by Laws of Utah 2025, Chapter 173  
43        **77-38-601** , as last amended by Laws of Utah 2025, Chapter 173  
44        **78B-7-502** , as last amended by Laws of Utah 2025, Chapter 173  
45        **78B-7-801** , as last amended by Laws of Utah 2025, Chapters 173, 284  
46        **80-1-102** , as last amended by Laws of Utah 2025, Chapter 426  
47        **80-6-304** , as last amended by Laws of Utah 2025, Chapters 173, 324  
48        **81-9-202** , as last amended by Laws of Utah 2025, Chapter 426  
49        **81-9-208** , as last amended by Laws of Utah 2025, Chapter 426

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

Section 1. Section **16-6a-1414** is amended to read:

**16-6a-1414. Grounds and procedure for judicial dissolution.**

- (1) The attorney general or the division director may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a nonprofit corporation if it is established that:
- (a) the nonprofit corporation obtained the nonprofit corporation's articles of incorporation through fraud; or
  - (b) the nonprofit corporation has continued to exceed or abuse the authority conferred upon the nonprofit corporation by law.
- (2) A member or director of a nonprofit corporation may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve the nonprofit corporation if it is established that:
- (a)
    - (i) the directors are deadlocked in the management of the corporate affairs;
    - (ii) the members, if any, are unable to break the deadlock; and
    - (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;
  - (b) the directors or those in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (c) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (d) the corporate assets are being misapplied or wasted.
- (3) A creditor may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a nonprofit corporation if it is established that:
- (a)
    - (i) the creditor's claim has been reduced to judgment;
    - (ii) the execution on the judgment has been returned unsatisfied; and
    - (iii) the nonprofit corporation is insolvent; or
  - (b)

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(i) the nonprofit corporation is insolvent; and

80 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

82 (4)

(a) As used in this Subsection (4):

83 (i)

[(A)] "Misconduct claim" means:

84 [(H)] (A) a claim for wrongful death, fraud, breach of public trust, or an intentional tort; or

86 [(H)] (B) a claim regarding criminal conduct by a director, member, or employee of the nonprofit corporation that is a felony offense or an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, Title 76, Chapter 5b, Sexual Exploitation Act, or Section 76-7-102.

90 [~~(B)~~] "~~Misconduct claim~~" ~~does not include a claim regarding criminal conduct by a director, member, or employee of the nonprofit corporation that is an offense described in Section 76-5-417 or 76-5-420.~~]

93 (ii) "Nonprofit corporation" does not include a bona fide church or religious organization.

95 (b) If a person brings a misconduct claim in an action against a nonprofit corporation, the person may also bring an action to dissolve the nonprofit corporation.

97 (c) If a person brings a dissolution action under Subsection (4)(b), the court may only dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable for the misconduct claim.

100 (d) Upon a motion by the plaintiff in a dissolution action described in Subsection (4)(b), the court may:

102 (i) issue an injunction preventing the nonprofit corporation from selling or disposing of any assets held by the nonprofit corporation; and

104 (ii) require the nonprofit corporation to deposit funds, or post a bond, with the court for the amount of damages pleaded in the complaint.

106 (e) The court may void a transaction that is made by the nonprofit corporation within 12 months before the day on which the action was filed with the court if the court finds that the transaction is voidable under Section 25-6-202.

109 (5) If an action is brought under this section, it is not necessary to make directors or members parties to the action to dissolve the nonprofit corporation unless relief is sought against the members individually.

112 (6) In an action under this section, the court may:

113 (a) issue injunctions;

114 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court directs; or

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116 (c) take other action required to preserve the nonprofit corporation's assets wherever located and carry  
on the business of the nonprofit corporation until a full hearing can be held.

119 (7) If a nonprofit corporation has been dissolved by voluntary or another action taken under this part:

121 (a) the nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs  
under judicial supervision in accordance with Section 16-6a-1405; and

124 (b) the attorney general, a director, a member, a creditor, or a plaintiff under Subsection (4) may  
bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial  
supervision in accordance with Section 16-6a-1405, upon establishing the grounds set forth in  
Subsections (1) through (4).

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

129 **26B-2-120. Background check -- Direct access to children or vulnerable adults.**

130 (1) As used in this section:

131 (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:

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

136 (B) a foster parent or prospective foster parent;

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

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

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

142 (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;

145 (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;

148 (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;

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- (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;
- 154 (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;
- 157 (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
- 159 (L) a short-term relief care provider.
- 160 (ii) "Applicant" does not include:
- 161 (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;
- 163 (B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services;
- 165 (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 a court order; or
- 169 (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.
- 174 (b) "Application" means a background check application to the office.
- 175 (c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.
- 177 (d) "Criminal finding" means a record of:
- 178 (i) an arrest for a criminal offense;
- 179 (ii) a warrant for a criminal arrest;
- 180 (iii) charges for a criminal offense; or
- 181 (iv) a criminal conviction.
- 182 (e) "Direct access" means that an individual has, or likely will have:
- 183 (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
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- (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.
- 189 (f)
- (i) "Direct access qualified" means that the applicant has an eligible determination by the office within the license and renewal time period; and
- 191 (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.
- 193 (g) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.
- 195 (h) "Licensee" means an individual or a human services program licensed by the division.
- 197 (i) "Non-criminal finding" means a record maintained in:
- 198 (i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
- 200 (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- 202 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- 204 (iv) juvenile court arrest, adjudication, and disposition records;
- 205 (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
- 208 (vi) a state child abuse or neglect registry.
- 209 (j) "Office" means the Office of Background Processing within the department.
- 210 (k) "Personal identifying information" means:
- 211 (i) current name, former names, nicknames, and aliases;
- 212 (ii) date of birth;
- 213 (iii) physical address and email address;
- 214 (iv) telephone number;
- 215 (v) driver license or other government-issued identification;
- 216 (vi) social security number;
- 217 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and

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- 219 (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3,  
Utah Administrative Rulemaking Act.
- 221 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to  
the office:
- 223 (a) personal identifying information;
- 224 (b) a fee established by the office under Section 63J-1-504;
- 225 (c) a disclosure form, specified by the office, for consent for:
- 226 (i) an initial background check upon association with a certification, contract, or licensee with the  
department;
- 228 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a certification,  
contract, or licensee with the department for 180 days;
- 230 (iii) a background check when the office determines that reasonable cause exists; and
- 231 (iv) retention of personal identifying information, including fingerprints, for monitoring and notification  
as described in Subsections (3)(c) and (4);
- 233 (d) if an applicant resided outside of the United States and its territories during the five years  
immediately preceding 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
- 238 (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.
- 243 (3) The office:
- 244 (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:
- 246 (i) check state and regional criminal background databases for the applicant's criminal history by:
- 248 (A) submitting personal identifying information to the bureau for a search; or
- 249 (B) using the applicant's personal identifying information to search state and regional criminal  
background databases as authorized under Section 53-10-108;
- 251 (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal  
history search of applicable national criminal background databases;

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- 254 (iii) search the Division of Child and Family Services' Licensing Information System described in  
Section 80-2-1002;
- 256 (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;
- 259 (v) search the Division of Child and Family Services' Management Information System in Section  
80-2-1001, if the applicant is:
- 261 (A) a prospective foster or adoptive parent;
- 262 (B) an employee of a congregate care program; or
- 263 (C) an adult who lives in a foster home.
- 264 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation  
database described in Section 26B-6-210;
- 266 (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
- 268 (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section  
78A-6-209;
- 270 (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:
- 273 (i) for an annual renewal; or
- 274 (ii) when the office determines that reasonable cause exists;
- 275 (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;
- 279 (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;
- 283 (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;
- 286 (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

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protect the security of the personal identifying information the office reviews under this Subsection (3);

- 290 (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:
- 293 (i) search the Division of Child and Family Services' Licensing Information System described in  
Section 80-2-1002; and
- 295 (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 the day on which the application is submitted  
to the office; and
- 298 (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.
- 301 (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.
- 304 (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.
- 307 (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:
- 309 (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
- 311 (ii) monitor state and regional criminal background databases and identify criminal activity associated  
with the applicant.
- 313 (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:
- 316 (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
- 319 (ii) monitoring national criminal background databases and identifying criminal activity associated with  
the applicant.

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- 321 (e) The bureau shall notify and release to the office all information of criminal activity associated with  
the applicant.
- 323 (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:
- 326 (i) discard and destroy any retained fingerprints; and
- 327 (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.
- 331 (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:
- 334 (i) a felony or misdemeanor involving conduct that constitutes any of the following:
- 335 (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or  
bestiality;
- 337 (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual  
exploitation of a minor;
- 339 (C) sexual solicitation or prostitution;
- 340 (D) a violent offense committed in the presence of a child, as described in Section 76-3-203.10;
- 342 (E) an offense included in Title 76, Chapter 5, Part 1, 2, 3, 4, or 7;
- 343 (F) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act[~~other than Section~~  
76-5b-206];
- 345 (G) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 346 (H) an offense included in Title 76, Chapter 12, Part 3, Privacy Offenses;
- 347 (I) an offense included in Title 76, Chapter 15, Part 3, Weapons of Mass Destruction;
- 349 (J) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
- 351 (K) aggravated arson, as described in Section 76-6-103;
- 352 (L) aggravated burglary, as described in Section 76-6-203;
- 353 (M) aggravated exploitation of prostitution, as described in Section 76-5d-208;
- 354 (N) aggravated robbery, as described in Section 76-6-302;

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- 355 (O) endangering persons in a human services program, as described in Section 26B-2-113;
- 357 (P) failure to report, as described in Section 80-2-609;
- 358 (Q) identity fraud crime, as described in Section 76-6-1102;
- 359 (R) riot, as described in Section 76-9-101; or
- 360 (S) threatening with or using a dangerous weapon in a fight or quarrel, as described in Section  
76-11-207; or
- 362 (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).
- 365 (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.
- 369 (ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in  
accordance with Subsection (7).
- 371 (c) Subject to Subsection (5)(d), the office shall deny direct access qualified status to an applicant who:
- 373 (i) a court order prohibits from having direct access to a child or vulnerable adult; or
- 374 (ii) is an applicant for a congregate care program and:
- 375 (A) is subject to an open investigation for a non-criminal finding; or
- 376 (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.
- 379 (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
- 382 (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.
- 385 (6) The office shall conduct a comprehensive review of an applicant's background check if the  
applicant:
- 387 (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);

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- 390 (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);
- 393 (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;
- 397 (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);
- 400 (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;
- 404 (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);
- 407 (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;
- 411 (h) is currently subject to a plea in abeyance or diversion agreement for an offense described in  
Subsection (5)(a);
- 413 (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;
- 416 (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:
- 418 (i) under 28 years old; or
- 419 (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);
- 422 (k) has a pending charge for an offense described in Subsection (5)(a);
- 423 (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;

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- (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;
- 430 (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;
- 434 (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;
- 438 (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
- 441 (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.
- 445 (7)
- (a) The comprehensive review shall include an examination of:
- 446 (i) the date of the offense or incident;
- 447 (ii) the nature and seriousness of the offense or incident;
- 448 (iii) the circumstances under which the offense or incident occurred;
- 449 (iv) the age of the perpetrator when the offense or incident occurred;
- 450 (v) whether the offense or incident was an isolated or repeated incident;
- 451 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
- 453 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 454 (B) sexual abuse;
- 455 (C) sexual exploitation; or
- 456 (D) negligent treatment;
- 457

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- (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
- 459 (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and
- 461 (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.
- 466 (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.
- 469 (8) The office shall grant direct access qualified status to an applicant who is not denied under this section.
- 471 (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:
- 474 (i) is awaiting the results of the criminal history search of national criminal background databases; and
- 476 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 478 (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:
- 481 (i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
- 483 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 485 (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.
- 488 (10)

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- (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.
- 491 (b) A licensee may not permit an individual to have direct access to a child or a vulnerable adult without  
being directly supervised unless:
- 493 (i) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
- 495 (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;
- 497 (iii) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites  
the individual to visit; or
- 499 (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.
- 502 (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.
- 506 (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.
- 509 (12)
- (a) This Subsection (12) applies to an applicant associated with a certification, contract, or licensee  
serving adults only.
- 511 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee shall comply with  
this section.
- 513 (c) The office shall conduct a comprehensive review for an applicant if:
- 514 (i) the applicant is seeking a position:
- 515 (A) as a peer support provider;
- 516 (B) as a mental health professional; or
- 517 (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-  
occurring substance use disorder; and
- 519

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(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.

522 (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.

526 (b) As federally required, the office shall:

527 (i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding 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

532 (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 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.

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

539 (i) federal law or rule permits otherwise; or

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

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

543 (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).

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

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

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

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

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

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

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- 553 (E) commission of domestic violence in the presence of a child, as described in Section 76-5-114;
- 555 (F) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 556 (G) intentional aggravated abuse of a vulnerable adult, as described in Section 76-5-111;
- 558 (H) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 560 (I) aggravated murder, as described in Section 76-5-202;
- 561 (J) murder, as described in Section 76-5-203;
- 562 (K) manslaughter, as described in Section 76-5-205;
- 563 (L) child abuse homicide, as described in Section 76-5-208;
- 564 (M) homicide by assault, as described in Section 76-5-209;
- 565 (N) kidnapping, as described in Section 76-5-301;
- 566 (O) child kidnapping, as described in Section 76-5-301.1;
- 567 (P) aggravated kidnapping, as described in Section 76-5-302;
- 568 (Q) human trafficking of a child, as described in Section 76-5-308.5;
- 569 (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]~~;
- 571 (S) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual Exploitation Act;
- 573 (T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 574 (U) aggravated arson, as described in Section 76-6-103;
- 575 (V) aggravated burglary, as described in Section 76-6-203;
- 576 (W) aggravated robbery, as described in Section 76-6-302;
- 577 (X) incest, as described in Section 76-7-102; or
- 578 (Y) domestic violence, as described in Section 77-36-1; or
- 579 (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).
- 581 (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:
- 585 (i) aggravated assault, as described in Section 76-5-103;
- 586 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 587 (iii) mayhem, as described in Section 76-5-105;

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- 588 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;  
589 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
590 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;  
592 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or  
594 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 595 (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:
- 598 (i) has an offense described in Subsection (5)(a);  
599 (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;  
601 (iii) has a listing in the Division of Child and Family Services' Licensing Information System described  
in Section 80-2-1002;  
603 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult, neglect, or exploitation  
database described in Section 26B-2-210;  
605 (v) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or  
607 (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.
- 610 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may  
make rules, consistent with this part, to:
- 612 (a) establish procedures for, and information to be examined in, the comprehensive review described in  
Subsections (6), (7), and (13); and  
614 (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.
- 618 Section 3. Section **26B-4-501** is amended to read:  
619 **26B-4-501. Definitions.**  
As used in this part:
- 621 (1) "Controlled substance" means the same as that term is defined in Title 58, Chapter 37, Utah  
Controlled Substances Act.  
623 (2) "Critical access hospital" means a critical access hospital that meets the criteria of 42 U.S.C. Sec.  
1395i-4(c)(2).

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- 625 (3) "Designated facility" means:
- 626 (a) a freestanding urgent care center;
- 627 (b) a general acute hospital; or
- 628 (c) a critical access hospital.
- 629 (4) "Dispense" means the same as that term is defined in Section 58-17b-102.
- 630 (5) "Division" means the Division of Professional Licensing created in Section 58-1-103.
- 631 (6) "Emergency contraception" means the use of a substance, approved by the United States Food and  
Drug Administration, to prevent pregnancy after sexual intercourse.
- 633 (7) "Freestanding urgent care center" means the same as that term is defined in Section 59-12-801.
- 635 (8) "General acute hospital" means the same as that term is defined in Section 26B-2-201.
- 636 (9) "Health care facility" means a hospital, a hospice inpatient residence, a nursing facility, a dialysis  
treatment facility, an assisted living residence, an entity that provides home- and community-based  
services, a hospice or home health care agency, or another facility that provides or contracts to  
provide health care services, which facility is licensed under Chapter 2, Part 2, Health Care Facility  
Licensing and Inspection.
- 641 (10) "Health care provider" means:
- 642 (a) a physician, as defined in Section 58-67-102;
- 643 (b) an advanced practice registered nurse, as defined in Section 58-31b-102;
- 644 (c) a physician assistant, as defined in Section 58-70a-102; or
- 645 (d) an individual licensed to engage in the practice of dentistry, as defined in Section 58-69-102.
- 647 (11) "Increased risk" means risk exceeding the risk typically experienced by an individual who is not  
using, and is not likely to use, an opiate.
- 649 (12) "Opiate" means the same as that term is defined in Section 58-37-2.
- 650 (13) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a  
controlled substance and that is approved by the federal Food and Drug Administration for the  
diagnosis or treatment of an opiate-related drug overdose.
- 653 (14) "Opiate-related drug overdose event" means an acute condition, including a decreased level of  
consciousness or respiratory depression resulting from the consumption or use of a controlled  
substance, or another substance with which a controlled substance was combined, and that a person  
would reasonably believe to require medical assistance.
- 657 (15) "Overdose outreach provider" means:

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- 658 (a) a law enforcement agency;
- 659 (b) a fire department;
- 660 (c) an emergency medical service provider, as defined in Section 53-2d-101;
- 661 (d) emergency medical service personnel, as defined in Section 53-2d-101;
- 662 (e) an organization providing treatment or recovery services for drug or alcohol use;
- 663 (f) an organization providing support services for an individual, or a family of an individual, with a substance use disorder;
- 665 (g) a certified peer support specialist, as defined in Section 26B-5-610;
- 666 (h) an organization providing substance use or mental health services under contract with a local substance abuse authority, as defined in Section 26B-5-101, or a local mental health authority, as defined in Section 26B-5-101;
- 669 (i) an organization providing services to the homeless;
- 670 (j) a local health department;
- 671 (k) an individual licensed to practice under:
- 672 (i) Title 58, Chapter 17b, Pharmacy Practice Act;
- 673 (ii) Title 58, Chapter 60, Part 2, Social Worker Licensing Act; or
- 674 (iii) Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act; or
- 675 (l) an individual.
- 676 (16) "Patient counseling" means the same as that term is defined in Section 58-17b-102.
- 677 (17) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
- 678 (18) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.
- 679 (19) "Physician" means the same as that term is defined in Section 58-67-102.
- 680 (20) "Practitioner" means:
- 681 (a) a physician; or
- 682 (b) any other person who is permitted by law to prescribe emergency contraception.
- 683 (21) "Prescribe" means the same as that term is defined in Section 58-17b-102.
- 684 (22)
- (a) "Self-administered hormonal contraceptive" means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy.
- 687 (b) "Self-administered hormonal contraceptive" includes an oral hormonal contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch.

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- 689 (c) "Self-administered hormonal contraceptive" does not include any drug intended to induce an  
abortion, as that term is defined in Section 76-7-301.
- 691 (23)
- [~~(a)~~] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual  
Offenses, that may result in a pregnancy.
- 693 [~~(b) "Sexual assault" does not include criminal conduct described in:~~]
- 694 [~~(i) Section 76-5-417, enticing a minor;~~]
- 695 [~~(ii) Section 76-5-418, sexual battery;~~]
- 696 [~~(iii) Section 76-5-419, lewdness; or~~]
- 697 [~~(iv) Section 76-5-420, lewdness involving a child.~~]
- 698 (24) "Victim of sexual assault" means any person who presents to receive, or receives, medical care in  
consequence of being subjected to sexual assault.
- 700 Section 4. Section **31A-21-501** is amended to read:
- 701 **31A-21-501. Definitions.**
- [~~For purposes of~~] As used in this part:
- 703 (1) "Applicant" means:
- 704 (a) in the case of an individual life or accident and health policy, the person who seeks to contract for  
insurance benefits; or
- 706 (b) in the case of a group life or accident and health policy, the proposed certificate holder.
- 708 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an individual who is  
16 years old or older who:
- 710 (a) is or was a spouse of the other party;
- 711 (b) is or was living as if a spouse of the other party;
- 712 (c) is related by blood or marriage to the other party;
- 713 (d) has one or more children in common with the other party; or
- 714 (e) resides or has resided in the same residence as the other party.
- 715 (3)
- [~~(a)~~] "Child abuse" means the commission or attempt to commit against a child a criminal offense  
described in:
- 717 [~~(i)~~] (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses; or
- 718 [~~(ii)~~] (b) Title 76, Chapter 5, Part 4, Sexual Offenses.

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- 719     ~~[(b) "Child abuse" does not include the criminal offense of enticing a minor, as described in Section~~  
       ~~76-5-417.]~~
- 721     (4)
- ~~[(a)] "Domestic violence" means any criminal offense involving violence or physical harm or threat~~  
       ~~of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal~~  
       ~~offense involving violence or physical harm, when committed by one cohabitant against another and~~  
       ~~includes commission or attempt to commit, any of the following offenses by one cohabitant against~~  
       ~~another:~~
- 726     ~~[(i)] (a) aggravated assault, as described in Section 76-5-103;~~
- 727     ~~[(ii)] (b) assault, as described in Section 76-5-102;~~
- 728     ~~[(iii)] (c) criminal homicide, as described in Section 76-5-201;~~
- 729     ~~[(iv)] (d) harassment, as described in Section 76-5-106;~~
- 730     ~~[(v)] (e) electronic communication harassment, as described in Section 76-12-202, 76-12-203, or~~  
       ~~76-12-204;~~
- 732     ~~[(vi)] (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections~~  
       ~~76-5-301, 76-5-301.1, and 76-5-302;~~
- 734     ~~[(vii)] (g) mayhem, as described in Section 76-5-105;~~
- 735     ~~[(viii)] (h) sexual offenses, as described in Sections 76-5b-201 and 76-5b-201.1 and in Title 76,~~  
       ~~Chapter 5, Part 4, Sexual Offenses;~~
- 737     ~~[(ix)] (i) stalking, as described in Section 76-5-106.5;~~
- 738     ~~[(x)] (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;~~
- 740     ~~[(xi)] (k) violation of a protective order or ex parte protective order, as described in Section~~  
       ~~76-5-108;~~
- 742     ~~[(xii)] (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction,~~  
       ~~Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;~~
- 744     ~~[(xiii)] (m) possession of a dangerous weapon with criminal intent, as described in Section~~  
       ~~76-11-208; or~~
- 746     ~~[(xiv)] (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any~~  
       ~~individual, building, or vehicle, as described in Section 76-11-209.~~
- 748     ~~[(b) "Domestic violence" does not include the criminal offense of:]~~
- 749     ~~[(i) enticing a minor, as described in Section 76-5-417;]~~

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- 750 [~~(ii) sexual battery, as described in Section 76-5-418;~~]  
751 [~~(iii) lewdness, as described in Section 76-5-419; or~~]  
752 [~~(iv) lewdness involving a child, as described in Section 76-5-420.~~]  
753 (5) "Subject of domestic abuse" means an individual who is, has been, may currently be, or may have  
been subject to domestic violence or child abuse.
- 755 Section 5. Section **34-52-201** is amended to read:  
756 **34-52-201. Public employer requirements.**
- 757 (1) Except as provided in Subsections (3) and (6), a public employer may not:  
758 (a) exclude an applicant from an initial interview because of:  
759 (i) a past criminal conviction, an expunged conviction, an arrest for an offense that occurred before the  
applicant was 18 years old, or a juvenile adjudication; or  
761 (ii) if the applicant is a mental health professional applicant, an arrest for an offense that occurred  
before the applicant was 18 years old;
- 763 (b) make an inquiry related to an applicant's expunged criminal or juvenile delinquency history;  
765 (c) when making a hiring decision regarding a mental health professional applicant, consider:  
767 (i) an arrest for an offense that occurred before the mental health professional applicant was 18 years  
old;  
769 (ii) an arrest not followed by a criminal conviction or juvenile adjudication;  
770 (iii) a juvenile adjudication; or  
771 (iv) a past criminal conviction if:  
772 (A) the sentence for the criminal conviction is terminated; and  
773 (B) the mental health professional applicant was not incarcerated for the past criminal conviction or  
the mental health professional applicant's incarceration for the past criminal conviction ended  
at least three years before the day on which the mental health professional applicant applied for  
employment; or  
777 (d) deny a mental health professional applicant employment based on a past criminal conviction that  
does not bear a direct relationship to the mental health professional applicant's ability to safely or  
competently perform the duties of employment.
- 780 (2) A public employer excludes an applicant from an initial interview under Subsection (1) if the public  
employer:  
782 (a) requires an applicant to disclose a criminal conviction or juvenile adjudication:

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- 783 (i) on an employment application;  
784 (ii) before an initial interview; or  
785 (iii) if no interview is conducted, before making a conditional offer of employment; or  
786 (b) requires an applicant who is a mental health professional applicant to disclose an arrest for an  
offense that occurred before the applicant was 18 years old:
- 788 (i) on an employment application;  
789 (ii) before an initial interview; or  
790 (iii) if no interview is conducted, before making a conditional offer of employment.
- 791 (3) A public employer may not deny a mental health professional applicant employment that requires  
the mental health professional applicant to provide substance use treatment based on:
- 794 (a) the mental health professional applicant's participation in substance use treatment; or  
795 (b) a past criminal conviction for a nonviolent drug offense if:
- 796 (i) the sentence for the criminal conviction is terminated; and  
797 (ii)
- (A) the mental health professional applicant was not incarcerated for the past criminal conviction; or  
799 (B) the mental health professional applicant's incarceration for the past criminal conviction ended  
at least three years before the day on which the mental health professional applicant applied for  
employment.
- 802 (4) An applicant seeking employment from a public employer may answer a question related to an  
expunged criminal or juvenile delinquency record as though the action underlying the expunged  
criminal or juvenile delinquency record never occurred.
- 805 (5) Except as provided in Subsections (1) through (3), this section does not prevent a public employer  
from:
- 807 (a) asking an applicant for information about an applicant's criminal conviction or juvenile delinquency  
history during an initial interview or after an initial interview; or  
809 (b) considering an applicant's criminal conviction or juvenile delinquency history when making a hiring  
decision.
- 811 (6)
- (a) Subsections (1) through (4) do not apply:

812

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- (i) if federal, state, or local law, including corresponding administrative rules, requires the consideration of an applicant's criminal conviction, an expunged conviction, an arrest for an offense that occurred before the applicant was 18 years old, or juvenile delinquency history;
- 816 (ii) to a public employer that is a law enforcement agency;
- 817 (iii) to a public employer that is part of the criminal or juvenile justice system;
- 818 (iv) to a public employer seeking a nonemployee volunteer;
- 819 (v) to a public employer that works with children or vulnerable adults;
- 820 (vi) to the Department of Alcoholic Beverage Services created in Section 32B-2-203;
- 821 (vii) to the State Tax Commission;
- 822 (viii) to a public employer whose primary purpose is performing financial or fiduciary functions; or
- 824 (ix) to a public transit district hiring or promoting an individual for a safety sensitive position described in Section 17B-2a-825.
- 826 (b) Subsections (1)(c)(iv) and (1)(d) do not apply to a criminal conviction for:
- 827 (i) a violent felony as defined in Section 76-3-203.5; or
- 828 (ii) a felony related to a criminal sexual act under:
- 829 (A) Title 76, Chapter 5, Part 4, Sexual Offenses~~[-, other than Section 76-5-417, 76-5-419, or 76-5-420];~~
- or
- 831 (B) Title 76, Chapter 5b, Sexual Exploitation Act.
- 832 (c) Subsections (1)(a)(ii), (1)(c), (1)(d), and (3) apply to a person under contract with a public employer.
- 834 Section 6. Section **34A-5-114** is amended to read:
- 835 **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement clauses --**
- Retaliation prohibited.**
- 837 (1) As used in this section:
- 838 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement clause.
- 839 (b) "Employee" means a current or a former employee.
- 840 (c) "Nondisclosure clause" means an agreement between an employee and employer that prevents, or has the effect of preventing, an employee from disclosing or discussing:
- 842 (i) sexual assault;
- 843 (ii) allegations of sexual assault;
- 844 (iii) sexual harassment; or
- 845 (iv) allegations of sexual harassment.

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- 846 (d) "Non-disparagement clause" means an agreement between an employee and employer that prohibits,  
or has the effect of prohibiting, an employee from making a negative statement that is:
- 849 (i) about the employer; and
- 850 (ii) related to:
- 851 (A) a claim of sexual assault or sexual harassment;
- 852 (B) a sexual assault dispute; or
- 853 (C) a sexual harassment dispute.
- 854 (e) "Post-employment restrictive covenant" means the same as that term is defined in Section  
34-51-102.
- 856 (f) "Proprietary information" means an employer's business plan or customer information.
- 858 (g) "Retaliate" means taking an adverse action against an employee because the employee made an  
allegation of sexual harassment or assault, including:
- 860 (i) discharge;
- 861 (ii) suspension;
- 862 (iii) demotion; or
- 863 (iv) discrimination in the terms, conditions, or privileges of employment.
- 864 (h)
- [~~(i)~~] "Sexual assault" means:
- 865 [~~(A)~~] (i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or
- 867 [~~(B)~~] (ii) criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- 868 [~~(ii) "Sexual assault" does not include criminal conduct described in:]~~
- 869 [~~(A) Section 76-5-417, enticing a minor;~~]
- 870 [~~(B) Section 76-5-418, sexual battery;~~]
- 871 [~~(C) Section 76-5-419, lewdness; or~~]
- 872 [~~(D) Section 76-5-420, lewdness involving a child.~~]
- 873 (i) "Sexual assault dispute" means a dispute between an employer and the employer's employee relating  
to alleged sexual assault.
- 875 (j) "Sexual harassment" means harassment on the basis of sex, sexual orientation, or gender, as  
prohibited in:
- 877 (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or
- 878 (ii) Subsection 34A-5-106(1)(a)(i).

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- 879 (k) "Sexual harassment dispute" means a dispute between an employer and the employer's employee  
relating to alleged sexual harassment.
- 881 (2)
- (a) A confidentiality clause regarding sexual misconduct, as a condition of employment, is against  
public policy and is void and unenforceable.
- 883 (b) After an employee makes an allegation of sexual harassment or sexual assault, an employer of any  
sized business, regardless of Subsection 34-5-102(1)(i)(D):
- 885 (i) may not retaliate against the employee because the employee made an allegation of sexual  
harassment or assault; or
- 887 (ii) may not retaliate based on an employee's refusal to enter into a confidentiality clause or an  
employment contract that, as a condition of employment, contains a confidentiality clause.
- 890 (c) An employee may, within three business days after the day on which the employee agrees to a  
settlement agreement that includes a confidentiality clause regarding sexual misconduct, withdraw  
from the settlement agreement.
- 893 (3) An employer who attempts to enforce a confidentiality clause in violation of this section:
- 894 (a) is liable for all costs, including reasonable attorney fees, resulting from legal action to enforce the  
confidentiality clause; and
- 896 (b) is not entitled to monetary damages resulting from a breach of a confidentiality clause.
- 898 (4) This section does not:
- 899 (a) prohibit an agreement between an employee who alleges sexual assault or sexual harassment and an  
employer from containing a nondisclosure clause, a non-disparagement clause, or any other clause  
prohibiting disclosure of:
- 902 (i) the amount of a monetary settlement; or
- 903 (ii) at the request of the employee, facts that could reasonably lead to the identification of the employee;
- 905 (b) prohibit an employer from requiring an employee to:
- 906 (i) sign a post-employment restrictive covenant; or
- 907 (ii) agree not to disclose an employer's non-public trade secrets, proprietary information, or confidential  
information that does not involve illegal acts;
- 909 (c) authorize an employee to:
- 910 (i) disclose data otherwise protected by law or legal privilege; or
- 911 (ii) knowingly make statements or disclosures that are false or made with reckless disregard of the truth;

## HB0090S01 compared with HB0090S02

- 913 (d) prohibit an employee from discussing sexual misconduct or allegations of sexual misconduct in a  
civil or criminal case when subpoenaed if the sexual misconduct or allegations of sexual misconduct  
are against the individual whom the employee alleged engaged in sexual misconduct;
- 917 (e) permit a disclosure that would violate state or federal law; or
- 918 (f) limit other grounds that may exist at law or in equity for the unenforceability of a confidentiality  
clause.

920 Section 7. Section **53-10-801** is amended to read:

921 **53-10-801. Definitions.**

[For purposes of] As used in this part:

- 923 (1) "Alleged sexual offender" means an individual or a minor regarding whom an indictment, petition,  
or an information has been filed or an arrest has been made alleging the commission of a sexual  
offense or an attempted sexual offense and regarding which:
- 926 (a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon  
probable cause regarding the alleged offense; and
- 928 (b) the judge has found probable cause to believe that the alleged victim has been exposed to conduct or  
activities that may result in an HIV infection as a result of the alleged offense.
- 931 (2) "Department of Health and Human Services" means the Department of Health and Human Services  
created in Section 26B-1-201.
- 933 (3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection  
determined by current medical standards and detected by any of the following:
- 935 (a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or  
other method approved by the Utah State Health Laboratory. Western blot interpretation will be  
based on criteria currently recommended by the Association of State and Territorial Public Health  
Laboratory Directors;
- 939 (b) presence of HIV antigen;
- 940 (c) isolation of HIV; or
- 941 (d) demonstration of HIV proviral DNA.
- 942 (4) "HIV positive individual" means an individual who is HIV positive as determined by the State  
Health Laboratory.
- 944 (5) "Local department of health" means a local health department as defined in Section 26A-1-102.
- 946 (6) "Minor" means an individual younger than 18 years old.

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- 947 (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).  
948 (8)  
(a) "Sexual offense" means a violation of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses.  
950 (b) "Sexual offense" does not include a violation of Section 76-5-417[;] or 76-5-418[, ~~76-5-419, or 76-5-420~~].  
952 (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health and Human Services.

955 Section 8. Section **53G-8-201** is amended to read:

956 **53G-8-201. Definitions.**

As used in this part:

958 (1) "Serious offense" means the same as that term is defined in Section 80-6-103

959 [~~(1)~~] (2)

[~~(a)~~] "Sexual crime" or "sexual misconduct" means any conduct described in:

960 [~~(i)~~] (a) Title 76, Chapter 5, Part 4, Sexual Offenses;

961 [~~(ii)~~] (b) Title 76, Chapter 5b, Sexual Exploitation Act; or

962 [~~(iii)~~] (c) Section 76-7-102, [~~incest~~] Incest.

963 [~~(b) "Sexual crime" or "sexual misconduct" does not include conduct described in:]~~

964 [~~(i) Section 76-5-417, enticing a minor;]~~

965 [~~(ii) Section 76-5-420, lewdness involving a child; or]~~

966 [~~(iii) Section 76-5b-206, failure to report child sexual abuse material by a computer technician.]~~

968 [~~(2) "Serious offense" means the same as that term is defined in Section 80-6-103.]~~

969 Section 9. Section **57-22-5.1** is amended to read:

970 **57-22-5.1. Crime victim's right to new locks -- Domestic violence victim's right to terminate rental agreement -- Limits an owner relating to assistance from public safety agency.**

973 (1) As used in this section:

974 (a)

(i) "Court order" means, except as provided in Subsection (1)(a)(ii):

975 (A) a civil protective order, as defined in Section 78B-7-102;

976 (B) a civil stalking injunction, as defined in Section 78B-7-102;

977 (C) a criminal protective order, as defined in Section 78B-7-102; or

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- 978 (D) a criminal stalking injunction, as defined in Section 78B-7-102.
- 979 (ii) "Court order" does not include:
- 980 (A) an ex parte civil protective order, as defined in Section 78B-7-102; or
- 981 (B) an ex parte civil stalking injunction, as defined in Section 78B-7-102, for which a hearing is  
requested.
- 983 (b)
- [~~(i)~~] "Crime victim" means a victim of:
- 984 [~~(A)~~] (i) domestic violence, as defined in Section 77-36-1;
- 985 [~~(B)~~] (ii) stalking, as defined in Section 76-5-106.5;
- 986 [~~(C)~~] (iii) an offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 987 [~~(D)~~] (iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or
- 988 [~~(E)~~] (v) dating violence, as defined in Section 78B-7-102.
- 989 [~~(ii) "Crime victim" does not include a victim of an offense of:]~~
- 990 [~~(A) enticing a minor under Section 76-5-417;]~~
- 991 [~~(B) sexual battery under Section 76-5-418;]~~
- 992 [~~(C) lewdness under Section 76-5-419; or]~~
- 993 [~~(D) lewdness involving a child under Section 76-5-420.]~~
- 994 (c) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 995 (d) "Financial obligation" means any rent, fees, damages, or other costs owed by a renter.
- 996 (e)
- (i) "Future obligations" means a renter's obligations under the rental agreement after the date on which  
the renter vacates the residential rental unit in accordance with Subsection (6).
- 999 (ii) "Future obligations" includes:
- 1000 (A) the payment of rent and fees for the residential rental unit; and
- 1001 (B) the right to occupy the residential rental unit.
- 1002 (f) "Public safety agency" means a governmental entity that provides fire protection, law enforcement,  
ambulance, medical, or similar service.
- 1004 (g) "Victim of domestic violence" means the same as the term "victim" in Section 77-36-1.
- 1006 (h) "Termination fee" means the equivalent of one month of rent under the rental agreement.
- 1008 (2) An acceptable form of documentation of an act listed in Subsection (1) is:
- 1009

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- 1013 (a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part 6, Cohabitant  
Abuse Protective Orders, subsequent to a hearing of which the petitioner and respondent have been  
given notice under Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders; or
- 1014 (b) a copy of a police report documenting an act listed in Subsection (1).
- 1014 (3)
- (a) A renter who is a crime victim may require the renter's owner to install a new lock to the renter's  
residential rental unit if the renter:
- 1016 (i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1);  
and
- 1018 (ii) pays for the cost of installing the new lock.
- 1019 (b) An owner may comply with Subsection (3)(a) by:
- 1020 (i) rekeying the lock if the lock is in good working condition; or
- 1021 (ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than  
the lock being replaced.
- 1023 (c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens  
the new lock.
- 1025 (d) Notwithstanding any rental agreement, an owner who installs a new lock under Subsection (3)(a)  
shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in  
Subsection (1).
- 1028 (e) Notwithstanding Section 78B-6-814, if an owner refuses to provide a copy of the key under  
Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit by a protective  
order but is a renter on the rental agreement, the perpetrator may file a petition with a court of  
competent jurisdiction within 30 days to:
- 1032 (i) establish whether the perpetrator should be given a key and allowed access to the residential rental  
unit; or
- 1034 (ii) establish whether the perpetrator should be relieved of further liability under the rental agreement  
because of the owner's exclusion of the perpetrator from the residential rental unit.
- 1037 (f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further liability under the  
rental agreement if the perpetrator is found by the court to have committed the act upon which the  
landlord's exclusion of the perpetrator is based.

1040

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- (4) A renter who is a victim of domestic violence may terminate all of the renter's future obligations under a rental agreement if the renter:
- 1042 (a) except as provided in Subsection (5), is in compliance with all obligations under the rental  
agreement, including the requirements of Section 57-22-5;
- 1044 (b) provides the owner with:
- 1045 (i) a court order protecting the renter from a domestic violence perpetrator; or
- 1046 (ii) a copy of a police report documenting that the renter is a victim of domestic violence and is not the  
predominant aggressor under Subsection 77-36-2.2(3);
- 1048 (c) provides the owner with a written notice of termination that includes the date on which the renter  
intends to vacate the renter's residential rental unit; and
- 1050 (d) pays the owner a termination fee on the later of the day on which:
- 1051 (i) the renter provides the owner with a written notice of termination; or
- 1052 (ii) the renter vacates the renter's residential rental unit.
- 1053 (5) A renter may terminate all of the renter's future obligations under a rental agreement under  
Subsection (4) when the renter is not in compliance with the requirements of Subsection 57-22-5(1)  
(g) or (2) if:
- 1056 (a) the renter provides evidence to the owner with the written notice of termination under Subsection (4)  
(c) establishing that:
- 1058 (i) the noncompliance with Subsection 57-22-5(1)(g) or (2) occurred less than 30 days before the day on  
which the renter provided the written notice of termination to the owner; and
- 1061 (ii) the noncompliance with Subsection 57-22-5(1)(g) or (2) is due to domestic violence;
- 1063 (b) the renter is in compliance with all obligations of the rental agreement, except for the  
noncompliance described in Subsection (5)(a); and
- 1065 (c) the renter complies with Subsections (4)(b), (c), and (d).
- 1066 (6) If a renter provides an owner with a written notice of termination under Subsection (4)(c), the renter  
shall:
- 1068 (a) vacate the renter's residential rental unit within 15 days after the day on which the written notice of  
termination is provided to the owner; and
- 1070 (b) pay rent for any occupation of the residential rental unit during that 15-day time period.
- 1072 (7) A renter may not terminate all of the renter's future obligations under a rental agreement under  
Subsection (4) after a notice of eviction is served on the renter.

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- 1074 (8) A renter who terminates all of the renter's future obligations under a rental agreement under  
Subsection (4) is liable for any financial obligation owed by the renter:
- 1076 (a) before the renter provided the owner with the written notice of termination under Subsection (4)(c);  
1078 (b) for any noncompliance with Subsection 57-22-5(1)(g) or (2) as described in Subsection (5); and  
1080 (c) for any occupancy of the residential rental unit by the renter during the 15-day time period described  
in Subsection (6).
- 1082 (9) The termination of a renter's future obligations under a rental agreement does not terminate the  
rental agreement for any other person entitled under the rental agreement to occupy the residential  
rental unit.
- 1085 (10) An owner may not:
- 1086 (a) impose a restriction on a renter's ability to request assistance from a public safety agency; or  
1088 (b) penalize or evict a renter because the renter makes reasonable requests for assistance from a public  
safety agency.
- 1090 Section 10. Section **59-27-105** is amended to read:
- 1091 **59-27-105. Sexually Explicit Business and Escort Service Fund -- Administrative charge.**
- 1093 (1) There is created an expendable special revenue fund called the "Sexually Explicit Business and  
Escort Service Fund."
- 1095 (2)
- (a) Except as provided in Subsection (3), the fund consists of all amounts collected by the commission  
under this chapter.
- 1097 (b)
- (i) The money in the fund shall be invested by the state treasurer pursuant to Title 51, Chapter 7, State  
Money Management Act.
- 1099 (ii) All interest or other earnings derived from the fund money shall be deposited in the fund.
- 1101 (3) Notwithstanding any other provision of this chapter, the commission shall retain and deposit an  
administrative charge in accordance with Section 59-1-306 from the revenues the commission  
collects from a tax under this chapter.
- 1104 (4)
- (a) Fund money shall be used as provided in this Subsection (4).
- 1105 (b) The Department of Corrections shall use 60% of the money in the fund, in addition to existing  
budgets, to provide treatment services to nonworking or indigent adults who:

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- 1108 (i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other than~~  
Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420]; and
- 1110 (ii) are not currently confined or incarcerated in a jail or prison.
- 1111 (c) The Division of Adult Probation and Parole created in Section 64-14-202 shall use 15% of the  
money in the fund to provide outpatient treatment services to individuals who:
- 1114 (i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other than~~  
Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420]; and
- 1116 (ii) are not currently confined or incarcerated in a jail or prison.
- 1117 (d) The Department of Corrections shall use 10% of the money in the fund, in addition to existing  
budgets, to implement treatment programs for juveniles who have been convicted of an offense  
under Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other than Section 76-5-417, 76-5-418,~~  
76-5-419, or 76-5-420].
- 1121 (e) The attorney general shall use 15% of the money in the fund to provide funding for any task force:
- 1123 (i) administered through the Office of the Attorney General; and
- 1124 (ii) that investigates and prosecutes individuals who use the Internet to commit crimes against children.
- 1126 Section 11. Section **63M-7-502** is amended to read:
- 1127 **63M-7-502. Definitions.**
- As used in this part:
- 1129 (1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section  
76-2-202.
- 1131 (2) "Advocacy services provider" means the same as that term is defined in Section 77-38-403.
- 1133 (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- 1134 (4) "Claimant" means any of the following claiming reparations under this part:
- 1135 (a) a victim;
- 1136 (b) a dependent of a deceased victim; or
- 1137 (c) an individual or representative who files a reparations claim on behalf of a victim.
- 1138 (5) "Child" means an unemancipated individual who is under 18 years old.
- 1139 (6) "Collateral source" means any source of benefits or advantages for economic loss otherwise  
reparable under this part that the claimant has received, or that is readily available to the claimant  
from:
- 1142 (a) the offender;

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- 1143 (b) the insurance of the offender or the victim;
- 1144 (c) the United States government or any of its agencies, a state or any of its political subdivisions, or an  
instrumentality of two or more states, except in the case on nonobligatory state-funded programs;
- 1147 (d) social security, Medicare, and Medicaid;
- 1148 (e) state-required temporary nonoccupational income replacement insurance or disability income  
insurance;
- 1150 (f) workers' compensation;
- 1151 (g) wage continuation programs of any employer;
- 1152 (h) proceeds of a contract of insurance payable to the claimant for the loss the claimant sustained  
because of the criminally injurious conduct;
- 1154 (i) a contract providing prepaid hospital and other health care services or benefits for disability; or
- 1156 (j) veteran's benefits, including veteran's hospitalization benefits.
- 1157 (7)
- (a) "Confidential record" means a record in the custody of the office that relates to a claimant's  
eligibility for a reparations award.
- 1159 (b) "Confidential record" includes:
- 1160 (i) a reparations claim;
- 1161 (ii) any correspondence regarding:
- 1162 (A) the approval or denial of a reparations claim; or
- 1163 (B) the payment of a reparations award;
- 1164 (iii) a document submitted to the office in support of a reparations award;
- 1165 (iv) a medical or mental health treatment plan; and
- 1166 (v) an investigative report provided to the office by a law enforcement agency.
- 1167 (8) "Criminal justice system victim advocate" means the same as that term is defined in Section  
77-38-403.
- 1169 (9)
- (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:
- 1171 (i) is or would be subject to prosecution in this state under Section 76-1-201;
- 1172 (ii) occurs or is attempted;
- 1173 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 1174

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- (iv) is punishable by fine, imprisonment, or death if the individual engaging in the conduct possessed the capacity to commit the conduct; and
- 1176 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is:
- 1178 (A) intended to cause bodily injury or death;
- 1179 (B) punishable under Title 76, Chapter 5, Offenses Against the Individual; or
- 1180 (C) chargeable as an offense for driving under the influence of alcohol or drugs.
- 1181 (b) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and other conduct leading to the psychological injury of an individual resulting from living in a setting that involves a bigamous relationship.
- 1184 (10)
- (a) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support.
- 1186 (b) "Dependent" includes a child of the victim born after the victim's death.
- 1187 (11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.
- 1191 (12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.
- 1196 (13) "Director" means the director of the office.
- 1197 (14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual:
- 1199 (a) convicted of a crime;
- 1200 (b) found delinquent; or
- 1201 (c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.
- 1203 (15)

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- (a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss.
- 1206 (b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment.
- 1208 (c) "Economic loss" does not include noneconomic detriment.
- 1209 (16) "Elderly victim" means an individual who is 60 years old or older and who is a victim.
- 1210 (17) "Fraudulent claim" means a filed reparations based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.
- 1213 (18) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.
- 1214 (19)
- (a) "Interpersonal violence" means an act involving violence, physical harm, or a threat of violence or physical harm, that is committed by an individual who is or has been in a domestic, dating, sexual, or intimate relationship with the victim.
- 1217 (b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act described in Subsection (19)(a).
- 1219 (20) "Law enforcement agency" means a public or private agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision of this state.
- 1222 (21) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
- 1223 (22)
- (a) "Medical examination" means a physical examination necessary to document criminally injurious conduct.
- 1225 (b) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.
- 1227 (23) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1230

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- (24) "Misconduct" means conduct by the victim that was attributable to the injury or death of the victim as provided by rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1233 (25) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.
- 1235 (26) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.
- 1237 (27) "Nonpublic restitution record" means a restitution record that contains a claimant's medical or mental health information.
- 1239 (28) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.
- 1241 (29) "Offender" means an individual who has violated Title 76, Utah Criminal Code, through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted.
- 1244 (30) "Offense" means a violation of Title 76, Utah Criminal Code.
- 1245 (31) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.
- 1247 (32) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.
- 1249 (33) "Public restitution record" means a restitution record that does not contain a claimant's medical or mental health information.
- 1251 (34)
- (a) "Rape crisis and services center" means a nonprofit entity that assists victims of sexual assault and victims' families by offering sexual assault crisis intervention and counseling through a sexual assault counselor.
- 1254 (b) "Rape crisis and services center" does not include a qualified institutional victim services provider as defined in Section 53H-14-401.
- 1256 (35) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.
- 1259 (36) "Reparations claim" means a claimant's request or application made to the office for a reparations award.
- 1261 (37)

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- (a) "Reparations officer" means an individual employed by the office to investigate a claimant's request for reparations and award reparations under this part.
- 1263 (b) "Reparations officer" includes the director when the director is acting as a reparations officer.
- 1265 (38) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.
- 1269 (39)
- (a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual.
- 1271 (b) "Representative" does not include a service provider or collateral source.
- 1272 (40) "Restitution" means the same as that term is defined in Section 77-38b-102.
- 1273 (41)
- (a) "Restitution record" means a record documenting payments made to, or on behalf of, a claimant by the office that the office relies on to support a restitution request made in accordance with Section 77-38b-205.
- 1276 (b) "Restitution record" includes:
- 1277 (i) a notice of restitution;
- 1278 (ii) an itemized list of payments;
- 1279 (iii) an invoice, receipt, or bill submitted to the office for reimbursement; and
- 1280 (iv) any documentation that the office relies on to establish a nexus between an offender's criminally injurious conduct and a reparations award made by the office.
- 1282 (42) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1285 (43) "Service provider" means an individual or agency who provides a service to a claimant for a monetary fee, except attorneys as provided in Section 63M-7-524.
- 1287 (44) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.
- 1288 (45)
- [(a)] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.

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- 1290 [~~(b) "Sexual assault" does not include criminal conduct described in:~~]
- 1291 [~~(i) Section 76-5-417, enticing a minor;~~]
- 1292 [~~(ii) Section 76-5-418, sexual battery;~~]
- 1293 [~~(iii) Section 76-5-419, lewdness; or~~]
- 1294 [~~(iv) Section 76-5-420, lewdness involving a child.~~]
- 1295 (46) "Sexual assault counselor" means an individual who:
- 1296 (a) is employed by or volunteers at a rape crisis and services center;
- 1297 (b) has a minimum of 40 hours of training in counseling and assisting victims of sexual assault; and
- 1299 (c) is under the supervision of the director of a rape crisis and services center or the director's designee.
- 1301 (47) "Strangulation" means any act involving the use of unlawful force or violence that:
- 1302 (a) impedes breathing or the circulation of blood; and
- 1303 (b) is likely to produce a loss of consciousness by:
- 1304 (i) applying pressure to the neck or throat of an individual; or
- 1305 (ii) obstructing the nose, mouth, or airway of an individual.
- 1306 (48) "Substantial bodily injury" means the same as that term is defined in Section 76-1-101.5.
- 1308 (49)
- (a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:
- 1310 (i) criminally injurious conduct; or
- 1311 (ii) the production of pornography in violation of Section 76-5b-201 or 76-5b-201.1 if the individual is a minor.
- 1313 (b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1316 (50) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.
- 1321 Section 12. Section **76-2-306** is amended to read:
- 1322 **76-2-306. Voluntary intoxication.**

## HB0090S01 compared with HB0090S02

- 1323 (1) Voluntary intoxication is not a defense to a criminal charge unless such intoxication negates  
the existence of the mental state which is an element of the offense. If recklessness or criminal  
negligence establishes an element of an offense and the actor is unaware of the risk because of  
voluntary intoxication, [his] the actor's unawareness is immaterial in a prosecution for that offense.
- 1328 (2) Voluntary intoxication is not a defense to a sexual [offenses] offense, as described in Title 76,  
Chapter 5, Part 4, Sexual Offenses[~~other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420~~].
- 1331 Section 13. Section **76-3-203.1** is amended to read:
- 1332 **76-3-203.1. Enhanced penalty for offenses committed in or for a certain group.**
- 1333 (1) As used in this section:
- 1334 (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.
- 1335 (b) "In concert with two or more individuals" means:
- 1336 (i) the actor was aided or encouraged by at least two other individuals in committing an offense and was  
aware of this aid or encouragement; and
- 1338 (ii) each of the other individuals:
- 1339 (A) was physically present; and
- 1340 (B) participated as a party to an offense listed in Subsection (6) or (7).
- 1341 (c) "In concert with two or more individuals" means, regarding intent:
- 1342 (i) any other individual participating as a party need not have the intent to engage in the same offense or  
degree of offense as the actor; and
- 1344 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an  
adult.
- 1346 (d) "Organized criminal group" means a group of three or more individuals, whether operating formally  
or informally, that:
- 1348 (i) has as one of the group's purposes the commission of criminal offenses; and
- 1349 (ii) whose members collectively engage in committing criminal offenses for the financial or other  
material benefit of the members or group.
- 1351 (e) "Principal place of residence" means the single location where an individual's habitation is fixed  
and to which, whenever the individual is absent, the individual has the intention of returning, as  
evidenced by:
- 1354 (i) the intent expressed by the individual; and
- 1355 (ii) acts of the individual that are consistent or inconsistent with the intent expressed by the individual.

## HB0090S01 compared with HB0090S02

- 1357 (2) An actor who commits an offense listed in Subsection (6) is subject to an enhanced penalty for the  
offense as provided in Subsection (5) if the trier of fact finds beyond a reasonable doubt that the  
actor acted:
- 1360 (a) in concert with two or more individuals;
- 1361 (b) for the benefit of, at the direction of, or in association with a criminal street gang or other organized  
criminal group; or
- 1363 (c) to gain recognition, acceptance, membership, or increased status with a criminal street gang or other  
organized criminal group.
- 1365 (3) An actor who commits an offense listed in Subsection (7) is subject to an enhanced penalty for the  
offense as provided in Subsection (5) if the trier of fact finds beyond a reasonable doubt that the  
actor:
- 1368 (a)
- 1369 (i) acted in concert with two or more individuals; and  
(ii)
- (A) traveled more than 50 miles from the actor's principal place of residence for the purpose of the actor  
committing an offense listed in Subsection (7); or
- 1371 (B) had previously been convicted of an offense listed in Subsection (7), or an offense in another  
jurisdiction, including a state, federal, or military court, that is substantially equivalent to an offense  
under Subsection (7);
- 1374 (b) acted for the benefit of, at the direction of, or in association with a criminal street gang or other  
organized criminal group; or
- 1376 (c) acted to gain recognition, acceptance, membership, or increased status with a criminal street gang or  
other organized criminal group.
- 1378 (4) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed  
upon the information or indictment notice that the actor is subject to the enhanced penalties  
provided under this section.
- 1381 (5) For an offense listed in Subsection (6) or (7), an actor may be charged as follows:
- 1382 (a) for a class B misdemeanor, as a class A misdemeanor;
- 1383 (b) for a class A misdemeanor, as a third degree felony;
- 1384 (c) for a third degree felony, as a second degree felony; and
- 1385 (d) for a second degree felony, as a first degree felony.

## HB0090S01 compared with HB0090S02

- 1386 (6) The offenses referred to in Subsection (2) are:
- 1387 (a) an offense described in Chapter 5, Part 1, Assault and Related Offenses;
- 1388 (b) an offense described in Chapter 5, Part 2, Criminal Homicide;
- 1389 (c) a felony offense described in Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 1391 (d) a felony offense described in Chapter 5, Part 4, Sexual Offenses~~[-other than enticing a minor under Section 76-5-417, lewdness under Section 76-5-419, or lewdness involving a child under Section 76-5-420];~~
- 1394 (e) a felony violation of aiding prostitution as described in Section 76-5d-206;
- 1395 (f) exploiting prostitution as described in Section 76-5d-207;
- 1396 (g) aggravated exploitation of prostitution under Section 76-5d-208;
- 1397 (h) robbery as described in Section 76-6-202;
- 1398 (i) burglary as described in Subsection 76-6-202(3)(b);
- 1399 (j) aggravated burglary as described in Section 76-6-203;
- 1400 (k) burglary of a research facility as described in Section 76-6-207;
- 1401 (l) aggravated robbery as described in Section 76-6-302;
- 1402 (m) an offense described in Chapter 11, Weapons; and
- 1403 (n) transporting or harboring aliens as described in Section 76-14-209.
- 1404 (7) The offenses referred to in Subsection (3) are:
- 1405 (a) criminal solicitation of a minor as described in Section 76-4-205;
- 1406 (b) an offense described in Chapter 6, Part 1, Property Destruction;
- 1407 (c) an offense described in Chapter 6, Part 4, Theft;
- 1408 (d) an offense described in Chapter 6, Part 6, Retail Theft;
- 1409 (e) an offense described in Chapter 6, Part 11, Identity Fraud Act;
- 1410 (f) communications fraud as described in Section 76-6-525; and
- 1411 (g) an offense described in Chapter 9, Part 16, Money Laundering and Currency Transaction Reporting Act.
- 1413 (8) A court may, if not otherwise prohibited from doing so by another section of the code, suspend a sentence imposed under this section and place the actor on probation.
- 1415 (9) It is not a bar to imposing the enhanced penalties under this section that the individuals with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those individuals are charged with or convicted of a different or lesser offense.

## HB0090S01 compared with HB0090S02

1419 Section 14. Section **76-3-203.12** is amended to read:

1420 **76-3-203.12. Enhanced penalty for sexual offenses committed by a person with human  
immunodeficiency virus, acquired immunodeficiency virus, hepatitis B, or hepatitis C.**

1423 (1) As used in this section:

1424 (a) "Sexual offense" means an offense described in Chapter 5, Part 4, Sexual Offenses.

1425 (b) "Sexual offense" does not include:

1426 [~~(i) enticing a minor, as described in Section 76-5-417;~~]

1427 [~~(ii) sexual battery, as described in Section 76-5-418;~~]

1428 [~~(iii)~~] (i) lewdness, as described in Section 76-5-419; or

1429 [~~(iv)~~] (ii) lewdness involving a child, as described in Section 76-5-420.

1430 (2) A person convicted of a sexual offense is subject to an enhanced penalty if at the time of the sexual  
offense the person was infected with human immunodeficiency virus, acquired immunodeficiency  
virus, hepatitis B, or hepatitis C and the person knew of the infection.

1434 (3)

(a) Except as provided in Subsection (3)(b), the enhancement of a penalty described in Subsection (2)  
shall be an enhancement of one classification higher than the root offense for which the person was  
convicted.

1437 (b) A felony of the first degree is not enhanced under this section.

1438 Section 15. Section **76-3-209** is amended to read:

1439 **76-3-209. Limitation on sentencing for crimes committed by juveniles.**

1440 (1) As used in this section[?],

1441 [~~(a) "Qualifying"~~] "qualifying sexual offense" means an offense described in Chapter 5, Part 4, Sexual  
Offenses.

1443 [~~(b) "Qualifying sexual offense" does not include enticing a minor as described in Section 76-5-417.]~~

1445 (2)

(a) This Subsection (2) only applies prospectively to an individual sentenced on or after May 10, 2016.

1447 (b) Notwithstanding any provision of law, an individual may not be sentenced to life without parole if:

1449 (i) the individual is convicted of a crime punishable by life without parole; and

1450 (ii) at the time the individual committed the crime, the individual was under 18 years old.

1452 (c) The maximum punishment that may be imposed on an individual described in Subsection (2)(b) is  
an indeterminate prison term of not less than 25 years and that may be for life.

## HB0090S01 compared with HB0090S02

- 1455 (3) Except as provided in Subsection (4), if an individual is convicted in district court of a qualifying  
sexual offense and, at the time of the offense, the individual was at least 14 years old, but under 18  
years old:
- 1458 (a) the district court shall impose a sentence consistent with the disposition that would have been made  
in juvenile court; and
- 1460 (b) the district court may not impose incarceration unless the court enters specific written findings that  
incarceration is warranted based on a totality of the circumstances, taking into account:
- 1463 (i) the time that elapsed after the individual committed the offense;
- 1464 (ii) the age of the individual at the time of the offense;
- 1465 (iii) the age of the victim at the time of the offense;
- 1466 (iv) the criminal history of the individual after the individual committed the offense;
- 1467 (v) any treatment assessments or validated risk tools; and
- 1468 (vi) public safety concerns.
- 1469 (4) Subsection (3) does not apply if:
- 1470 (a) before the individual described in Subsection (3) is convicted of the qualifying sexual offense,  
the individual is convicted of a qualifying sexual offense that the individual committed when the  
individual was 18 years old or older;
- 1473 (b) the individual is convicted in district court, before the victim is 18 years old, of a violation of  
Section 76-5-405, aggravated sexual assault; or
- 1475 (c) the conviction occurred in district court after the individual was:
- 1476 (i) charged by criminal information in the juvenile court for the qualifying sexual offense in accordance  
with Section 80-6-503; and
- 1478 (ii) bound over to the district court for the qualifying sexual offense in accordance with Section  
80-6-504.
- 1480 (5) If the district court imposes incarceration under Subsection (3)(b), the term of incarceration may not  
exceed:
- 1482 (a) seven years for a violation of Section 76-5-405, aggravated sexual assault;
- 1483 (b) except as provided in Subsection (5)(a), four years for a felony violation of Chapter 5, Part 4, Sexual  
Offenses~~[, other than Section 76-5-417, 76-5-419, or 76-5-420]~~; or
- 1485 (c) the maximum sentence described in Section 76-3-204 for a misdemeanor violation of Chapter 5,  
Part 4, Sexual Offenses~~[, other than Section 76-5-417]~~.

## HB0090S01 compared with HB0090S02

1487 Section 16. Section **76-4-102** is amended to read:

1488 **76-4-102. Attempt -- Classification of offenses.**

1489 (1) A violation of Section 76-4-101 where the actor attempts to commit:

1490 (a)

(i) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

1492 (ii) except as provided in Subsection (2), aggravated murder under Section 76-5-202, which results in serious bodily injury, is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life;

1495 (b) except as provided in Subsection (1)(c), (d), or (e), a first degree felony is a second degree felony;

1497 (c) murder under Subsection 76-5-203(2)(a) is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than five years and which may be for life;

1500 (d) one of [the] the following offenses is a first degree felony that is punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

1503 (i) child kidnapping under Section 76-5-301.1; or

1504 (ii) except as provided in Subsection (1)(e), a felony described in Title 76, Chapter 5, Part 4, Sexual Offenses[~~-, other than Section 76-5-417,~~] , that is a first degree felony;

1507 (e) except as provided in Subsection (3), one of the following offenses is a first degree felony that is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life:

1510 (i) rape of a child under Section 76-5-402.1;

1511 (ii) object rape of a child under Section 76-5-402.3; or

1512 (iii) sodomy on a child under Section 76-5-403.1;

1513 (f) a second degree felony is a third degree felony;

1514 (g) a third degree felony is a class A misdemeanor;

1515 (h) a class A misdemeanor is a class B misdemeanor;

1516 (i) a class B misdemeanor is a class C misdemeanor; and

1517 (j) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

1519

## HB0090S01 compared with HB0090S02

(2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

1523 (a) 10 years and which may be for life; or

1524 (b) six years and which may be for life.

1525 (3) If, when imposing a sentence under Subsection (1)(e), a court finds that a lesser term than the term described in Subsection (1)(e) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

1529 (a) 10 years and which may be for life;

1530 (b) six years and which may be for life; or

1531 (c) three years and which may be for life.

1532 Section 17. Section **76-4-202** is amended to read:

1533 **76-4-202. Conspiracy -- Classification of offenses.**

Conspiracy to commit:

1535 (1) a capital felony is a first degree felony;

1536 (2) a first degree felony is a second degree felony, except that conspiracy to commit child kidnaping, in violation of Section 76-5-301.1 or to commit any of those felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses[~~, other than Section 76-5-417~~], which are first degree felonies, is a first degree felony punishable by imprisonment for an indeterminate term of not less than three years and which may be for life;

1541 (3) a second degree felony is a third degree felony;

1542 (4) a third degree felony is a class A misdemeanor;

1543 (5) a class A misdemeanor is a class B misdemeanor;

1544 (6) a class B misdemeanor is a class C misdemeanor; or

1545 (7) [A] a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

1547 Section 18. Section **76-4-203** is amended to read:

1548 **76-4-203. Criminal solicitation of an adult.**

1549 (1)

(a) As used in this section:

1550 (i) "Adult" means an individual who is 18 years old or older.

## HB0090S01 compared with HB0090S02

- 1551 (ii) "Solicit" means to ask, command, encourage, importune, offer to hire, or request.
- 1552 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1553 (2) An actor commits criminal solicitation of an adult if, with the intent that a felony offense be committed, the actor solicits an adult to engage in specific conduct that, under the circumstances as the actor believes the circumstances to be, would be a felony offense or would cause the adult to be a party to the commission of a felony offense.
- 1557 (3) A violation of Subsection (2) where the actor solicits the adult to commit:
- 1558 (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;
- 1560 (b) except as provided in Subsection (3)(c) or (d), a first degree felony is a second degree felony;
- 1562 (c) any of the following felony offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:
- 1565 (i) murder, as described in Subsection 76-5-203(2)(a);
- 1566 (ii) child kidnapping, as described in Section 76-5-301.1; or
- 1567 (iii) except as provided in Subsection (3)(d), an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other than Section 76-5-417]~~, that is a first degree felony;
- 1570 (d) except as provided in Subsection (4), any of the following felony offenses is a first degree felony punishable by a term of imprisonment of not less than 15 years and which may be for life:
- 1573 (i) rape of a child, Section 76-5-402.1;
- 1574 (ii) object rape of a child, Section 76-5-402.3; or
- 1575 (iii) sodomy on a child, Section 76-5-403.1;
- 1576 (e) a second degree felony is a third degree felony; and
- 1577 (f) a third degree felony is a class A misdemeanor.
- 1578 (4) If a court finds that a lesser term than the term described in Subsection (3)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
- 1581 (a) 10 years and which may be for life;
- 1582 (b) six years and which may be for life; or
- 1583 (c) three years and which may be for life.
- 1584 (5) An actor may be convicted under this section only if the solicitation is made under circumstances strongly corroborative of the actor's intent that the offense be committed.

## HB0090S01 compared with HB0090S02

- 1586 (6) It is not a defense to a violation of this section that:
- 1587 (a) the adult solicited by the actor:
- 1588 (i) does not agree to act upon the solicitation;
- 1589 (ii) does not commit an overt act;
- 1590 (iii) does not engage in conduct constituting a substantial step toward the commission of any offense;
- 1592 (iv) is not criminally responsible for the felony offense solicited;
- 1593 (v) was acquitted, was not prosecuted or convicted, or was convicted of a different offense or of a  
different type or degree of offense; or
- 1595 (vi) is immune from prosecution; or
- 1596 (b) the actor:
- 1597 (i) belongs to a class of persons that by definition is legally incapable of committing the offense in an  
individual capacity; or
- 1599 (ii) fails to communicate with the adult that the actor solicits to commit an offense if the intent of the  
actor's conduct was to effect the communication.
- 1601 (7) Nothing in this section prevents an actor who otherwise solicits an adult to engage, or intentionally  
aids an adult in engaging, in conduct that constitutes an offense from being prosecuted and  
convicted as a party to the offense under Section 76-2-202 if the adult actually commits the offense.
- 1605 Section 19. Section **76-5-107** is amended to read:
- 1606 **76-5-107. Threat of violence.**
- 1607 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 1608 (2) An actor commits a threat of violence if the actor:
- 1609 (a)
- 1610 (i) threatens to commit an offense:
- 1610 (A) under Title 76, Chapter 5, Part 4, Sexual Offenses[~~, other than Section 76-5-417, 76-5-418,~~  
~~76-5-419, or 76-5-420~~]; or
- 1612 (B) involving bodily injury, death, or substantial property damage; and
- 1613 (ii) acts with intent to place an individual in fear:
- 1614 (A) that the actor will imminently commit an offense under Title 76, Chapter 5, Part 4, Sexual Offenses,  
[~~other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420,~~] against the individual; or
- 1617 (B) of imminent serious bodily injury, substantial bodily injury, or death; or
- 1618

## HB0090S01 compared with HB0090S02

(b) makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to an individual.

1620 (3)

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

1621 (b) An actor who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

1624 (4) It is not a defense under this section that the actor did not attempt to or was incapable of carrying out the threat.

1626 (5) A threat under Subsection (2) may be express or implied.

1627 Section 20. Section **76-5-302** is amended to read:

1628 **76-5-302. Aggravated kidnapping.**

1629 (1)

(a) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

1632 (i) Section 76-5-301, kidnapping; or

1633 (ii) Section 76-5-304, unlawful detention.

1634 (b) Terms defined in Section 76-1-101.5 apply to this section.

1635 (2) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:

1637 (a) uses or threatens to use a dangerous weapon; or

1638 (b) acts with the intent to:

1639 (i) hold the victim for ransom or reward, as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

1642 (ii) facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

1644 (iii) hinder or delay the discovery of or reporting of a felony;

1645 (iv) inflict bodily injury on or to terrorize the victim or another individual;

1646 (v) interfere with the performance of any governmental or political function; or

1647 (vi) commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses, other than Section [~~76-5-417, 76-5-418,~~]76-5-419[,] or 76-5-420.

## HB0090S01 compared with HB0090S02

- 1649 (3)
- (a) A violation of Subsection (2) in the course of committing unlawful detention is a third degree felony.
- 1651 (b) A violation of Subsection (2) in the course of committing kidnapping is a first degree felony.
- 1653 (4) An actor convicted of a violation of Subsection (3)(b) shall be sentenced to imprisonment of:
- 1655 (a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and which may be for life;
- 1657 (b) except as provided in Subsection (4)(c) or (5), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to the victim or another individual; or
- 1660 (c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.
- 1663 (5) If, when imposing a sentence under Subsection (4)(a) or (b), a court finds that a lesser term than the term described in Subsection (4)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
- 1667 (a) for purposes of Subsection (4)(b), 15 years and which may be for life; or
- 1668 (b) for purposes of Subsection (4)(a) or (b):
- 1669 (i) 10 years and which may be for life; or
- 1670 (ii) six years and which may be for life.
- 1671 (6) The provisions of Subsection (5) do not apply when a defendant is sentenced under Subsection (4) (c).
- 1673 (7) Subsections (4)(b) and (c) do not apply if the actor was younger than 18 years old at the time of the offense.
- 1675 (8) Imprisonment under Subsection (4) is mandatory in accordance with Section 76-3-406.
- 1676 Section 21. Section **76-5b-201** is amended to read:
- 1677 **76-5b-201. Sexual exploitation of a minor -- Offenses.**
- 1678 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 1679 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses, views, accesses with the intent to view, or maintains access with the intent to view, child sexual abuse material.
- 1682 (3)

## HB0090S01 compared with HB0090S02

- 1683 (a) A violation of Subsection (2) is a second degree felony.
- 1684 (b) It is a separate offense under this section:
- 1685 (i) for each minor depicted in the child sexual abuse material; and
- 1686 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 1687 (4) For a charge of violating this section, it is an affirmative defense that:
- 1688 (a) the defendant:
- 1690 (i) did not solicit the child sexual abuse material from the minor depicted in the child sexual abuse
- 1692 (ii) is not more than two years older than the minor depicted in the child sexual abuse material; and
- 1696 (iii) upon request of a law enforcement agent or the minor depicted in the child sexual abuse material, removes from an electronic device or destroys the child sexual abuse material and all copies of the child sexual abuse material in the defendant's possession; and
- 1698 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses[; other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420].
- 1700 (5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.
- 1702 (6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:
- 1704 (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:
- 1705 (i) reporting or data preservation duties required under federal or state law; or
- 1708 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;
- 1711 (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;
- 1713 (c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;
- 1713 (d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;

## HB0090S01 compared with HB0090S02

- 1715 (e) an attorney or employee of an attorney who is required to view child sexual abuse material during  
the course of a judicial process and while acting within the scope of employment;
- 1718 (f) an employee of the Department of Health and Human Services who is required to view child sexual  
abuse material within the scope of the employee's employment;
- 1720 (g) an employee, independent contractor, or designated interviewer of a Children's Justice Center, who  
is required to view child sexual abuse material within the scope of the employee's, independent  
contractor's, or designated interviewer's scope of employment or assignment; or
- 1724 (h) an attorney who is required to view child sexual abuse material within the scope of the attorney's  
responsibility to represent the Department of Health and Human Services, including the divisions  
and offices within the Department of Health and Human Services.

1728 Section 22. Section **76-7-101** is amended to read:

1729 **76-7-101. Bigamy.**

1730 (1) An individual is guilty of bigamy if:

1731 (a) the individual purports to marry another individual; and

1732 (b) knows or reasonably should know that one or both of the individuals described in Subsection (1)(a)  
are legally married to another individual.

1734 (2) An individual who violates Subsection (1) is guilty of an infraction.

1735 (3) An individual is guilty of a third degree felony if the individual induces bigamy:

1736 (a) under fraudulent or false pretenses; or

1737 (b) by threat or coercion.

1738 (4) An individual is guilty of a second degree felony if the individual:

1739 (a) cohabitates with another individual with whom the individual is engaged in bigamy as described in  
Subsection (1); and

1741 (b) in furtherance of the conduct described in Subsection (4)(a)[;] :

1742 (i) ~~[-]commits a felony [offense, or for Section 76-5-418, a misdemeanor offense, in-]violation of[one  
or more of the following]:~~

1744 [(i)] (A) Section 76-5-109, child abuse;

1745 [(ii)] (B) Section 76-5-109.2, aggravated child abuse;

1746 [(iii)] (C) Section 76-5-109.3, child abandonment;

1747 [(iv)] (D) Section 76-5-109.4, child torture;

1748 [(v)] (E) Section 76-5-111, abuse of a vulnerable adult;

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- 1749 [(vi)] (F) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1750 [(vii)] (G) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1751 [(viii)] (H) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1752 [(ix)] (I) Chapter 5, Part 2, Criminal Homicide;
- 1753 [(x)] (J) Section 76-5-208, child abuse homicide;
- 1754 [(xi)] (K) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 1755 [(xii)] (L) Chapter 5, Part 4, Sexual Offenses~~[-other than:]~~ ;
- 1756 [(A) Section 76-5-417, enticing a minor;]
- 1757 [(B) Section 76-5-419, lewdness; or]
- 1758 [(C) Section 76-5-420, lewdness involving a child];
- 1759 [(xiii)] (M) Section 76-7-201, criminal nonsupport;
- 1760 [(xiv)] (N) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
- 1761 [(xv)] (O) Title 78B, Chapter 7, Part 8, Criminal Protective Orders~~[-]~~ ; or
- 1762 (ii) commits a misdemeanor violation of Section 76-5-418, sexual battery.
- 1763 (5) It is a defense to prosecution under Subsection (2) that:
- 1764 (a) the individual ceased the practice of bigamy as described in Subsection (1) under reasonable fear of coercion or bodily harm;
- 1766 (b) the individual entered the practice of bigamy, as described in Subsection (1), as a minor and ceased the practice of bigamy at any time after the individual entered the practice of bigamy; or
- 1769 (c) law enforcement discovers that the individual practices bigamy, as described in Subsection (1), as a result of the individual's efforts to protect the safety and welfare of another individual.
- 1772 Section 23. Section **77-2-9** is amended to read:
- 1773 **77-2-9. Offenses ineligible for diversion.**
- 1774 (1) A magistrate may not grant a diversion for:
- 1775 (a) a capital felony;
- 1776 (b) a felony in the first degree;
- 1777 (c) any case involving a sexual offense against a victim who is under 14 years old;
- 1778 (d) any motor vehicle related offense involving alcohol or drugs;
- 1779 (e) any case involving using a motor vehicle in the commission of a felony;
- 1780 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;
- 1782

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(g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:

1784 (i) manslaughter under Section 76-5-205; or

1785 (ii) negligent homicide under Section 76-5-206; or

1786 (h) a crime of domestic violence as defined in Section 77-36-1.

1787 (2) When an individual is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other than a violation of Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420,]~~, while the individual is under 16 years old, the court may enter a diversion in the matter if the court enters on the record the court's findings that:

1791 (a) the offenses could have been adjudicated in juvenile court but for the delayed reporting or delayed filing of the information in the district court, unless the offenses are before the court in accordance with Section 80-6-502 or 80-6-504;

1794 (b) the individual did not use coercion or force;

1795 (c) there is no more than three years' difference between the ages of the participants; and

1796 (d) it would be in the best interest of the person to grant diversion.

1797 Section 24. Section **77-7a-104** is amended to read:

1798 **77-7a-104. Activation and use of body-worn cameras.**

1799 (1) As used in this section:

1800 (a) "Health care facility" means the same as that term is defined in Section 78B-3-403.

1801 (b) "Health care provider" means the same as that term is defined in Section 78B-3-403.

1802 (c) "Hospital" means the same as that term is defined in Section 78B-3-403.

1803 (d) "Human service program" means the same as that term is defined in Section 26B-2-101.

1805 (2) Except as provided in Subsection (5), an officer using a body-worn camera:

1806 (a) shall verify that the equipment is properly functioning as is reasonably within the officer's ability;

1808 (b) shall report any malfunctioning equipment to the officer's supervisor if:

1809 (i) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or

1811 (ii) the officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty;

1813 (c) shall wear the body-worn camera so that it is clearly visible to the individual being recorded;

1815 (d) shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible;

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- 1817 (e) shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter,  
except as an interruption of a recording is allowed under this section;
- 1820 (f) shall, when going on duty and off duty, record the officer's name, identification number, and the  
current time and date, unless the information is already available due to the functionality of the  
body-worn camera;
- 1823 (g) shall, if the body-worn camera was present during a law enforcement encounter, document the  
presence of the body-worn camera in any report or other official record of a contact;
- 1826 (h) except as provided in Subsection (2)(i), when the body-worn camera has been activated during the  
officer's direct participation in a law enforcement encounter, keep the body-worn camera activated  
until the officer's direct participation in the law enforcement encounter is complete;
- 1830 (i) may deactivate the body-worn camera:
- 1831 (i) to consult with a supervisor or another officer;
- 1832 (ii) during a significant period of inactivity;
- 1833 (iii) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who  
wishes to report or discuss criminal activity if:
- 1835 (A) the individual who is the subject of the recording requests that the officer deactivate the officer's  
body-worn camera; and
- 1837 (B) the officer believes that the value of the information outweighs the value of the potential recording  
and records the request by the individual to deactivate the body-worn camera; or
- 1840 (iv) during a conversation with a victim of a domestic violence offense as defined in Section 77-36-1,  
or a sexual offense, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, [~~other than Section  
76-5-417, 76-5-418, 76-5-419, or 76-5-420~~] if:
- 1844 (A) the officer is conducting an evidence-based lethality assessment;
- 1845 (B) the victim or the officer believes that deactivating the body-worn camera recording will encourage  
complete and accurate information sharing by the victim, or is necessary to protect the safety or  
identity of the victim; and
- 1848 (C) the officer's body-worn camera is reactivated as soon as reasonably possible after the evidence-  
based lethality assessment is complete;
- 1850 (j) shall, if the officer deactivates or fails to activate the body-worn camera in violation of this section,  
document in a written report the reason for deactivating or for failing to activate the body-worn  
camera; and

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- 1853 (k) may not activate a body-worn camera in a hospital, health care facility, human service program,  
or the clinic of a health care provider, except during a law enforcement encounter, and with notice  
under Section 77-7a-105.
- 1856 (3) A violation of this section may not serve as the sole basis to dismiss a criminal case or charge.
- 1858 (4) This section does not preclude a law enforcement agency from establishing internal agency policies  
for an officer's failure to comply with the requirements of this section.
- 1860 (5) Subsections (2)(c), (d), (e), (g), (h), and (j) do not apply to an officer who:
- 1861 (a) is assigned to a narcotics unit or task force that is engaged primarily in narcotics investigations; or
- 1863 (b) is engaged in an undercover operation.
- 1864 Section 25. Section **77-22-2.5** is amended to read:
- 1865 **77-22-2.5. Court orders for criminal investigations for records concerning an electronic  
communications system or service or remote computing service -- Content -- Fee for providing  
information.**
- 1868 (1) As used in this section:
- 1869 (a)
- (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data,  
or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,  
photoelectronic, or photooptical system.
- 1872 (ii) "Electronic communication" does not include:
- 1873 (A) a wire or oral communication;
- 1874 (B) a communication made through a tone-only paging device;
- 1875 (C) a communication from a tracking device; or
- 1876 (D) electronic funds transfer information stored by a financial institution in a communications system  
used for the electronic storage and transfer of funds.
- 1878 (b) "Electronic communications service" means a service which provides for users the ability to send or  
receive wire or electronic communications.
- 1880 (c) "Electronic communications system" means a wire, radio, electromagnetic, photooptical, or  
photoelectronic facilities for the transmission of wire or electronic communications, and a computer  
facilities or related electronic equipment for the electronic storage of the communication.
- 1884 (d) "Internet service provider" means the same as that term is defined in Section 76-5c-401.
- 1886 (e) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.

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- 1887 (f) "Remote computing service" means the provision to the public of computer storage or processing  
services by means of an electronic communications system.
- 1889 (g)
- 1889 [(†)] "Sexual offense against a minor" means:
- 1890 [(A)] (i) sexual exploitation of a minor or attempted sexual exploitation of a minor in violation of  
Section 76-5b-201;
- 1892 [(B)] (ii) aggravated sexual exploitation of a minor or attempted aggravated sexual exploitation of a  
minor in violation of Section 76-5b-201.1;
- 1894 [(C)] (iii) a sexual offense or attempted sexual offense committed against a minor in violation of  
Title 76, Chapter 5, Part 4, Sexual Offenses;
- 1896 [(D)] (iv) dealing in or attempting to deal in material harmful to a minor in violation of Section  
76-5c-205 or 76-5c-206;
- 1898 [(E)] (v) human trafficking of a child in violation of Section 76-5-308.5; or
- 1899 [(F)] (vi) aggravated sexual extortion of a child in violation of Section 76-5b-204.
- 1900 [(ii) "Sexual offense against a minor" does not include an offense described in Section 76-5-418,  
76-5-419, or 76-5-420.]
- 1902 (2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of  
stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and  
has reasonable suspicion that an electronic communications system or service or remote computing  
service has been used in the commission of a criminal offense, a law enforcement agent shall:
- 1907 (a) articulate specific facts showing reasonable grounds to believe that the records or other information  
sought, as designated in Subsections (2)(c)(i) through (v), are relevant and material to an ongoing  
investigation;
- 1910 (b) present the request to a prosecutor for review and authorization to proceed; and
- 1911 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec. 2703 and 18  
U.S.C. Sec. 2702, to the electronic communications system or service or remote computing service  
provider that owns or controls the Internet protocol address, websites, email address, or service to a  
specific telephone number, requiring the production of the following information, if available, upon  
providing in the court order the Internet protocol address, email address, telephone number, or other  
identifier, and the dates and times the address, telephone number, or other identifier is suspected of  
being used in the commission of the offense:

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- 1919 (i) names of subscribers, service customers, and users;
- 1920 (ii) addresses of subscribers, service customers, and users;
- 1921 (iii) records of session times and durations;
- 1922 (iv) length of service, including the start date and types of service utilized; and
- 1923 (v) telephone or other instrument subscriber numbers or other subscriber identifiers, including a temporarily assigned network address.
- 1925 (3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce a record under Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.
- 1929 (4)
- (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.
- 1932 (b) The law enforcement agency conducting the investigation shall pay the fee.
- 1933 (5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.
- 1936 (6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that the provider does not have the information.
- 1941 (7) There is no cause of action against a provider or wire or electronic communication service, or the provider or service's officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.
- 1945 (8)
- (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

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(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

1950 (9) A prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

1952 (a) the number of requests for court orders authorized by the prosecutorial agency;

1953 (b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

1955 (c) if the court order led to criminal charges being filed, the type and number of offenses charged.

1957 Section 26. Section **77-36-1** is amended to read:

1958 **77-36-1. Definitions.**

As used in this chapter:

1960 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

1961 (2) "Department" means the Department of Public Safety.

1962 (3) "Divorced" means an individual who has obtained a divorce under Title 81, Chapter 4, Part 4, Divorce.

1964 (4)

(a) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another.

1968 (b) "Domestic violence" or "domestic violence offense" includes the commission of or attempt to commit, any of the following offenses by one cohabitant against another:

1970 (i) aggravated assault under Section 76-5-103;

1971 (ii) aggravated cruelty to an animal under Section 76-13-203, with the intent to harass or threaten the other cohabitant;

1973 (iii) assault under Section 76-5-102;

1974 (iv) criminal homicide under Section 76-5-201;

1975 (v) harassment under Section 76-5-106;

1976 (vi) electronic communication harassment under Sections 76-12-202, 76-12-203, and 76-12-204;

1978

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- (vii) kidnapping, child kidnapping, or aggravated kidnapping under Sections 76-5-301, 76-5-301.1, and 76-5-302;
- 1980 (viii) mayhem under Section 76-5-105;
- 1981 (ix) propelling a bodily substance or material, as described in Section 76-5-102.9;
- 1982 (x) sexual offenses under Title 76, Chapter 5, Part 4, Sexual Offenses, and sexual exploitation of a minor and aggravated sexual exploitation of a minor, as described in Sections 76-5b-201 and 76-5b-201.1;
- 1985 (xi) stalking under Section 76-5-106.5;
- 1986 (xii) unlawful detention and unlawful detention of a minor under Section 76-5-304;
- 1987 (xiii) violation of a protective order or ex parte protective order under Section 76-5-108;
- 1989 (xiv) an offense against property under Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
- 1992 (xv) disorderly conduct under Section 76-9-102, if a conviction or adjudication of disorderly conduct is the result of a plea agreement in which the perpetrator was originally charged with a domestic violence offense otherwise described in this Subsection (4), except that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4) (b)(xv), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- 1999 (xvi) child abuse under Section 76-5-114;
- 2000 (xvii) threatening violence under Section 76-5-107;
- 2001 (xviii) tampering with a witness under Section 76-8-508;
- 2002 (xix) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 2003 (xx) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
- 2004 (xxi) unlawful distribution of an intimate image under Section 76-5b-203;
- 2005 (xxii) unlawful distribution of a counterfeit intimate image under Section 76-5b-205;
- 2006 (xxiii) threatening with or using a dangerous weapon in a fight or quarrel under Section 76-11-207;
- 2008 (xxiv) possession of a dangerous weapon with criminal intent under Section 76-11-208;
- 2010 (xxv) improper discharging of a dangerous weapon under Section 76-11-209;
- 2011 (xxvi) voyeurism under Section 76-12-306;
- 2012 (xxvii) recorded or photographed voyeurism under Section 76-12-307;
- 2013 (xxviii) distribution of images obtained through voyeurism under Section 76-12-308;

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- 2014 (xxix) damage to or interruption of a communication device under Section 76-6-108; or  
2016 (xxx) an offense under Subsection 78B-7-806(1).  
2017 [~~(e) "Domestic violence" or "domestic violence offense" does not include:~~]  
2018 [~~(i) enticing a minor under Section 76-5-417;~~]  
2019 [~~(ii) lewdness under in Section 76-5-419; or~~]  
2020 [~~(iii) lewdness involving a child under Section 76-5-420.~~]  
2021 (5) "Jail release agreement" means the same as that term is defined in Section 78B-7-801.  
2022 (6) "Jail release court order" means the same as that term is defined in Section 78B-7-801.  
2023 (7) "Marital status" means married and living together, divorced, separated, or not married.  
2024 (8) "Married and living together" means a couple whose marriage was solemnized under Section  
81-2-305 or 81-2-407 and who are living in the same residence.  
2026 (9) "Not married" means any living arrangement other than married and living together, divorced, or  
separated.  
2028 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).  
2029 (11) "Pretrial protective order" means a written order:  
2030 (a) specifying and limiting the contact a person who has been charged with a domestic violence offense  
may have with an alleged victim or other specified individuals; and  
2032 (b) specifying other conditions of release under Section 78B-7-802 or 78B-7-803, pending trial in the  
criminal case.  
2034 (12) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic  
violence case that limits the contact an individual who is convicted or adjudicated of a domestic  
violence offense may have with a victim or other specified individuals under Section 78B-7-804.  
2038 (13) "Separated" means a couple who have had their marriage solemnized under Section 81-2-305 or  
81-2-407 and who are not living in the same residence.  
2040 (14) "Victim" means a cohabitant who has been subjected to domestic violence.  
2041 Section 27. Section **77-37-2** is amended to read:  
2042 **77-37-2. Definitions.**  
As used in this chapter:  
2044 (1) "Alleged sexual offender" means the same as that term is defined in Section 53-10-801.  
2045

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(2) "Child" means a person who is younger than 18 years old, unless otherwise specified in statute.

The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.

2048 (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.

2049 (4) "HIV infection" means the same as that term is defined in Section 53-10-801.

2050 (5) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.

2051 (6)

(a) "Sexual offense" means any conduct described in:

2052 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

2053 (ii) Title 76, Chapter 5b, Sexual Exploitation Act; or

2054 (iii) Section 76-7-102, incest.

2055 (b) "Sexual offense" does not include conduct described in[;]

2056 [~~(i) Section 76-5-417, enticing a minor;~~]

2057 [~~(ii) Section 76-5-420, lewdness involving a child; or]~~

2058 [~~(iii)] Section 76-5b-206, failure to report child sexual abuse material by a computer technician.~~

2060 (7) "Victim" means an individual, including a minor, against whom an offense has been allegedly committed.

2062 (8) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

2066 Section 28. Section **77-38-601** is amended to read:

2067 **77-38-601. Definitions.**

As used in this part:

2069 (1) "Abuse" means any of the following:

2070 (a) "abuse" as that term is defined in Section 76-5-111 or 80-1-102; or

2071 (b) "child abuse" as that term is defined in Section 76-5-109.

2072 (2) "Actual address" means the residential street address of the program participant that is stated in a program participant's application for enrollment or on a notice of a change of address under Section 77-38-610.

2075

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- (3) "Assailant" means an individual who commits or threatens to commit abuse, human trafficking, domestic violence, stalking, or a sexual offense against an applicant for the program or a minor or incapacitated individual residing with an applicant for the program.
- 2079 (4) "Assigned address" means an address designated by the commission and assigned to a program participant.
- 2081 (5) "Authorization card" means a card issued by the commission that identifies a program participant as enrolled in the program with the program participant's assigned address and the date on which the program participant will no longer be enrolled in the program.
- 2084 (6) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
- 2086 (7) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 2087 (8) "Human trafficking" means a human trafficking offense under Section 76-5-308.
- 2088 (9) "Incapacitated individual" means an individual who is incapacitated, as defined in Section 75-1-201.
- 2090 (10)
- (a) "Mail" means first class letters or flats delivered by the United States Postal Service, including priority, express, and certified mail.
- 2092 (b) "Mail" does not include a package, parcel, periodical, or catalogue, unless the package, parcel, periodical, or catalogue is clearly identifiable as:
- 2094 (i) being sent by a federal, state, or local agency or another government entity; or
- 2095 (ii) a pharmaceutical or medical item.
- 2096 (11) "Minor" means an individual who is younger than 18 years old.
- 2097 (12) "Notification form" means a form issued by the commission that a program participant may send to a person demonstrating that the program participant is enrolled in the program.
- 2100 (13) "Program" means the Safe at Home Program created in Section 77-38-602.
- 2101 (14) "Program assistant" means an individual designated by the commission under Section 77-38-604 to assist an applicant or program participant.
- 2103 (15) "Program participant" means an individual who is enrolled under Section 77-38-606 by the commission to participate in the program.
- 2105 (16) "Record" means the same as that term is defined in Section 63G-2-103.
- 2106 (17)
- (a) "Sexual offense" means:

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- 2107 (i) a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses; or  
2108 (ii) a sexual exploitation offense under Title 76, Chapter 5b, Part 2, Sexual Exploitation.
- 2110 (b) "Sexual offense" does not include an offense under:
- 2111 [~~(i) Section 76-5-417, enticing a minor;~~]  
2112 [~~(ii) Section 76-5-418, sexual battery;~~]  
2113 [~~(iii) (i) Section 76-5-419, lewdness;~~  
2114 [~~(iv) (ii) Section 76-5-420, lewdness involving a child; or~~  
2115 [~~(v) (iii) Section 76-5b-206, failure to report child sexual abuse material by a computer technician.~~
- 2117 (18) "Stalking" means the same as that term is defined in Section 76-5-106.5.
- 2118 (19) "State or local government entity" means a county, municipality, higher education institution,  
special district, special service district, or any other political subdivision of the state or an  
administrative subunit of the executive, legislative, or judicial branch of this state, including:
- 2122 (a) a law enforcement entity or any other investigative entity, agency, department, division, bureau,  
board, or commission; or
- 2124 (b) an individual acting or purporting to act for or on behalf of a state or local entity, including an  
elected or appointed public official.
- 2126 (20) "Victim" means a victim of abuse, domestic violence, human trafficking, stalking, or a sexual  
[assault] offense.
- 2128 Section 29. Section **78B-7-502** is amended to read:
- 2129 **78B-7-502. Definitions.**
- As used in this part:
- 2131 (1) "Ex parte sexual violence protective order" means an order issued without notice to the respondent  
under this part.
- 2133 (2) "Protective order" means:
- 2134 (a) a sexual violence protective order; or  
2135 (b) an ex parte sexual violence protective order.
- 2136 (3)
- (a) "Sexual violence" means the commission or the attempt to commit:
- 2137 (i) any sexual offense described in:
- 2138 (A) Title 76, Chapter 5, Part 4, Sexual Offenses; or  
2139 (B) Title 76, Chapter 5b, Part 2, Sexual Exploitation;

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- 2140 (ii) human trafficking for sexual exploitation under Section 76-5-308.1; or  
2141 (iii) aggravated human trafficking for forced sexual exploitation under Section 76-5-310.
- 2143 (b) "Sexual violence" does not include an offense described in:
- 2144 [~~(i) Section 76-5-417, enticing a minor;~~]  
2145 [~~(ii) Section 76-5-418, sexual battery;~~]  
2146 [~~(iii)~~] (i) Section 76-5-419, lewdness;  
2147 [~~(iv)~~] (ii) Section 76-5-420, lewdness involving a child; or  
2148 [~~(v)~~] (iii) Section 76-5b-206, failure to report child sexual abuse material by a computer technician.
- 2150 (4) "Sexual violence protective order" means an order issued under this part after a hearing on the petition, of which the petitioner and respondent have been given notice.
- 2152 Section 30. Section **78B-7-801** is amended to read:
- 2153 **78B-7-801. Definitions.**
- As used in this part:
- 2155 (1)
- (a) "Jail release agreement" means a written agreement that is entered into by an individual who is arrested or issued a citation, regardless of whether the individual is booked into jail:
- 2158 (i) under which the arrested or cited individual agrees to not engage in any of the following:
- 2160 (A) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;
- 2162 (B) threatening or harassing the alleged victim; or
- 2163 (C) knowingly entering onto the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim, unless, after a law enforcement officer or the law enforcement officer's employing agency notifies or attempts to notify the alleged victim, the individual enters the premises while accompanied by a law enforcement officer for the purpose of retrieving the individual's personal belongings; and
- 2169 (ii) that specifies other conditions of release from jail or arrest.
- 2170 (b) "Jail release agreement" includes a written agreement that includes the conditions described in Section (1)(a) entered into by a minor who is taken into custody or placed in detention or a shelter facility under Section 80-6-201.
- 2173 (2) "Jail release court order" means a written court order that:
- 2174 (a) orders an arrested or cited individual not to engage in any of the following:
- 2175 (i) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;

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- 2177 (ii) threatening or harassing the alleged victim; or  
2178 (iii) knowingly entering onto the premises of the alleged victim's residence or on premises temporarily  
occupied by the alleged victim, unless, after a law enforcement officer or the law enforcement  
officer's employing agency notifies or attempts to notify the alleged victim, the individual enters  
the premises while accompanied by a law enforcement officer for the purpose of retrieving the  
individual's personal belongings; and
- 2184 (b) specifies other conditions of release from jail.
- 2185 (3) "Minor" means the same as that term is defined in Section 80-1-102.
- 2186 (4) "Offense against a child or vulnerable adult" means the commission or attempted commission of an  
offense described in:
- 2188 (a) Section 76-5-109, child abuse;  
2189 (b) Section 76-5-109.2, aggravated child abuse;  
2190 (c) Section 76-5-109.3, child abandonment;  
2191 (d) Section 76-5-109.4, child torture;  
2192 (e) Section 76-5-110, abuse or neglect of a child with a disability;  
2193 (f) Section 76-5-111, abuse of a vulnerable adult;  
2194 (g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;  
2195 (h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;  
2196 (i) Section 76-5-111.4, financial exploitation of a vulnerable adult;  
2197 (j) Section 76-5-114, commission of domestic violence in the presence of a child; or  
2198 (k) Section 76-5-418, sexual battery.
- 2199 (5)
- (a) "Qualifying offense" means:
- 2200 (i) domestic violence;  
2201 (ii) an offense against a child or vulnerable adult; or  
2202 (iii) the commission or attempted commission of an offense described in [~~Section 76-5-418, sexual  
battery, or~~] Title 76, Chapter 5, Part 4, Sexual Offenses.
- 2204 (b) "Qualifying offense" does not include an offense described in:
- 2205 [~~(i) Section 76-5-417, enticing a minor;~~]  
2206 [(~~ii~~) (i) Section 76-5-419, lewdness; or  
2207 [(~~iii~~) (ii) Section 76-5-420, lewdness involving a child.

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2208 Section 31. Section **80-1-102** is amended to read:

2209 **80-1-102. Juvenile Code definitions.**

Except as provided in Section 80-6-1103, as used in this title:

2211 (1)

(a) "Abuse" means:

2212 (i)

(A) nonaccidental harm of a child;

2213 (B) threatened harm of a child;

2214 (C) sexual exploitation;

2215 (D) sexual abuse; or

2216 (E) human trafficking of a child in violation of Section 76-5-308.5; or

2217 (ii) that a child's parent:

2218 (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

2220 (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

2223 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the  
death of another parent of the child.

2225 (b) "Abuse" does not include:

2226 (i) reasonable discipline or management of a child, including withholding privileges;

2227 (ii) conduct described in Section 76-2-401; or

2228 (iii) the use of reasonable and necessary physical restraint or force on a child:

2229 (A) in self-defense;

2230 (B) in defense of others;

2231 (C) to protect the child; or

2232 (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).

2234 (2) "Abused child" means a child who has been subjected to abuse.

2235 (3)

(a) "Adjudication" means, except as provided in Subsection (3)(b):

2236 (i) for a delinquency petition or criminal information under Chapter 6, Juvenile Justice:

2238

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- (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;
- 2241 (B) an admission by a minor in the juvenile court as described in Section 80-6-306; or
- 2243 (C) a plea of no contest by minor in the juvenile court; or
- 2244 (ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in the petition have been proved.
- 2246 (b) "Adjudication" does not include:
- 2247 (i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's admission; or
- 2249 (ii) a finding of not competent to proceed in accordance with Section 80-6-402.
- 2250 (4)
- (a) "Adult" means an individual who is 18 years old or older.
- 2251 (b) "Adult" does not include an individual:
- 2252 (i) who is 18 years old or older; and
- 2253 (ii) who is a minor.
- 2254 (5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 2256 (6) "Board" means the Board of Juvenile Court Judges.
- 2257 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18 years old.
- 2259 (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.
- 2261 (9) "Child placing" means the same as that term is defined in Section 26B-2-101.
- 2262 (10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.
- 2263 (11) "Child protection team" means a team consisting of:
- 2264 (a) the child welfare caseworker assigned to the case;
- 2265 (b) if applicable, the child welfare caseworker who made the decision to remove the child;
- 2267 (c) a representative of the school or school district where the child attends school;
- 2268 (d) if applicable, the law enforcement officer who removed the child from the home;
- 2269 (e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
- 2271 (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;

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- 2273 (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
- 2275 (h) any other individuals determined appropriate and necessary by the team coordinator and chair.
- 2277 (12)
- (a) "Chronic abuse" means repeated or patterned abuse.
- 2278 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 2279 (13)
- (a) "Chronic neglect" means repeated or patterned neglect.
- 2280 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 2281 (14) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.
- 2283 (15) "Commit" or "committed" means, unless specified otherwise:
- 2284 (a) with respect to a child, to transfer legal custody; and
- 2285 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 2286 (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.
- 2290 (17) "Community placement" means placement of a minor in a community-based program described in  
Section 80-5-402.
- 2292 (18) "Correctional facility" means:
- 2293 (a) a county jail; or
- 2294 (b) a secure correctional facility as defined in Section 64-13-1.
- 2295 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's  
likelihood of reoffending.
- 2297 (20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
- 2299 (21) "Dependent child" or "dependency" means a child who is without proper care through no fault of  
the child's parent, guardian, or custodian.
- 2301 (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.
- 2303 (23) "Detention" means home detention or secure detention.
- 2304

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- (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.
- 2306 (25) "Detention risk assessment tool" means an evidence-based tool established under Section 80-5-203 that:
- 2308 (a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and
- 2310 (b) is designed to assist in making a determination of whether a minor shall be held in detention.
- 2312 (26) "Developmental immaturity" means incomplete development in one or more domains that manifests as a functional limitation in the minor's present ability to:
- 2314 (a) consult with counsel with a reasonable degree of rational understanding; and
- 2315 (b) have a rational as well as factual understanding of the proceedings.
- 2316 (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.
- 2318 (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.
- 2321 (29) "Educational series" means an evidence-based instructional series:
- 2322 (a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104; and
- 2324 (b) designed to prevent substance use or the onset of a mental health disorder.
- 2325 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 2326 (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.
- 2330 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 2331 (33) "Formal probation" means a minor is:
- 2332 (a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and
- 2334 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2335 (34) "Gender identity" means the same as that term is defined in Section 34A-5-102.
- 2336 (35) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

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- 2338 (36) "Guardian" means a person appointed by a court to make decisions regarding a minor, including  
the authority to consent to:
- 2340 (a) marriage;
- 2341 (b) enlistment in the armed forces;
- 2342 (c) major medical, surgical, or psychiatric treatment; or
- 2343 (d) legal custody, if legal custody is not vested in another individual, agency, or institution.
- 2345 (37) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 2346 (38) "Harm" means:
- 2347 (a) physical or developmental injury or damage;
- 2348 (b) emotional damage that results in a serious impairment in the child's growth, development, behavior,  
or psychological functioning;
- 2350 (c) sexual abuse; or
- 2351 (d) sexual exploitation.
- 2352 (39) "Home detention" means placement of a minor:
- 2353 (a) if prior to 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
- 2356 (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.
- 2360 (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.
- 2363 (b) "Incest" includes:
- 2364 (i) blood relationships of the whole or half blood, regardless of whether the relationship is legally  
recognized;
- 2366 (ii) relationships of parent and child by adoption; and
- 2367 (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent  
and stepchild exists.
- 2369 (41) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

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- 2370 (42) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 2371 (43) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.
- 2373 (44) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.
- 2375 (45) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
- 2376 (46)
- (a) "Intake probation" means a minor is:
- 2377 (i) monitored by a juvenile probation officer; and
- 2378 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2379 (b) "Intake probation" does not include formal probation.
- 2380 (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.
- 2383 (48) "Juvenile offender" means:
- 2384 (a) a serious youth offender; or
- 2385 (b) a youth offender.
- 2386 (49) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.
- 2388 (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.
- 2392 (51) "Legal custody" means a relationship embodying:
- 2393 (a) the right to physical custody of the minor;
- 2394 (b) the right and duty to protect, train, and discipline the minor;
- 2395 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
- 2397 (d) the right to determine where and with whom the minor shall live; and
- 2398 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2399 (52) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.
- 2401 (53) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.
- 2403 (54) "Mental illness" means:
- 2404

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- (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
- 2406 (b) the same as that term is defined in:
- 2407 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
- 2409 (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- 2411 (55) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:
- 2412 (a) a child; or
- 2413 (b) an individual:
- 2414 (i)
- (A) who is at least 18 years old and younger than 21 years old; and
- 2415 (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;
- 2419 (ii)
- (A) who is at least 18 years old and younger than 25 years old; and
- 2420 (B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(b); or
- 2422 (iii)
- (A) who is at least 18 years old and younger than 21 years old; and
- 2423 (B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(c).
- 2425 (56) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-101.
- 2427 (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.
- 2431 (58)
- (a) "Neglect" means action or inaction causing:
- 2432 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe Relinquishment of a Newborn Child;

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- 2434 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or  
custodian;
- 2436 (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;
- 2439 (iv) a child to be at risk of being neglected or abused because another child in the same home is  
neglected or abused;
- 2441 (v) abandonment of a child through an unregulated child custody transfer under Section 81-14-203;  
or
- 2443 (vi) educational neglect.
- 2444 (b) "Neglect" does not include:
- 2445 (i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not  
provide specified medical treatment for a child;
- 2447 (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;
- 2450 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 2451 (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:
- 2454 (A) traveling to and from school, including by walking, running, or bicycling;
- 2455 (B) traveling to and from nearby commercial or recreational facilities;
- 2456 (C) engaging in outdoor play;
- 2457 (D) remaining in a vehicle unattended, except under the conditions described in Subsection  
76-5-115(2);
- 2459 (E) remaining at home unattended; or
- 2460 (F) engaging in a similar independent activity.
- 2461 (59) "Neglected child" means a child who has been subjected to neglect.
- 2462 (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:
- 2465 (a) the assigned juvenile probation officer; and
- 2466 (b)
- (i) the minor; or

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- 2467 (ii) the minor and the minor's parent, guardian, or custodian.
- 2468 (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:
- 2470 (a) understand the nature of the proceedings against the minor or of the potential disposition for the  
offense charged; or
- 2472 (b) consult with counsel and participate in the proceedings against the minor with a reasonable degree  
of rational understanding.
- 2474 (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.
- 2476 (b) "Parent" includes the minor's noncustodial parent as defined in Section 81-1-101.
- 2477 (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.
- 2481 (64) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2482 (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.
- 2485 (b) "Probation" includes intake probation or formal probation.
- 2486 (66) "Prosecuting attorney" means:
- 2487 (a) the attorney general and any assistant attorney general;
- 2488 (b) any district attorney or deputy district attorney;
- 2489 (c) any county attorney or assistant county attorney; and
- 2490 (d) any other attorney authorized to commence an action on behalf of the state.
- 2491 (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:
- 2493 (a) the day on which the shelter hearing is held under Section 80-3-301; or
- 2494 (b) the day on which the child is returned home.
- 2495 (68) "Protective services" means expedited services that are provided:
- 2496 (a) in response to evidence of neglect, abuse, or dependency of a child;

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- 2497 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 2498 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect  
or abuse; and
- 2500 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 2501 (c) in cases where the child's welfare is endangered:
- 2502 (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
- 2504 (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
- 2506 (iii) to protect the child from the circumstances that endanger the child's welfare including, when  
appropriate:
- 2508 (A) removal from the child's home;
- 2509 (B) placement in substitute care; and
- 2510 (C) petitioning the court for termination of parental rights.
- 2511 (69) "Protective supervision" means a legal status created by court order, following an adjudication on  
the ground of abuse, neglect, or dependency, whereby:
- 2513 (a) the minor is permitted to remain in the minor's home; and
- 2514 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided by an agency  
designated by the juvenile court.
- 2516 (70)
- (a) "Related condition" means a condition that:
- 2517 (i) is found to be closely related to intellectual disability;
- 2518 (ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of  
an intellectually disabled individual;
- 2520 (iii) is likely to continue indefinitely; and
- 2521 (iv) constitutes a substantial limitation to the individual's ability to function in society.
- 2522 (b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or  
behavioral disturbance.
- 2524 (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:
- 2527 (i) the responsibility for support;
- 2528 (ii) the right to consent to adoption;

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- 2529 (iii) the right to determine the child's religious affiliation; and
- 2530 (iv) the right to reasonable parent-time unless restricted by the court.
- 2531 (b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:
- 2533 (i) marriage;
- 2534 (ii) enlistment; and
- 2535 (iii) major medical, surgical, or psychiatric treatment.
- 2536 (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.
- 2539 (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.
- 2543 (74) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.
- 2545 (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:
- 2548 (a) before disposition of an offense that is alleged to have been committed by the minor; or
- 2550 (b) under Section 80-6-704.
- 2551 (76) "Serious youth offender" means an individual who:
- 2552 (a) is at least 14 years old, but under 25 years old;
- 2553 (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
- 2556 (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.
- 2558 (77) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
- 2559 (78) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.
- 2561 (79)
- (a) "Severe type of child abuse or neglect" means, except as provided in Subsection (79)(b):

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- 2563 (i) if committed by an individual who is 18 years old or older:
- 2564 (A) chronic abuse;
- 2565 (B) severe abuse;
- 2566 (C) sexual abuse;
- 2567 (D) sexual exploitation;
- 2568 (E) abandonment;
- 2569 (F) chronic neglect; or
- 2570 (G) severe neglect; or
- 2571 (ii) if committed by an individual who is under 18 years old:
- 2572 (A) causing serious injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or
- 2574 (B) sexual behavior with or upon another child that indicates a significant risk to other children.
- 2576 (b) "Severe type of child abuse or neglect" does not include:
- 2577 (i) the use of reasonable and necessary physical restraint by an educator in accordance with Section 53G-8-301 or Section 76-2-401;
- 2579 (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
- 2584 (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.
- 2588 (c) Subsection (79)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.
- 2590 (80)
- (a) "Sexual abuse" means:
- 2591 (i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;
- 2593 (ii) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:
- 2595 (A) there is an indication of force or coercion;

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- 2596 (B) the children are related, as described in Subsection (40), including siblings by marriage while the marriage exists or by adoption; or
- 2598 (C) the act or attempted act constitutes unlawful sexual activity as described in Section 76-5-401.3.
- 2600 (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:
- 2603 (A) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2604 (B) child bigamy, Section 76-7-101.5;
- 2605 (C) incest, Section 76-7-102;
- 2606 (D) voyeurism, Section 76-12-306;
- 2607 (E) recorded or photographed voyeurism, Section 76-12-307; or
- 2608 (F) distribution of images obtained through voyeurism, Section 76-12-308; or
- 2609 (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.
- 2612 (b) "Sexual abuse" does not include engaging in any conduct with a child that would constitute an offense described in[~~§~~]
- 2614 [~~(i)~~] Section 76-5-401, unlawful sexual activity with a minor, if the alleged perpetrator of the offense is a minor[~~;~~~~or~~] .
- 2616 [~~(ii) Section 76-5-417, enticing a minor.~~]
- 2617 (81) "Sexual exploitation" means knowingly:
- 2618 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2619 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2620 (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;
- 2623 (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:
- 2625 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2626 (ii) engaging in sexual or simulated sexual conduct; or
- 2627 (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,

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regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

- 2631 (82) "Shelter" means the temporary care of a child in a physically unrestricted facility pending a  
disposition or transfer to another jurisdiction.
- 2633 (83) "Shelter facility" means a nonsecure facility that provides shelter for a minor.
- 2634 (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:
- 2638 (a) age;
- 2639 (b) social factors;
- 2640 (c) emotional factors;
- 2641 (d) sexual factors;
- 2642 (e) intellectual factors;
- 2643 (f) family risk factors; and
- 2644 (g) other related considerations.
- 2645 (85) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- 2646 (86) "Status offense" means an offense that would not be an offense but for the age of the offender.
- 2648 (87) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of  
alcohol or other drugs or substances.
- 2650 (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.
- 2653 (89) "Substitute care" means:
- 2654 (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;
- 2658 (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
- 2661 (c) the licensing and supervision of a substitute care facility.

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- 2662 (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.
- 2666 (91) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.
- 2668 (92) "Therapist" means:
- 2669 (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
- 2672 (b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.
- 2674 (93) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.
- 2676 (94) "Torture" means:
- 2677 (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
- 2680 (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.
- 2682 (95) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
- 2683 (a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;
- 2685 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
- 2686 (c) results in the situations described in Subsections (95)(a) and (b).
- 2687 (96) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
- 2689 (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.
- 2693 (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.

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- 2695 (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.
- 2699 (100) "Youth offender" means an individual who is:
- 2700 (a) at least 12 years old, but under 21 years old; and
- 2701 (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.
- 2703 Section 32. Section **80-6-304** is amended to read:
- 2704 **80-6-304. Nonjudicial adjustments. -- Requirement to seek legal counsel before declination.**
- 2706 (1) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:
- 2707 (a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established  
under Subsection (5);
- 2709 (b) pay restitution to any victim;
- 2710 (c) complete community or compensatory service;
- 2711 (d) attend counseling or treatment with an appropriate provider;
- 2712 (e) attend substance abuse treatment or counseling;
- 2713 (f) comply with specified restrictions on activities or associations;
- 2714 (g) attend victim-offender mediation if requested by the victim; and
- 2715 (h) comply with any other reasonable action that is in the interest of the minor, the community, or the  
victim.
- 2717 (2)
- (a) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment in  
accordance with Section 80-6-303.5, the juvenile probation officer shall provide an initial notice to  
reasonably identifiable and locatable victims of the offense contained in the referral.
- 2721 (b) The victim shall be responsible to provide to the juvenile probation officer upon request:
- 2723 (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and out-of-pocket loss;
- 2725 (ii) documentation and evidence of compensation or reimbursement from an insurance company or an  
agency of the state, any other state, or the federal government received as a direct result of the crime  
for injury, loss of earnings, or out-of-pocket loss; and
- 2729 (iii) proof of identification, including home and work address and telephone numbers.
- 2730

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- (c) The inability, failure, or refusal of the victim to provide all or part of the requested information shall result in the juvenile probation officer determining restitution based on the best information available.
- 2733 (3) The juvenile probation officer may not predicate acceptance of an offer of a nonjudicial adjustment on an admission of guilt.
- 2735 (4)
- (a) A minor may not decline to enter into a nonjudicial adjustment without first being advised of their right to consult with counsel, subject to the requirements of this section.
- 2738 (b) If a minor seeks to decline a nonjudicial adjustment, the juvenile probation officer shall inform the minor of:
- 2740 (i) the minor's right to consult with counsel; and
- 2741 (ii) the availability of resources for the minor to receive legal advice provided by the Office of Indigent Defense Services created in Section 78B-22-451.
- 2743 (c) If a minor seeks to decline a nonjudicial adjustment, and also declines to seek the advice of counsel after being informed as required under Subsection (4)(b), the juvenile probation officer shall:
- 2746 (i) sign an acknowledgment that the juvenile probation officer provided the minor with the information required by Subsection (4)(b);
- 2748 (ii) have the minor sign an acknowledgment that the minor received the information required by Subsection (4)(b) and knowingly and voluntarily declined to seek the advice of counsel; and
- 2751 (iii) permit the minor to decline the nonjudicial adjustment.
- 2752 (d) No provision of this section affects a court's obligation to ensure a minor's right to counsel in the event a petition is filed.
- 2754 (5)
- (a) The juvenile probation officer may not deny a minor an offer of a nonjudicial adjustment due to a minor's inability to pay a financial penalty under Subsection (1).
- 2756 (b) The juvenile probation officer shall base a fee, fine, or the restitution for a nonjudicial adjustment under Subsection (1) upon the ability of the minor's family to pay as determined by a statewide sliding scale developed in accordance with Section 63M-7-208.
- 2760 (6)
- (a) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile court judge extends the nonjudicial adjustment for an additional 90 days.

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- 2762 (b) A juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under  
Subsection (6)(a):
- 2764 (i) for a minor who is:
- 2765 (A) offered a nonjudicial adjustment for a sexual offense under Title 76, Chapter 5, Part 4, Sexual  
Offenses, that the minor committed before the minor was 12 years old~~[, other than an offense under  
Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420]~~; or
- 2769 (B) referred to a prosecuting attorney for a sexual offense under Title 76, Chapter 5, Part 4, Sexual  
Offenses, that the minor committed before the minor was 12 years old~~[, other than an offense under  
Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420]~~; and
- 2773 (ii) the judge determines that:
- 2774 (A) the nonjudicial adjustment requires specific treatment for the sexual offense;
- 2775 (B) the treatment cannot be completed within 180 days after the day on which the minor entered into  
the nonjudicial adjustment; and
- 2777 (C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the  
minor.
- 2779 (c) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection (6)(b), the judge  
may extend the nonjudicial adjustment until the minor completes the specific treatment, but the  
judge may only grant each extension for 90 days at a time.
- 2782 (7) If a minor violates Section 76-9-1106, the minor may be required to pay a fine or penalty and  
participate in a court-approved tobacco education program with a participation fee.
- 2785 Section 33. Section **81-9-202** is amended to read:
- 2786 **81-9-202. Advisory guidelines for a custody and parent-time arrangement.**
- 2787 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304, the following  
advisory guidelines are suggested to govern a custody and parent-time arrangement between  
parents.
- 2790 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a court-imposed  
solution.
- 2792 (3) A parent-time schedule shall be used to maximize the continuity and stability of the minor child's  
life.
- 2794 (4) Each parent shall give special consideration to make the minor child available to attend family  
functions including funerals, weddings, family reunions, religious holidays, important ceremonies,

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and other significant events in the life of the minor child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

- 2798 (5)
- (a) The court shall determine the responsibility for the pick up, delivery, and return of the minor child when the parent-time order is entered.
- 2800 (b) The court may change the responsibility described in Subsection (5)(a) at any time a subsequent modification is made to the parent-time order.
- 2802 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
- 2803 (i) have the minor child ready for parent-time at the time the minor child is to be picked up; and
- 2805 (ii) be present at the custodial home or make reasonable alternate arrangements to receive the minor child at the time the minor child is returned.
- 2807 (d) If the custodial parent will be transporting the minor child, the noncustodial parent shall:
- 2809 (i) be at the appointed place at the time the noncustodial parent is to receive the minor child; and
- 2811 (ii) have the minor child ready to be picked up at the appointed time and place or have made reasonable alternate arrangements for the custodial parent to pick up the minor child.
- 2814 (6) A parent may not interrupt regular school hours for a school-age minor child for the exercise of parent-time.
- 2816 (7) The court may:
- 2817 (a) make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents; and
- 2819 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 2821 (8) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.
- 2823 (9) A parent may not withhold parent-time or child support due to the other parent's failure to comply with a court-ordered parent-time schedule.
- 2825 (10)
- (a) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the minor child is participating or being honored.

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- (b) The noncustodial parent is entitled to attend and participate fully in the functions described in Subsection (10)(a).
- 2830 (c) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records.
- 2832 (d) A parent shall immediately notify the other parent in the event of a medical emergency.
- 2834 (11) Each parent shall provide the other with the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.
- 2837 (12)
- (a) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the minor child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available.
- 2840 (b) If the parents cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available by taking into consideration:
- 2843 (i) the best interests of the minor child;
- 2844 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
- 2845 (iii) any other factors the court considers material.
- 2846 (13)
- (a) Parental care is presumed to be better care for the minor child than surrogate care.
- 2847 (b) The court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the minor child, to provide the child care.
- 2849 (c) Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.
- 2851 (14) Each parent shall:
- 2852 (a) provide all surrogate care providers with the name, current address, and telephone number of the other parent; and
- 2854 (b) provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.
- 2857 (15)
- (a) Each parent is entitled to an equal division of major religious holidays celebrated by the parents.
- 2859 (b) The parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the minor child on the religious holiday.

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- 2861 (16) If the minor child is on a different parent-time schedule than a sibling, based on Sections 81-9-302  
and 81-9-304, the parents should consider if an upward deviation for parent-time with all the  
minor children so that parent-time is uniform between school aged and nonschool aged children, is  
appropriate.
- 2865 (17)
- (a) When one or both parents are servicemembers or contemplating joining a uniformed service, the  
parents should resolve issues of custodial responsibility in the event of deployment as soon as  
practicable through reaching a voluntary agreement pursuant to Section 81-10-201 or through court  
order obtained pursuant to this part.
- 2869 (b) Service members shall ensure their family care plan reflects orders and agreements entered and  
filed pursuant to Chapter 10, Uniform Deployed Parents Custody, Parent-time, and Visitation Act.
- 2872 (18) A parent shall immediately notify the other parent if:
- 2873 (a) the parent resides with an individual or provides an individual with access to the minor child; and
- 2875 (b) the parent knows that the individual:
- 2876 (i) is required to register as a sex offender, a kidnap offender, or a child abuse offender for an offense  
committed against a minor child under Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender  
Registry; or
- 2879 (ii) has been convicted of:
- 2880 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, or  
76-5-208;
- 2882 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses[~~other~~  
~~than an offense under Section 76-5-417, 76-5-418, or 76-5-419~~];
- 2884 (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3,  
Kidnapping, Trafficking, and Smuggling;
- 2886 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation  
Act; or
- 2888 (E) an offense that is substantially similar to an offense under Subsections (18)(b)(ii)(A) through (D).
- 2890 (19)
- (a) For emergency purposes, whenever the minor child travels with a parent, the parent shall provide the  
following information to the other parent:
- 2892 (i) an itinerary of travel dates;

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- 2893 (ii) destinations;
- 2894 (iii) places where the minor child or traveling parent can be reached; and
- 2895 (iv) the name and telephone number of an available third person who would be knowledgeable of  
the minor child's location.
- 2897 (b) Unchaperoned travel of a minor child under the age of five years is not recommended.
- 2899 Section 34. Section **81-9-208** is amended to read:
- 2900 **81-9-208. Modification or termination of a custody or parent-time order -- Noncompliance  
with a parent-time order.**
- 2902 (1) The court has continuing jurisdiction to make subsequent changes to modify:
- 2903 (a) custody of a minor child if there is a showing of a substantial and material change in circumstances  
since the entry of the order; and
- 2905 (b) parent-time for a minor child if there is a showing that there is a change in circumstances since the  
entry of the order.
- 2907 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a showing by a  
parent that the other parent:
- 2909 (a) resides with an individual or provides an individual with access to the minor child; and
- 2911 (b) knows that the individual:
- 2912 (i) is required to register as a sex offender, a kidnap offender, or a child abuse offender for an offense  
committed against a minor child under Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender  
Registry; or
- 2915 (ii) has been convicted of:
- 2916 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, or  
76-5-208;
- 2918 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses[~~other  
than an offense under Section 76-5-417, 76-5-418, or 76-5-419~~];
- 2920 (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3,  
Kidnapping, Trafficking, and Smuggling;
- 2922 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation  
Act; or
- 2924 (E) an offense that is substantially similar to an offense under Subsections (2)(b)(ii)(A) through (D).
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- (3) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal custody or joint physical custody if:
- 2929 (a) the verified petition or accompanying affidavit initially alleges that admissible evidence will show that there has been a substantial and material change in the circumstances of the minor child or one or both parents or joint legal or physical custodians since the entry of the order to be modified;
- 2933 (b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child; and
- 2935 (c)
- (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 81-9-205(8); or
- 2937 (ii) if no dispute resolution procedure is contained in the order that established joint legal custody or joint physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 81-9-205(13) unless the parents certify that, in good faith, they have used a dispute resolution procedure to resolve their dispute.
- 2942 (4)
- (a) In determining whether the best interest of a minor child will be served by either modifying or terminating the joint legal custody or joint physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors described in Sections 81-9-204 and 81-9-205.
- 2946 (b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:
- 2948 (i) a substantial and material change of circumstance has occurred; and
- 2949 (ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child.
- 2951 (c) The court shall give substantial weight to the existing joint legal custody or joint physical custody order when the minor child is thriving, happy, and well-adjusted.
- 2953 (5) The court shall, in every case regarding a petition for termination of a joint legal custody or joint physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Section 81-9-204.

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- 2963 (6) The court may modify the terms and conditions of the existing order in accordance with this chapter and may order the parents to file a parenting plan in accordance with Section 81-9-203.
- 2959 (7) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 81-9-203.
- 2963 (8) If an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are service members, and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 81-10-306 through 81-10-309.
- 2967 (9) If the court finds that an action to modify custody or parent-time is filed or answered frivolously and, in a manner, designed to harass the other party, the court shall assess attorney fees as costs against the offending party.
- 2970 (10) If a petition to modify custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees expended by the prevailing party in that action if the court determines that the petition was without merit and not asserted or defended against in good faith.
- 2974 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court:
- 2977 (a) may award to the prevailing party:
- 2978 (i) actual attorney fees incurred;
- 2979 (ii) the costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time, including:
- 2981 (A) court costs;
- 2982 (B) child care expenses;
- 2983 (C) transportation expenses actually incurred;
- 2984 (D) lost wages, if ascertainable; or
- 2985 (E) counseling for a parent or a minor child if ordered or approved by the court; or
- 2986 (iii) any other appropriate equitable remedy; and
- 2987 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up parent-time is not in the best interest of the minor child.

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Section 35. **Effective date.**

Effective Date.

This bill takes effect on {~~May 6, 2026~~ January 1, 2027.

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