

**Sexual Offenses Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

Senate Sponsor:

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**LONG TITLE****General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

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

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

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

**31A-21-501**, as last amended by Laws of Utah 2025, Chapters 173, 208

**34-52-201**, as last amended by Laws of Utah 2025, Chapter 173

**34A-5-114**, as last amended by Laws of Utah 2025, Chapters 173, 425

**53-10-801**, as last amended by Laws of Utah 2025, Chapter 173

**53G-8-201**, as last amended by Laws of Utah 2025, Chapter 173

**57-22-5.1**, as last amended by Laws of Utah 2025, Chapter 173

**59-27-105**, as last amended by Laws of Utah 2025, Chapters 173, 214

**63M-7-502**, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

**76-2-306**, as last amended by Laws of Utah 2025, Chapter 173

**76-3-203.1**, as last amended by Laws of Utah 2025, Chapters 173, 174, 178, and 208

**76-3-203.5**, as last amended by Laws of Utah 2025, Chapters 173, 174, 208, and 284

**76-3-203.12**, as last amended by Laws of Utah 2025, Chapter 173

31 **76-3-209**, as last amended by Laws of Utah 2025, Chapter 173  
 32 **76-3-407**, as last amended by Laws of Utah 2025, Chapters 173, 223  
 33 **76-4-102**, as last amended by Laws of Utah 2025, Chapters 173, 204  
 34 **76-4-202**, as last amended by Laws of Utah 2025, Chapter 173  
 35 **76-4-203**, as last amended by Laws of Utah 2025, Chapter 173  
 36 **76-5-107**, as last amended by Laws of Utah 2025, Chapter 173  
 37 **76-5-302**, as last amended by Laws of Utah 2025, Chapter 173  
 38 **76-5b-201**, as last amended by Laws of Utah 2025, Chapters 173, 223 and 320  
 39 **76-7-101**, as last amended by Laws of Utah 2025, Chapters 173, 284  
 40 **77-2-9**, as last amended by Laws of Utah 2025, Chapter 173  
 41 **77-7a-104**, as last amended by Laws of Utah 2025, Chapters 173, 249  
 42 **77-22-2.5**, as last amended by Laws of Utah 2025, Chapter 173  
 43 **77-36-1**, as last amended by Laws of Utah 2025, Chapters 173, 208 and 277  
 44 **77-37-2**, as last amended by Laws of Utah 2025, Chapter 173  
 45 **77-38-601**, as last amended by Laws of Utah 2025, Chapter 173  
 46 **78B-7-502**, as last amended by Laws of Utah 2025, Chapter 173  
 47 **78B-7-801**, as last amended by Laws of Utah 2025, Chapters 173, 284  
 48 **80-1-102**, as last amended by Laws of Utah 2025, Chapter 426  
 49 **80-6-304**, as last amended by Laws of Utah 2025, Chapters 173, 324  
 50 **81-9-202**, as last amended by Laws of Utah 2025, Chapter 426  
 51 **81-9-208**, as last amended by Laws of Utah 2025, Chapter 426

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

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

55 **16-6a-1414 . Grounds and procedure for judicial dissolution.**

- 56 (1) The attorney general or the division director may bring an action in a court with  
 57 jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a  
 58 nonprofit corporation if it is established that:
- 59 (a) the nonprofit corporation obtained the nonprofit corporation's articles of  
 60 incorporation through fraud; or
  - 61 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred  
 62 upon the nonprofit corporation by law.
- 63 (2) A member or director of a nonprofit corporation may bring an action in a court with  
 64 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)(i) the nonprofit corporation is insolvent; and
- (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

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

(i) ~~[(A)]~~ "Misconduct claim" means:

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

~~[(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.

~~[(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.]~~

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

(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.

- 99 (c) If a person brings a dissolution action under Subsection (4)(b), the court may only  
100 dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable  
101 for the misconduct claim.
- 102 (d) Upon a motion by the plaintiff in a dissolution action described in Subsection (4)(b),  
103 the court may:
- 104 (i) issue an injunction preventing the nonprofit corporation from selling or disposing  
105 of any assets held by the nonprofit corporation; and  
106 (ii) require the nonprofit corporation to deposit funds, or post a bond, with the court  
107 for the amount of damages pleaded in the complaint.
- 108 (e) The court may void a transaction that is made by the nonprofit corporation within 12  
109 months before the day on which the action was filed with the court if the court finds  
110 that the transaction is voidable under Section 25-6-202.
- 111 (5) If an action is brought under this section, it is not necessary to make directors or  
112 members parties to the action to dissolve the nonprofit corporation unless relief is sought  
113 against the members individually.
- 114 (6) In an action under this section, the court may:
- 115 (a) issue injunctions;  
116 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court  
117 directs; or  
118 (c) take other action required to preserve the nonprofit corporation's assets wherever  
119 located and carry on the business of the nonprofit corporation until a full hearing can  
120 be held.
- 121 (7) If a nonprofit corporation has been dissolved by voluntary or another action taken under  
122 this part:
- 123 (a) the nonprofit corporation may bring a proceeding to wind up and liquidate its  
124 business and affairs under judicial supervision in accordance with Section 16-6a-1405;  
125 and  
126 (b) the attorney general, a director, a member, a creditor, or a plaintiff under Subsection  
127 (4) may bring a proceeding to wind up and liquidate the affairs of the nonprofit  
128 corporation under judicial supervision in accordance with Section 16-6a-1405, upon  
129 establishing the grounds set forth in Subsections (1) through (4).

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

131 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

- 132 (1) As used in this section:

- (a)(i) "Applicant" means an individual who is associated with a certification, contract, or licensee with the department under this part and has direct access, including:
- (A) an adoptive parent or prospective adoptive parent, including an applicant for an adoption in accordance with Section 78B-6-128;
  - (B) a foster parent or prospective foster parent;
  - (C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
  - (D) an individual who transports a child for a youth transportation company;
  - (E) an individual who provides certified peer support, as defined in Section 26B-5-610;
  - (F) an individual who provides peer supports, has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder;
  - (G) an individual who has lived experience with the services provided by the department, and uses that lived experience to provide support, guidance, or services to promote resiliency and recovery;
  - (H) an individual who is identified as a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in the practice of mental health therapy, as defined in Section 58-60-102;
  - (I) an individual, other than the child or vulnerable adult receiving the service, who is 12 years old or older and resides in a home, that is licensed or certified by the division;
  - (J) an individual who is 12 years old or older and is associated with a certification, contract, or licensee with the department under this part and has or will likely have direct access;
  - (K) a foster home licensee that submits an application for an annual background screening as required by Subsection 26B-2-105(4)(d)(iii); or
  - (L) a short-term relief care provider.
- (ii) "Applicant" does not include:
- (A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services;
  - (B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services;

- 167 (C) a parent of a person receiving services from the Division of Services for  
168 People with Disabilities, if the parent provides direct care to and resides with  
169 the person, including if the parent provides direct care to and resides with the  
170 person pursuant to a court order; or
- 171 (D) an individual or a department contractor who provides services in an adults  
172 only substance use disorder program, as defined by rule adopted by the  
173 Department of Health and Human Services in accordance with Title 63G,  
174 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program  
175 director or a member, as defined by Section 26B-2-105, of the program.
- 176 (b) "Application" means a background check application to the office.
- 177 (c) "Bureau" means the Bureau of Criminal Identification within the Department of  
178 Public Safety, created in Section 53-10-201.
- 179 (d) "Criminal finding" means a record of:
- 180 (i) an arrest for a criminal offense;
- 181 (ii) a warrant for a criminal arrest;
- 182 (iii) charges for a criminal offense; or
- 183 (iv) a criminal conviction.
- 184 (e) "Direct access" means that an individual has, or likely will have:
- 185 (i) contact with or access to a child or vulnerable adult by which the individual will  
186 have the opportunity for personal communication or touch with the child or  
187 vulnerable adult; or
- 188 (ii) an opportunity to view medical, financial, or other confidential personal  
189 identifying information of the child, the child's parent or legal guardian, or the  
190 vulnerable adult.
- 191 (f)(i) "Direct access qualified" means that the applicant has an eligible determination  
192 by the office within the license and renewal time period; and
- 193 (ii) no more than 180 days have passed since the date on which the applicant's  
194 association with a certification, contract, or licensee with the department expires.
- 195 (g) "Incidental care" means occasional care, not in excess of five hours per week and  
196 never overnight, for a foster child.
- 197 (h) "Licensee" means an individual or a human services program licensed by the  
198 division.
- 199 (i) "Non-criminal finding" means a record maintained in:
- 200 (i) the Division of Child and Family Services' Management Information System

- described in Section 80-2-1001;
- (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (iv) juvenile court arrest, adjudication, and disposition records;
- (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry; or
- (vi) a state child abuse or neglect registry.
- (j) "Office" means the Office of Background Processing within the department.
- (k) "Personal identifying information" means:
- (i) current name, former names, nicknames, and aliases;
- (ii) date of birth;
- (iii) physical address and email address;
- (iv) telephone number;
- (v) driver license or other government-issued identification;
- (vi) social security number;
- (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and
- (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to the office:
- (a) personal identifying information;
- (b) a fee established by the office under Section 63J-1-504;
- (c) a disclosure form, specified by the office, for consent for:
- (i) an initial background check upon association with a certification, contract, or licensee with the department;
- (ii) ongoing monitoring of fingerprints and registries until no longer associated with a certification, contract, or licensee with the department for 180 days;
- (iii) a background check when the office determines that reasonable cause exists; and
- (iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(c) and (4);

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

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

(3) The office:

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

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

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

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

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

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

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

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

(A) a prospective foster or adoptive parent;

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

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

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

(vii) search the juvenile court records for substantiated findings of severe child abuse



- or neglect described in Section 80-3-404 or 80-3-504; and
- (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;
- (b) may conduct all or portions of a background check in connection with determining whether an applicant is direct access qualified, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (i) for an annual renewal; or
- (ii) when the office determines that reasonable cause exists;
- (c) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
- (d) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant is associated with more than one certification, contract, or licensee with the department;
- (e) shall notify the bureau when a direct access qualified individual has not been associated with a certification, contract, or licensee with the department for a period of 180 days;
- (f) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);
- (g) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any applicant working in a congregate care program, shall:
- (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and
- (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the application is submitted to the office; and
- (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

- 303 (4)(a) With the personal identifying information the office submits to the bureau under  
304 Subsection (3), the bureau shall check against state and regional criminal background  
305 databases for the applicant's criminal history.
- 306 (b) With the personal identifying information and fingerprints the office submits to the  
307 bureau under Subsection (3), the bureau shall check against national criminal  
308 background databases for the applicant's criminal history.
- 309 (c) Upon direction from the office, and with the personal identifying information and  
310 fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:
- 311 (i) maintain a separate file of the fingerprints for search by future submissions to the  
312 local and regional criminal records databases, including latent prints; and  
313 (ii) monitor state and regional criminal background databases and identify criminal  
314 activity associated with the applicant.
- 315 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of  
316 Investigation Next Generation Identification System, to be retained in the Federal  
317 Bureau of Investigation Next Generation Identification System for the purpose of:
- 318 (i) being searched by future submissions to the national criminal records databases,  
319 including the Federal Bureau of Investigation Next Generation Identification  
320 System and latent prints; and  
321 (ii) monitoring national criminal background databases and identifying criminal  
322 activity associated with the applicant.
- 323 (e) The bureau shall notify and release to the office all information of criminal activity  
324 associated with the applicant.
- 325 (f) Upon notice that an individual who has direct access qualified status will no longer  
326 be associated with a certification, contract, or licensee with the department, the  
327 bureau shall:
- 328 (i) discard and destroy any retained fingerprints; and  
329 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
330 individual's direct access to a child or a vulnerable adult has ceased, so that the  
331 Federal Bureau of Investigation will discard and destroy the retained fingerprints  
332 from the Federal Bureau of Investigation Next Generation Identification System.
- 333 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access  
334 qualified status to an applicant who, within three years from the date on which the  
335 office conducts the background check, was convicted of:
- 336 (i) a felony or misdemeanor involving conduct that constitutes any of the following:

- (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
- (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;
- (C) sexual solicitation or prostitution;
- (D) a violent offense committed in the presence of a child, as described in Section 76-3-203.10;
- (E) an offense included in Title 76, Chapter 5, Part 1, 2, 3, 4, or 7;
- (F) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act~~[-other than Section 76-5b-206]~~;
- (G) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- (H) an offense included in Title 76, Chapter 12, Part 3, Privacy Offenses;
- (I) an offense included in Title 76, Chapter 15, Part 3, Weapons of Mass Destruction;
- (J) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
- (K) aggravated arson, as described in Section 76-6-103;
- (L) aggravated burglary, as described in Section 76-6-203;
- (M) aggravated exploitation of prostitution, as described in Section 76-5d-208;
- (N) aggravated robbery, as described in Section 76-6-302;
- (O) endangering persons in a human services program, as described in Section 26B-2-113;
- (P) failure to report, as described in Section 80-2-609;
- (Q) identity fraud crime, as described in Section 76-6-1102;
- (R) riot, as described in Section 76-9-101; or
- (S) threatening with or using a dangerous weapon in a fight or quarrel, as described in Section 76-11-207; or
- (ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).
- (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider or a mental health professional, if the applicant provides services in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

- 371 (ii) The office shall conduct a comprehensive review of an applicant described in  
372 Subsection (5)(b)(i) in accordance with Subsection (7).
- 373 (c) Subject to Subsection (5)(d), the office shall deny direct access qualified status to an  
374 applicant who:
- 375 (i) a court order prohibits from having direct access to a child or vulnerable adult; or  
376 (ii) is an applicant for a congregate care program and:
- 377 (A) is subject to an open investigation for a non-criminal finding; or  
378 (B) has a supported non-criminal finding, excluding a supported finding for  
379 dependency, as defined in Section 80-1-102, within three years from the date  
380 on which the office conducts the background check.
- 381 (d)(i) Subsection (5)(c) does not apply retrospectively for congregate care program  
382 employees who have an approved background screening on or before July 1,  
383 2025; or
- 384 (ii) notwithstanding Subsection (5)(c)(ii)(A), the division may grant temporary direct  
385 access qualified status to an applicant subject to a condition that the applicant is  
386 directly supervised at all times.
- 387 (6) The office shall conduct a comprehensive review of an applicant's background check if  
388 the applicant:
- 389 (a) has a felony or class A misdemeanor conviction that is more than three years from  
390 the date on which the office conducts the background check, for an offense described  
391 in Subsection (5)(a);
- 392 (b) has a felony charge or conviction that is no more than 10 years from the date on  
393 which the office conducts the background check for an offense not described in  
394 Subsection (5)(a);
- 395 (c) has a felony charge or conviction that is more than 10 years from the date on which  
396 the office conducts the background check, for an offense not described in Subsection  
397 (5)(a), with criminal or non-criminal findings after the date of the felony charge or  
398 conviction;
- 399 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than  
400 three years and no more than 10 years from the date on which the office conducts the  
401 background check for an offense described in Subsection (5)(a);
- 402 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10  
403 years from the date on which the office conducts the background check, for an  
404 offense described in Subsection (5)(a), with criminal or non-criminal findings after

- the date of conviction;
- (f) has a misdemeanor charge or conviction that is no more than three years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);
  - (g) has a misdemeanor charge or conviction that is more than three years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of charge or conviction;
  - (h) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5)(a);
  - (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;
  - (j) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
    - (i) under 28 years old; or
    - (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);
  - (k) has a pending charge for an offense described in Subsection (5)(a);
  - (l) has a supported finding that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
  - (m) has a supported finding that occurred more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002, with criminal or non-criminal findings after the date of the listing;
  - (n) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
  - (o) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section

- 439 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 440 (p) has a substantiated finding that occurred no more than 15 years from the date on
- 441 which the office conducts the background check of severe child abuse or neglect
- 442 under Section 80-3-404 or 80-3-504; or
- 443 (q) has a substantiated finding that occurred more than 15 years from the date on which
- 444 the office conducts the background check of severe child abuse or neglect under
- 445 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of
- 446 the listing.
- 447 (7)(a) The comprehensive review shall include an examination of:
- 448 (i) the date of the offense or incident;
- 449 (ii) the nature and seriousness of the offense or incident;
- 450 (iii) the circumstances under which the offense or incident occurred;
- 451 (iv) the age of the perpetrator when the offense or incident occurred;
- 452 (v) whether the offense or incident was an isolated or repeated incident;
- 453 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 454 adult, including:
- 455 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 456 (B) sexual abuse;
- 457 (C) sexual exploitation; or
- 458 (D) negligent treatment;
- 459 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 460 treatment received, or additional academic or vocational schooling completed;
- 461 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
- 462 which the applicant is applying; and
- 463 (ix) if the background check of an applicant is being conducted for the purpose of
- 464 giving direct access qualified status to an applicant seeking a position in a
- 465 congregate care program or to become a prospective foster or adoptive parent, any
- 466 listing in the Division of Child and Family Services' Management Information
- 467 System described in Section 80-2-1001.
- 468 (b) At the conclusion of the comprehensive review, the office shall deny direct access
- 469 qualified status to an applicant if the office finds the approval would likely create a
- 470 risk of harm to a child or vulnerable adult.
- 471 (8) The office shall grant direct access qualified status to an applicant who is not denied
- 472 under this section.

- (9)(a) The office may conditionally grant direct access qualified status to an applicant, for a maximum of 60 days after the day on which the office sends written notice, without requiring that the applicant be directly supervised, if the office:
- (i) is awaiting the results of the criminal history search of national criminal background databases; and
  - (ii) would otherwise grant direct access qualified status to the applicant under this section.
- (b) The office may conditionally grant direct access qualified status to an applicant, for a maximum of one year after the day on which the office sends written notice, without requiring that the applicant be directly supervised if the office:
- (i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
  - (ii) would otherwise grant direct access qualified status to the applicant under this section.
- (c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall grant or deny direct access qualified status to the applicant in accordance with this section.
- (10)(a) Each time an applicant is associated with a licensee, the department shall review the current status of the applicant's background check to ensure the applicant is still eligible for direct access qualified status in accordance with this section.
- (b) A licensee may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:
- (i) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
  - (ii) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
  - (iii) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
  - (iv) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
- (c) Notwithstanding any other provision of this section, an applicant who is denied direct access qualified status shall not have direct access to a child or vulnerable adult unless the office grants direct access qualified status to the applicant through a

subsequent application in accordance with this section.

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

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

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

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

(i) the applicant is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

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

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

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

(b) As federally required, the office shall:

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

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

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



- 541 (i) federal law or rule permits otherwise; or
- 542 (ii) the requirements would prohibit the Division of Child and Family Services or a
- 543 court from placing a child with:
- 544 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
- 545 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,
- 546 or 80-3-303, pending completion of the background check described in
- 547 Subsections (5), (6), and (7).
- 548 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 549 qualified status if the applicant has been convicted of:
- 550 (i) a felony involving conduct that constitutes any of the following:
- 551 (A) child abuse, as described in Section 76-5-109;
- 552 (B) aggravated child abuse, as described in Section 76-5-109.2;
- 553 (C) child abandonment, as described in Section 76-5-109.3;
- 554 (D) child torture, as described in Section 76-5-109.4;
- 555 (E) commission of domestic violence in the presence of a child, as described in
- 556 Section 76-5-114;
- 557 (F) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 558 (G) intentional aggravated abuse of a vulnerable adult, as described in Section
- 559 76-5-111;
- 560 (H) endangerment of a child or vulnerable adult, as described in Section
- 561 76-5-112.5;
- 562 (I) aggravated murder, as described in Section 76-5-202;
- 563 (J) murder, as described in Section 76-5-203;
- 564 (K) manslaughter, as described in Section 76-5-205;
- 565 (L) child abuse homicide, as described in Section 76-5-208;
- 566 (M) homicide by assault, as described in Section 76-5-209;
- 567 (N) kidnapping, as described in Section 76-5-301;
- 568 (O) child kidnapping, as described in Section 76-5-301.1;
- 569 (P) aggravated kidnapping, as described in Section 76-5-302;
- 570 (Q) human trafficking of a child, as described in Section 76-5-308.5;
- 571 (R) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses~~[, other~~
- 572 ~~than Section 76-5-417, 76-5-418, or 76-5-419];~~
- 573 (S) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
- 574 Exploitation Act;

- 575 (T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;  
576 (U) aggravated arson, as described in Section 76-6-103;  
577 (V) aggravated burglary, as described in Section 76-6-203;  
578 (W) aggravated robbery, as described in Section 76-6-302;  
579 (X) incest, as described in Section 76-7-102; or  
580 (Y) domestic violence, as described in Section 77-36-1; or  
581 (ii) an offense committed outside the state that, if committed in the state, would  
582 constitute a violation of an offense described in Subsection (13)(d)(i).
- 583 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access  
584 qualified status to an applicant if, within the five years from the date on which the  
585 office conducts the background check, the applicant was convicted of a felony  
586 involving conduct that constitutes a violation of any of the following:
- 587 (i) aggravated assault, as described in Section 76-5-103;  
588 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;  
589 (iii) mayhem, as described in Section 76-5-105;  
590 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;  
591 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
592 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances  
593 Act;  
594 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance  
595 Precursor Act; or  
596 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 597 (f) In addition to the circumstances described in Subsection (6), the office shall conduct  
598 a comprehensive review of an applicant's background check under this section if the  
599 applicant:
- 600 (i) has an offense described in Subsection (5)(a);  
601 (ii) has an infraction conviction entered on a date that is no more than three years  
602 before the date on which the office conducts the background check;  
603 (iii) has a listing in the Division of Child and Family Services' Licensing Information  
604 System described in Section 80-2-1002;  
605 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,  
606 neglect, or exploitation database described in Section 26B-2-210;  
607 (v) has a substantiated finding of severe child abuse or neglect under Section  
608 80-3-404 or 80-3-504; or

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

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

- (a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6), (7), and (13); and
- (b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services for purposes of granting or denying direct access qualified status to an applicant.

Section 3. Section **26B-4-501** is amended to read:

**26B-4-501 . Definitions.**

As used in this part:

- (1) "Controlled substance" means the same as that term is defined in Title 58, Chapter 37, Utah Controlled Substances Act.
- (2) "Critical access hospital" means a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2).
- (3) "Designated facility" means:
  - (a) a freestanding urgent care center;
  - (b) a general acute hospital; or
  - (c) a critical access hospital.
- (4) "Dispense" means the same as that term is defined in Section 58-17b-102.
- (5) "Division" means the Division of Professional Licensing created in Section 58-1-103.
- (6) "Emergency contraception" means the use of a substance, approved by the United States Food and Drug Administration, to prevent pregnancy after sexual intercourse.
- (7) "Freestanding urgent care center" means the same as that term is defined in Section 59-12-801.
- (8) "General acute hospital" means the same as that term is defined in Section 26B-2-201.
- (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.

- 643 (10) "Health care provider" means:
- 644 (a) a physician, as defined in Section 58-67-102;
- 645 (b) an advanced practice registered nurse, as defined in Section 58-31b-102;
- 646 (c) a physician assistant, as defined in Section 58-70a-102; or
- 647 (d) an individual licensed to engage in the practice of dentistry, as defined in Section
- 648 58-69-102.
- 649 (11) "Increased risk" means risk exceeding the risk typically experienced by an individual
- 650 who is not using, and is not likely to use, an opiate.
- 651 (12) "Opiate" means the same as that term is defined in Section 58-37-2.
- 652 (13) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is
- 653 not a controlled substance and that is approved by the federal Food and Drug
- 654 Administration for the diagnosis or treatment of an opiate-related drug overdose.
- 655 (14) "Opiate-related drug overdose event" means an acute condition, including a decreased
- 656 level of consciousness or respiratory depression resulting from the consumption or use
- 657 of a controlled substance, or another substance with which a controlled substance was
- 658 combined, and that a person would reasonably believe to require medical assistance.
- 659 (15) "Overdose outreach provider" means:
- 660 (a) a law enforcement agency;
- 661 (b) a fire department;
- 662 (c) an emergency medical service provider, as defined in Section 53-2d-101;
- 663 (d) emergency medical service personnel, as defined in Section 53-2d-101;
- 664 (e) an organization providing treatment or recovery services for drug or alcohol use;
- 665 (f) an organization providing support services for an individual, or a family of an
- 666 individual, with a substance use disorder;
- 667 (g) a certified peer support specialist, as defined in Section 26B-5-610;
- 668 (h) an organization providing substance use or mental health services under contract
- 669 with a local substance abuse authority, as defined in Section 26B-5-101, or a local
- 670 mental health authority, as defined in Section 26B-5-101;
- 671 (i) an organization providing services to the homeless;
- 672 (j) a local health department;
- 673 (k) an individual licensed to practice under:
- 674 (i) Title 58, Chapter 17b, Pharmacy Practice Act;
- 675 (ii) Title 58, Chapter 60, Part 2, Social Worker Licensing Act; or
- 676 (iii) Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act; or

(l) an individual.

(16) "Patient counseling" means the same as that term is defined in Section 58-17b-102.

(17) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

(18) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.

(19) "Physician" means the same as that term is defined in Section 58-67-102.

(20) "Practitioner" means:

(a) a physician; or

(b) any other person who is permitted by law to prescribe emergency contraception.

(21) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(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.

(b) "Self-administered hormonal contraceptive" includes an oral hormonal contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch.

(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.

(23)[(a)] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses, that may result in a pregnancy.

~~[(b) "Sexual assault" does not include criminal conduct described in:]~~

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

~~[(ii) Section 76-5-418, sexual battery;]~~

~~[(iii) Section 76-5-419, lewdness; or]~~

~~[(iv) Section 76-5-420, lewdness involving a child.]~~

(24) "Victim of sexual assault" means any person who presents to receive, or receives, medical care in consequence of being subjected to sexual assault.

Section 4. Section **31A-21-501** is amended to read:

**31A-21-501 . Definitions.**

~~[For purposes of]~~ As used in this part:

(1) "Applicant" means:

(a) in the case of an individual life or accident and health policy, the person who seeks to contract for insurance benefits; or

(b) in the case of a group life or accident and health policy, the proposed certificate holder.

(2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an

individual who is 16 years old or older who:

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has one or more children in common with the other party; or
- (e) resides or has resided in the same residence as the other party.

(3)~~[(a)]~~ "Child abuse" means the commission or attempt to commit against a child a criminal offense described in:

~~[(i)]~~ (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses; or

~~[(ii)]~~ (b) Title 76, Chapter 5, Part 4, Sexual Offenses.

~~[(b)]~~ "Child abuse" does not include the criminal offense of enticing a minor, as described in Section 76-5-417.]

(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:

~~[(i)]~~ (a) aggravated assault, as described in Section 76-5-103;

~~[(ii)]~~ (b) assault, as described in Section 76-5-102;

~~[(iii)]~~ (c) criminal homicide, as described in Section 76-5-201;

~~[(iv)]~~ (d) harassment, as described in Section 76-5-106;

~~[(v)]~~ (e) electronic communication harassment, as described in Section 76-12-202, 76-12-203, or 76-12-204;

~~[(vi)]~~ (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

~~[(vii)]~~ (g) mayhem, as described in Section 76-5-105;

~~[(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;

~~[(ix)]~~ (i) stalking, as described in Section 76-5-106.5;

~~[(x)]~~ (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;

~~[(xi)]~~ (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

~~[(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;  
[(xiii)] (m) possession of a dangerous weapon with criminal intent, as described in  
Section 76-11-208; or  
[(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.

[(b) "Domestic violence" does not include the criminal offense of:]

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

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

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

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

- (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.

Section 5. Section **34-52-201** is amended to read:

**34-52-201 . Public employer requirements.**

- (1) Except as provided in Subsections (3) and (6), a public employer may not:
- (a) exclude an applicant from an initial interview because of:
    - (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
    - (ii) if the applicant is a mental health professional applicant, an arrest for an offense that occurred before the applicant was 18 years old;
  - (b) make an inquiry related to an applicant's expunged criminal or juvenile delinquency history;
  - (c) when making a hiring decision regarding a mental health professional applicant, consider:
    - (i) an arrest for an offense that occurred before the mental health professional applicant was 18 years old;
    - (ii) an arrest not followed by a criminal conviction or juvenile adjudication;
    - (iii) a juvenile adjudication; or
    - (iv) a past criminal conviction if:
      - (A) the sentence for the criminal conviction is terminated; and
      - (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

(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.

(2) A public employer excludes an applicant from an initial interview under Subsection (1) if the public employer:

(a) requires an applicant to disclose a criminal conviction or juvenile adjudication:

(i) on an employment application;

(ii) before an initial interview; or

(iii) if no interview is conducted, before making a conditional offer of employment; or

(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:

(i) on an employment application;

(ii) before an initial interview; or

(iii) if no interview is conducted, before making a conditional offer of employment.

(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:

(a) the mental health professional applicant's participation in substance use treatment; or

(b) a past criminal conviction for a nonviolent drug offense if:

(i) the sentence for the criminal conviction is terminated; and

(ii)(A) the mental health professional applicant was not incarcerated for the past criminal conviction; or

(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.

(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.

(5) Except as provided in Subsections (1) through (3), this section does not prevent a public employer from:

(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

(b) considering an applicant's criminal conviction or juvenile delinquency history when making a hiring decision.



(6)(a) Subsections (1) through (4) do not apply:

- (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;
- (ii) to a public employer that is a law enforcement agency;
- (iii) to a public employer that is part of the criminal or juvenile justice system;
- (iv) to a public employer seeking a nonemployee volunteer;
- (v) to a public employer that works with children or vulnerable adults;
- (vi) to the Department of Alcoholic Beverage Services created in Section 32B-2-203;
- (vii) to the State Tax Commission;
- (viii) to a public employer whose primary purpose is performing financial or fiduciary functions; or
- (ix) to a public transit district hiring or promoting an individual for a safety sensitive position described in Section 17B-2a-825.

(b) Subsections (1)(c)(iv) and (1)(d) do not apply to a criminal conviction for:

- (i) a violent felony as defined in Section 76-3-203.5; or
- (ii) a felony related to a criminal sexual act under:
  - (A) Title 76, Chapter 5, Part 4, Sexual Offenses~~[-, other than Section 76-5-417, 76-5-419, or 76-5-420];~~ or
  - (B) Title 76, Chapter 5b, Sexual Exploitation Act.

(c) Subsections (1)(a)(ii), (1)(c), (1)(d), and (3) apply to a person under contract with a public employer.

Section 6. Section **34A-5-114** is amended to read:

**34A-5-114 . Limitations on enforceability of nondisclosure and non-disparagement clauses -- Retaliation prohibited.**

(1) As used in this section:

- (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement clause.
- (b) "Employee" means a current or a former employee.
- (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:
  - (i) sexual assault;
  - (ii) allegations of sexual assault;
  - (iii) sexual harassment; or

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

(k) "Sexual harassment dispute" means a dispute between an employer and the employer's employee relating to alleged sexual harassment.

(2)(a) A confidentiality clause regarding sexual misconduct, as a condition of employment, is against public policy and is void and unenforceable.

(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):

(i) may not retaliate against the employee because the employee made an allegation of sexual harassment or assault; or

(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.

(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.

(3) An employer who attempts to enforce a confidentiality clause in violation of this section:

(a) is liable for all costs, including reasonable attorney fees, resulting from legal action to enforce the confidentiality clause; and

(b) is not entitled to monetary damages resulting from a breach of a confidentiality clause.

(4) This section does not:

(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:

(i) the amount of a monetary settlement; or

(ii) at the request of the employee, facts that could reasonably lead to the identification of the employee;

(b) prohibit an employer from requiring an employee to:

(i) sign a post-employment restrictive covenant; or

(ii) agree not to disclose an employer's non-public trade secrets, proprietary information, or confidential information that does not involve illegal acts;

(c) authorize an employee to:

(i) disclose data otherwise protected by law or legal privilege; or

(ii) knowingly make statements or disclosures that are false or made with reckless disregard of the truth;

- (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;
- (e) permit a disclosure that would violate state or federal law; or
- (f) limit other grounds that may exist at law or in equity for the unenforceability of a confidentiality clause.

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

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

~~[For purposes of]~~ As used in this part:

- (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:
- (a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and
- (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.
- (2) "Department of Health and Human Services" means the Department of Health and Human Services created in Section 26B-1-201.
- (3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:
- (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;
- (b) presence of HIV antigen;
- (c) isolation of HIV; or
- (d) demonstration of HIV proviral DNA.
- (4) "HIV positive individual" means an individual who is HIV positive as determined by the State Health Laboratory.
- (5) "Local department of health" means a local health department as defined in Section 26A-1-102.
- (6) "Minor" means an individual younger than 18 years old.

- (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).
- (8)(a) "Sexual offense" means a violation of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses.
- (b) "Sexual offense" does not include a violation of Section 76-5-417[;] or 76-5-418[; 76-5-419, or 76-5-420].
- (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.

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

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

As used in this part:

- (1) "Serious offense" means the same as that term is defined in Section 80-6-103
- ~~[(+)] (2)[(a)] "Sexual crime" or "sexual misconduct" means any conduct described in:~~
- ~~[(i)] (a) Title 76, Chapter 5, Part 4, Sexual Offenses;~~
- ~~[(ii)] (b) Title 76, Chapter 5b, Sexual Exploitation Act; or~~
- ~~[(iii)] (c) Section 76-7-102, [ineest] Incest.~~
- ~~[(b) "Sexual crime" or "sexual misconduct" does not include conduct described in:]~~
- ~~[(i) Section 76-5-417, enticing a minor;]~~
- ~~[(ii) Section 76-5-420, lewdness involving a child; or]~~
- ~~[(iii) Section 76-5b-206, failure to report child sexual abuse material by a computer technician.]~~
- ~~[(2) "Serious offense" means the same as that term is defined in Section 80-6-103.]~~

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

**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.**

(1) As used in this section:

- (a)(i) "Court order" means, except as provided in Subsection (1)(a)(ii):
- (A) a civil protective order, as defined in Section 78B-7-102;
- (B) a civil stalking injunction, as defined in Section 78B-7-102;
- (C) a criminal protective order, as defined in Section 78B-7-102; or
- (D) a criminal stalking injunction, as defined in Section 78B-7-102.
- (ii) "Court order" does not include:
- (A) an ex parte civil protective order, as defined in Section 78B-7-102; or

- 983 (B) an ex parte civil stalking injunction, as defined in Section 78B-7-102, for  
984 which a hearing is requested.
- 985 (b)~~(f)~~ "Crime victim" means a victim of:
- 986 ~~[(A)]~~ (i) domestic violence, as defined in Section 77-36-1;
- 987 ~~[(B)]~~ (ii) stalking, as defined in Section 76-5-106.5;
- 988 ~~[(C)]~~ (iii) an offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 989 ~~[(D)]~~ (iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or
- 990 ~~[(E)]~~ (v) dating violence, as defined in Section 78B-7-102.
- 991 ~~[(ii) "Crime victim" does not include a victim of an offense of:]~~
- 992 ~~[(A) enticing a minor under Section 76-5-417;]~~
- 993 ~~[(B) sexual battery under Section 76-5-418;]~~
- 994 ~~[(C) lewdness under Section 76-5-419; or]~~
- 995 ~~[(D) lewdness involving a child under Section 76-5-420.]~~
- 996 (c) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 997 (d) "Financial obligation" means any rent, fees, damages, or other costs owed by a renter.
- 998 (e)(i) "Future obligations" means a renter's obligations under the rental agreement
- 999 after the date on which the renter vacates the residential rental unit in accordance
- 1000 with Subsection (6).
- 1001 (ii) "Future obligations" includes:
- 1002 (A) the payment of rent and fees for the residential rental unit; and
- 1003 (B) the right to occupy the residential rental unit.
- 1004 (f) "Public safety agency" means a governmental entity that provides fire protection, law
- 1005 enforcement, ambulance, medical, or similar service.
- 1006 (g) "Victim of domestic violence" means the same as the term "victim" in Section
- 1007 77-36-1.
- 1008 (h) "Termination fee" means the equivalent of one month of rent under the rental
- 1009 agreement.
- 1010 (2) An acceptable form of documentation of an act listed in Subsection (1) is:
- 1011 (a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part
- 1012 6, Cohabitant Abuse Protective Orders, subsequent to a hearing of which the
- 1013 petitioner and respondent have been given notice under Title 78B, Chapter 7, Part 6,
- 1014 Cohabitant Abuse Protective Orders; or
- 1015 (b) a copy of a police report documenting an act listed in Subsection (1).
- 1016 (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:

(i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1); and

(ii) pays for the cost of installing the new lock.

(b) An owner may comply with Subsection (3)(a) by:

(i) rekeying the lock if the lock is in good working condition; or

(ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than the lock being replaced.

(c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens the new lock.

(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).

(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:

(i) establish whether the perpetrator should be given a key and allowed access to the residential rental unit; or

(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.

(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.

(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:

(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;

(b) provides the owner with:

(i) a court order protecting the renter from a domestic violence perpetrator; or

(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);

(c) provides the owner with a written notice of termination that includes the date on

- 1051 which the renter intends to vacate the renter's residential rental unit; and
- 1052 (d) pays the owner a termination fee on the later of the day on which:
- 1053 (i) the renter provides the owner with a written notice of termination; or
- 1054 (ii) the renter vacates the renter's residential rental unit.
- 1055 (5) A renter may terminate all of the renter's future obligations under a rental agreement
- 1056 under Subsection (4) when the renter is not in compliance with the requirements of
- 1057 Subsection 57-22-5(1)(g) or (2) if:
- 1058 (a) the renter provides evidence to the owner with the written notice of termination
- 1059 under Subsection (4)(c) establishing that:
- 1060 (i) the noncompliance with Subsection 57-22-5(1)(g) or (2) occurred less than 30
- 1061 days before the day on which the renter provided the written notice of termination
- 1062 to the owner; and
- 1063 (ii) the noncompliance with Subsection 57-22-5(1)(g) or (2) is due to domestic
- 1064 violence;
- 1065 (b) the renter is in compliance with all obligations of the rental agreement, except for the
- 1066 noncompliance described in Subsection (5)(a); and
- 1067 (c) the renter complies with Subsections (4)(b), (c), and (d).
- 1068 (6) If a renter provides an owner with a written notice of termination under Subsection
- 1069 (4)(c), the renter shall:
- 1070 (a) vacate the renter's residential rental unit within 15 days after the day on which the
- 1071 written notice of termination is provided to the owner; and
- 1072 (b) pay rent for any occupation of the residential rental unit during that 15-day time
- 1073 period.
- 1074 (7) A renter may not terminate all of the renter's future obligations under a rental agreement
- 1075 under Subsection (4) after a notice of eviction is served on the renter.
- 1076 (8) A renter who terminates all of the renter's future obligations under a rental agreement
- 1077 under Subsection (4) is liable for any financial obligation owed by the renter:
- 1078 (a) before the renter provided the owner with the written notice of termination under
- 1079 Subsection (4)(c);
- 1080 (b) for any noncompliance with Subsection 57-22-5(1)(g) or (2) as described in
- 1081 Subsection (5); and
- 1082 (c) for any occupancy of the residential rental unit by the renter during the 15-day time
- 1083 period described in Subsection (6).
- 1084 (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.

(10) An owner may not:

(a) impose a restriction on a renter's ability to request assistance from a public safety agency; or

(b) penalize or evict a renter because the renter makes reasonable requests for assistance from a public safety agency.

Section 10. Section **59-27-105** is amended to read:

**59-27-105 . Sexually Explicit Business and Escort Service Fund -- Administrative charge.**

(1) There is created an expendable special revenue fund called the "Sexually Explicit Business and Escort Service Fund."

(2)(a) Except as provided in Subsection (3), the fund consists of all amounts collected by the commission under this chapter.

(b)(i) The money in the fund shall be invested by the state treasurer pursuant to Title 51, Chapter 7, State Money Management Act.

(ii) All interest or other earnings derived from the fund money shall be deposited in the fund.

(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.

(4)(a) Fund money shall be used as provided in this Subsection (4).

(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:

(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

(ii) are not currently confined or incarcerated in a jail or prison.

(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:

(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

(ii) are not currently confined or incarcerated in a jail or prison.

(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].

(e) The attorney general shall use 15% of the money in the fund to provide funding for any task force:

(i) administered through the Office of the Attorney General; and

(ii) that investigates and prosecutes individuals who use the Internet to commit crimes against children.

Section 11. Section **63M-7-502** is amended to read:

**63M-7-502 . Definitions.**

As used in this part:

(1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section 76-2-202.

(2) "Advocacy services provider" means the same as that term is defined in Section 77-38-403.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Claimant" means any of the following claiming reparations under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an individual or representative who files a reparations claim on behalf of a victim.

(5) "Child" means an unemancipated individual who is under 18 years old.

(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:

(a) the offender;

(b) the insurance of the offender or the victim;

(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;

(d) social security, Medicare, and Medicaid;

(e) state-required temporary nonoccupational income replacement insurance or disability income insurance;

(f) workers' compensation;

- 1153 (g) wage continuation programs of any employer;
- 1154 (h) proceeds of a contract of insurance payable to the claimant for the loss the claimant
- 1155 sustained because of the criminally injurious conduct;
- 1156 (i) a contract providing prepaid hospital and other health care services or benefits for
- 1157 disability; or
- 1158 (j) veteran's benefits, including veteran's hospitalization benefits.

1159 (7)(a) "Confidential record" means a record in the custody of the office that relates to a  
1160 claimant's eligibility for a reparations award.

1161 (b) "Confidential record" includes:

- 1162 (i) a reparations claim;
- 1163 (ii) any correspondence regarding:
  - 1164 (A) the approval or denial of a reparations claim; or
  - 1165 (B) the payment of a reparations award;
- 1166 (iii) a document submitted to the office in support of a reparations award;
- 1167 (iv) a medical or mental health treatment plan; and
- 1168 (v) an investigative report provided to the office by a law enforcement agency.

1169 (8) "Criminal justice system victim advocate" means the same as that term is defined in  
1170 Section 77-38-403.

1171 (9)(a) "Criminally injurious conduct" other than acts of war declared or not declared  
1172 means conduct that:

- 1173 (i) is or would be subject to prosecution in this state under Section 76-1-201;
- 1174 (ii) occurs or is attempted;
- 1175 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 1176 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the
- 1177 conduct possessed the capacity to commit the conduct; and
- 1178 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
- 1179 aircraft, or water craft, unless the conduct is:
  - 1180 (A) intended to cause bodily injury or death;
  - 1181 (B) punishable under Title 76, Chapter 5, Offenses Against the Individual; or
  - 1182 (C) chargeable as an offense for driving under the influence of alcohol or drugs.

1183 (b) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and  
1184 other conduct leading to the psychological injury of an individual resulting from  
1185 living in a setting that involves a bigamous relationship.

1186 (10)(a) "Dependent" means a natural person to whom the victim is wholly or partially

legally responsible for care or support.

(b) "Dependent" includes a child of the victim born after the victim's death.

(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.

(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.

(13) "Director" means the director of the office.

(14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(15)(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.

(b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment.

(c) "Economic loss" does not include noneconomic detriment.

(16) "Elderly victim" means an individual who is 60 years old or older and who is a victim.

(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.

(18) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

(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.

(b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act described in Subsection (19)(a).

- (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.
- (21) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
- (22)(a) "Medical examination" means a physical examination necessary to document criminally injurious conduct.
- (b) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.
- (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.
- (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.
- (25) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.
- (26) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.
- (27) "Nonpublic restitution record" means a restitution record that contains a claimant's medical or mental health information.
- (28) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.
- (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.
- (30) "Offense" means a violation of Title 76, Utah Criminal Code.
- (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.
- (32) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.
- (33) "Public restitution record" means a restitution record that does not contain a claimant's medical or mental health information.
- (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.

(b) "Rape crisis and services center" does not include a qualified institutional victim services provider as defined in Section 53H-14-401.

(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.

(36) "Reparations claim" means a claimant's request or application made to the office for a reparations award.

(37)(a) "Reparations officer" means an individual employed by the office to investigate a claimant's request for reparations and award reparations under this part.

(b) "Reparations officer" includes the director when the director is acting as a reparations officer.

(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.

(39)(a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual.

(b) "Representative" does not include a service provider or collateral source.

(40) "Restitution" means the same as that term is defined in Section 77-38b-102.

(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.

(b) "Restitution record" includes:

(i) a notice of restitution;

(ii) an itemized list of payments;

(iii) an invoice, receipt, or bill submitted to the office for reimbursement; and

(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.

(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.

(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.

- (44) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.
- (45)[(a)] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- ~~[(b) "Sexual assault" does not include criminal conduct described in:]~~
- ~~[(i) Section 76-5-417, enticing a minor;]~~
- ~~[(ii) Section 76-5-418, sexual battery;]~~
- ~~[(iii) Section 76-5-419, lewdness; or]~~
- ~~[(iv) Section 76-5-420, lewdness involving a child.]~~
- (46) "Sexual assault counselor" means an individual who:
- (a) is employed by or volunteers at a rape crisis and services center;
- (b) has a minimum of 40 hours of training in counseling and assisting victims of sexual assault; and
- (c) is under the supervision of the director of a rape crisis and services center or the director's designee.
- (47) "Strangulation" means any act involving the use of unlawful force or violence that:
- (a) impedes breathing or the circulation of blood; and
- (b) is likely to produce a loss of consciousness by:
- (i) applying pressure to the neck or throat of an individual; or
- (ii) obstructing the nose, mouth, or airway of an individual.
- (48) "Substantial bodily injury" means the same as that term is defined in Section 76-1-101.5.
- (49)(a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:
- (i) criminally injurious conduct; or
- (ii) the production of pornography in violation of Section 76-5b-201 or 76-5b-201.1 if the individual is a minor.
- (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.
- (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.

Section 12. Section **76-2-306** is amended to read:

**76-2-306 . Voluntary intoxication.**

- (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.
- (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].

Section 13. Section **76-3-203.1** is amended to read:

**76-3-203.1 . Enhanced penalty for offenses committed in or for a certain group.**

- (1) As used in this section:
- (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.
- (b) "In concert with two or more individuals" means:
- (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
- (ii) each of the other individuals:
- (A) was physically present; and
- (B) participated as a party to an offense listed in Subsection (6) or (7).
- (c) "In concert with two or more individuals" means, regarding intent:
- (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
- (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.
- (d) "Organized criminal group" means a group of three or more individuals, whether operating formally or informally, that:
- (i) has as one of the group's purposes the commission of criminal offenses; and
- (ii) whose members collectively engage in committing criminal offenses for the financial or other material benefit of the members or group.
- (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:
- (i) the intent expressed by the individual; and



- 1357 (ii) acts of the individual that are consistent or inconsistent with the intent expressed  
1358 by the individual.
- 1359 (2) An actor who commits an offense listed in Subsection (6) is subject to an enhanced  
1360 penalty for the offense as provided in Subsection (5) if the trier of fact finds beyond a  
1361 reasonable doubt that the actor acted:
- 1362 (a) in concert with two or more individuals;
- 1363 (b) for the benefit of, at the direction of, or in association with a criminal street gang or  
1364 other organized criminal group; or
- 1365 (c) to gain recognition, acceptance, membership, or increased status with a criminal  
1366 street gang or other organized criminal group.
- 1367 (3) An actor who commits an offense listed in Subsection (7) is subject to an enhanced  
1368 penalty for the offense as provided in Subsection (5) if the trier of fact finds beyond a  
1369 reasonable doubt that the actor:
- 1370 (a)(i) acted in concert with two or more individuals; and
- 1371 (ii)(A) traveled more than 50 miles from the actor's principal place of residence  
1372 for the purpose of the actor committing an offense listed in Subsection (7); or
- 1373 (B) had previously been convicted of an offense listed in Subsection (7), or an  
1374 offense in another jurisdiction, including a state, federal, or military court, that  
1375 is substantially equivalent to an offense under Subsection (7);
- 1376 (b) acted for the benefit of, at the direction of, or in association with a criminal street  
1377 gang or other organized criminal group; or
- 1378 (c) acted to gain recognition, acceptance, membership, or increased status with a  
1379 criminal street gang or other organized criminal group.
- 1380 (4) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be  
1381 subscribed upon the information or indictment notice that the actor is subject to the  
1382 enhanced penalties provided under this section.
- 1383 (5) For an offense listed in Subsection (6) or (7), an actor may be charged as follows:
- 1384 (a) for a class B misdemeanor, as a class A misdemeanor;
- 1385 (b) for a class A misdemeanor, as a third degree felony;
- 1386 (c) for a third degree felony, as a second degree felony; and
- 1387 (d) for a second degree felony, as a first degree felony.
- 1388 (6) The offenses referred to in Subsection (2) are:
- 1389 (a) an offense described in Chapter 5, Part 1, Assault and Related Offenses;
- 1390 (b) an offense described in Chapter 5, Part 2, Criminal Homicide;

- (c) a felony offense described in Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (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]~~;
- (e) a felony violation of aiding prostitution as described in Section 76-5d-206;
- (f) exploiting prostitution as described in Section 76-5d-207;
- (g) aggravated exploitation of prostitution under Section 76-5d-208;
- (h) robbery as described in Section 76-6-202;
- (i) burglary as described in Subsection 76-6-202(3)(b);
- (j) aggravated burglary as described in Section 76-6-203;
- (k) burglary of a research facility as described in Section 76-6-207;
- (l) aggravated robbery as described in Section 76-6-302;
- (m) an offense described in Chapter 11, Weapons; and
- (n) transporting or harboring aliens as described in Section 76-14-209.
- (7) The offenses referred to in Subsection (3) are:
- (a) criminal solicitation of a minor as described in Section 76-4-205;
- (b) an offense described in Chapter 6, Part 1, Property Destruction;
- (c) an offense described in Chapter 6, Part 4, Theft;
- (d) an offense described in Chapter 6, Part 6, Retail Theft;
- (e) an offense described in Chapter 6, Part 11, Identity Fraud Act;
- (f) communications fraud as described in Section 76-6-525; and
- (g) an offense described in Chapter 9, Part 16, Money Laundering and Currency Transaction Reporting Act.
- (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.
- (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.
- Section 14. Section **76-3-203.5** is amended to read:
- 76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.**
- (1) As used in this section:
- (a) "Felony" means any violation of a criminal statute of the state, any other state, the

- 1425 United States, or any district, possession, or territory of the United States for which  
1426 the maximum punishment the offender may be subjected to exceeds one year in  
1427 prison.
- 1428 (b) "Habitual violent offender" means a person convicted within the state of any violent  
1429 felony and who on at least two previous occasions has been convicted of a violent  
1430 felony and committed to either prison in Utah or an equivalent correctional institution  
1431 of another state or of the United States either at initial sentencing or after revocation  
1432 of probation.
- 1433 (c) "Violent felony" means:
- 1434 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to  
1435 commit any of the following offenses punishable as a felony:
- 1436 (A) arson as described in Section 76-6-102;
- 1437 (B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);
- 1438 (C) criminal mischief as described in Section 76-6-106;
- 1439 (D) aggravated arson as described in Section 76-6-103;
- 1440 (E) assault by prisoner as described in Section 76-5-102.5;
- 1441 (F) disarming a police officer as described in Section 76-5-102.8;
- 1442 (G) aggravated assault as described in Section 76-5-103;
- 1443 (H) aggravated assault by prisoner as described in Section 76-5-103.5;
- 1444 (I) mayhem as described in Section 76-5-105;
- 1445 (J) stalking as described in Subsection 76-5-106.5(2);
- 1446 (K) threat of terrorism as described in Section 76-5-107.3;
- 1447 (L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);
- 1448 (M) child torture as described in Section 76-5-109.4;
- 1449 (N) commission of domestic violence in the presence of a child as described in  
1450 Section 76-5-114;
- 1451 (O) abuse or neglect of a child with a disability as described in Section 76-5-110;
- 1452 (P) abuse or exploitation of a vulnerable adult as described in Section 76-5-111,  
1453 76-5-111.2, 76-5-111.3, or 76-5-111.4;
- 1454 (Q) endangerment of a child or vulnerable adult as described in Section 76-5-112.5;
- 1455 (R) an offense described in Chapter 5, Part 2, Criminal Homicide;
- 1456 (S) kidnapping as described in Section 76-5-301;
- 1457 (T) child kidnapping as described in Section 76-5-301.1;
- 1458 (U) aggravated kidnapping as described in Section 76-5-302;

1459 (V) rape as described in Section 76-5-402;  
1460 (W) rape of a child as described in Section 76-5-402.1;  
1461 (X) object rape as described in Section 76-5-402.2;  
1462 (Y) object rape of a child as described in Section 76-5-402.3;  
1463 (Z) forcible sodomy as described in Section 76-5-403;  
1464 (AA) sodomy on a child as described in Section 76-5-403.1;  
1465 (BB) forcible sexual abuse as described in Section 76-5-404;  
1466 (CC) sexual abuse of a child as described in Section 76-5-404.1;  
1467 (DD) aggravated sexual abuse of a child as described in Section 76-5-404.3;  
1468 (EE) aggravated sexual assault as described in Section 76-5-405;  
1469 (FF) sexual exploitation of a minor as described in Section 76-5b-201;  
1470 (GG) aggravated sexual exploitation of a minor as described in Section  
1471 76-5b-201.1;  
1472 (HH) sexual exploitation of a vulnerable adult as described in Section 76-5b-202;  
1473 (II) aggravated exploitation of prostitution as described in Subsection  
1474 76-5d-208(2)(a);  
1475 (JJ) burglary as described in Subsection 76-6-202(3)(b);  
1476 (KK) aggravated burglary as described in Section 76-6-203;  
1477 (LL) robbery as described in Section 76-6-301;  
1478 (MM) aggravated robbery as described in Section 76-6-302;  
1479 (NN) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or (1)(a)(ii);  
1480 (OO) tampering with a witness as described in Section 76-8-508;  
1481 (PP) retaliation against a witness, victim, or informant as described in Section  
1482 76-8-508.3;  
1483 (QQ) tampering or retaliating against a juror as described in Subsection  
1484 76-8-508.5(2)(a)(iii);  
1485 (RR) extortion to dismiss a criminal proceeding as described in Subsection  
1486 76-6-406(1)(a)(i), (ii), or (ix);  
1487 (SS) bus hijacking as described in Section 76-9-1502;  
1488 (TT) assault with intent to commit bus hijacking as described in Section 76-9-1503;  
1489 (UU) purchase or possession of a dangerous weapon by a restricted person as  
1490 described in Section 76-11-305 or 76-11-306;  
1491 (VV) unlawful delivery of explosive, chemical, or incendiary devices as described  
1492 in Section 76-15-209;

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

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

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

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

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

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

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

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

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

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

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

(3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

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

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

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

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

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

(4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a

jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

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

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

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

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

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

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

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

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

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

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

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

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

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

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

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

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

(i) a grievous sexual offense;

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

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

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

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

Section 15. Section **76-3-203.12** is amended to read:

**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.**

(1) As used in this section:

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

(b) "Sexual offense" does not include:

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

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

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

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

(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.

(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.

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

Section 16. Section **76-3-209** is amended to read:

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

- (1) As used in this section[?] ,
- [(a) "~~Qualifying~~] "qualifying sexual offense" means an offense described in Chapter 5, Part 4, Sexual Offenses.
- [(b) "~~Qualifying sexual offense~~" does not include ~~enticing a minor as described in Section 76-5-417.~~]
- (2)(a) This Subsection (2) only applies prospectively to an individual sentenced on or after May 10, 2016.
- (b) Notwithstanding any provision of law, an individual may not be sentenced to life without parole if:
- (i) the individual is convicted of a crime punishable by life without parole; and
  - (ii) at the time the individual committed the crime, the individual was under 18 years old.
- (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.
- (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:
- (a) the district court shall impose a sentence consistent with the disposition that would have been made in juvenile court; and
  - (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:
    - (i) the time that elapsed after the individual committed the offense;
    - (ii) the age of the individual at the time of the offense;
    - (iii) the age of the victim at the time of the offense;
    - (iv) the criminal history of the individual after the individual committed the offense;
    - (v) any treatment assessments or validated risk tools; and
    - (vi) public safety concerns.
- (4) Subsection (3) does not apply if:
- (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;



- (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
- (c) the conviction occurred in district court after the individual was:
  - (i) charged by criminal information in the juvenile court for the qualifying sexual offense in accordance with Section 80-6-503; and
  - (ii) bound over to the district court for the qualifying sexual offense in accordance with Section 80-6-504.

(5) If the district court imposes incarceration under Subsection (3)(b), the term of incarceration may not exceed:

- (a) seven years for a violation of Section 76-5-405, aggravated sexual assault;
- (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
- (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].~~

Section 17. Section **76-3-407** is amended to read:

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

(1) As used in this section:

(a)~~[(i)]~~ "Prior sexual offense" means:

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

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

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

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

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

~~[(ii)]~~ "Prior sexual offense" does not include:

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

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

(b)~~[(i)]~~ "Sexual offense" means:

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

- 1663           ~~[(B)]~~ (ii) sexual exploitation of a minor, Section 76-5b-201;
- 1664           ~~[(C)]~~ (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 1665           ~~[(D)]~~ (iv) a felony attempt to commit an offense described in Subsections ~~[(1)(b)(i)(B)~~
- 1666                     ~~and (C)]~~ (1)(b)(ii) and (iii); or
- 1667           ~~[(E)]~~ (v) an offense in another state, territory, or district of the United States that, if
- 1668                     committed in Utah, would constitute an offense described in Subsections [
- 1669                     ~~(1)(b)(i)(A) through (D)]~~ (1)(b)(i) through (iv).
- 1670           ~~[(ii) "Sexual offense" does not include:]~~
- 1671                     ~~[(A) lewdness, as described in Section 76-5-419; or]~~
- 1672                     ~~[(B) lewdness involving a child, as described in Section 76-5-420.]~~
- 1673       (2) Notwithstanding any other provision of law, the minimum and maximum penalty for a
- 1674           sexual offense is increased by five years for each conviction of the defendant for a prior
- 1675           sexual offense that arose from a separate criminal episode, if the trier of fact finds that:
- 1676           (a) the defendant was convicted of a prior sexual offense; and
- 1677           (b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a)
- 1678                     before the defendant committed the sexual offense for which the defendant is being
- 1679                     sentenced.
- 1680       (3) The increased term described in Subsection (2) shall be in addition to, and consecutive
- 1681           to, any other prison term served by the defendant.
- 1682       (4) If a defendant's conviction is increased under this section, the defendant's entire
- 1683           sentence for the conviction is subject to mandatory imprisonment under Section 76-3-406.
- 1684           Section 18. Section **76-4-102** is amended to read:
- 1685           **76-4-102 . Attempt -- Classification of offenses.**
- 1686       (1) A violation of Section 76-4-101 where the actor attempts to commit:
- 1687           (a)(i) a capital felony, or a felony punishable by imprisonment for life without parole,
- 1688                     is a first degree felony;
- 1689           (ii) except as provided in Subsection (2), aggravated murder under Section 76-5-202,
- 1690                     which results in serious bodily injury, is punishable by imprisonment for an
- 1691                     indeterminate term of not fewer than 15 years and which may be for life;
- 1692           (b) except as provided in Subsection (1)(c), (d), or (e), a first degree felony is a second
- 1693                     degree felony;
- 1694           (c) murder under Subsection 76-5-203(2)(a) is a first degree felony punishable by
- 1695                     imprisonment for an indeterminate term of not fewer than five years and which may
- 1696                     be for life;

(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:

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

(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;

(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:

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

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

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

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

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

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

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

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

(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:

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

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

(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:

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

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

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

Section 19. Section **76-4-202** is amended to read:

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

Conspiracy to commit:

- (1) a capital felony is a first degree felony;
- (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;
- (3) a second degree felony is a third degree felony;
- (4) a third degree felony is a class A misdemeanor;
- (5) a class A misdemeanor is a class B misdemeanor;
- (6) a class B misdemeanor is a class C misdemeanor; or
- (7) ~~[A]~~ a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

Section 20. Section **76-4-203** is amended to read:

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

- (1)(a) As used in this section:
  - (i) "Adult" means an individual who is 18 years old or older.
  - (ii) "Solicit" means to ask, command, encourage, importune, offer to hire, or request.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (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.
- (3) A violation of Subsection (2) where the actor solicits the adult to commit:
  - (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;
  - (b) except as provided in Subsection (3)(c) or (d), a first degree felony is a second degree felony;
  - (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:
    - (i) murder, as described in Subsection 76-5-203(2)(a);
    - (ii) child kidnapping, as described in Section 76-5-301.1; or
    - (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;

(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:

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

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

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

(e) a second degree felony is a third degree felony; and

(f) a third degree felony is a class A misdemeanor.

(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:

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

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

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

(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.

(6) It is not a defense to a violation of this section that:

(a) the adult solicited by the actor:

(i) does not agree to act upon the solicitation;

(ii) does not commit an overt act;

(iii) does not engage in conduct constituting a substantial step toward the commission of any offense;

(iv) is not criminally responsible for the felony offense solicited;

(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

(vi) is immune from prosecution; or

(b) the actor:

(i) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or

(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.

(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.

Section 21. Section **76-5-107** is amended to read:

**76-5-107 . Threat of violence.**

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits a threat of violence if the actor:
  - (a)(i) threatens to commit an offense:
    - (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
    - (B) involving bodily injury, death, or substantial property damage; and
  - (ii) acts with intent to place an individual in fear:
    - (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
    - (B) of imminent serious bodily injury, substantial bodily injury, or death; or
  - (b) makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to an individual.
- (3)(a) A violation of Subsection (2) is a class B misdemeanor.
- (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.

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

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

Section 22. Section **76-5-302** is amended to read:

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

- (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:
  - (i) Section 76-5-301, kidnapping; or
  - (ii) Section 76-5-304, unlawful detention.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits aggravated kidnapping if the actor, in the course of committing

unlawful detention or kidnapping:

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

(b) acts with the intent to:

(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;

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

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

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

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

(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.

(3)(a) A violation of Subsection (2) in the course of committing unlawful detention is a third degree felony.

(b) A violation of Subsection (2) in the course of committing kidnapping is a first degree felony.

(4) An actor convicted of a violation of Subsection (3)(b) shall be sentenced to imprisonment of:

(a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and which may be for life;

(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

(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.

(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:

(a) for purposes of Subsection (4)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (4)(a) or (b):

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

- 1867 (ii) six years and which may be for life.
- 1868 (6) The provisions of Subsection (5) do not apply when a defendant is sentenced under
- 1869 Subsection (4)(c).
- 1870 (7) Subsections (4)(b) and (c) do not apply if the actor was younger than 18 years old at the
- 1871 time of the offense.
- 1872 (8) Imprisonment under Subsection (4) is mandatory in accordance with Section 76-3-406.
- 1873 Section 23. Section **76-5b-201** is amended to read:
- 1874 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**
- 1875 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 1876 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses,
- 1877 views, accesses with the intent to view, or maintains access with the intent to view, child
- 1878 sexual abuse material.
- 1879 (3)(a) A violation of Subsection (2) is a second degree felony.
- 1880 (b) It is a separate offense under this section:
- 1881 (i) for each minor depicted in the child sexual abuse material; and
- 1882 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 1883 (4) For a charge of violating this section, it is an affirmative defense that:
- 1884 (a) the defendant:
- 1885 (i) did not solicit the child sexual abuse material from the minor depicted in the child
- 1886 sexual abuse material;
- 1887 (ii) is not more than two years older than the minor depicted in the child sexual abuse
- 1888 material; and
- 1889 (iii) upon request of a law enforcement agent or the minor depicted in the child
- 1890 sexual abuse material, removes from an electronic device or destroys the child
- 1891 sexual abuse material and all copies of the child sexual abuse material in the
- 1892 defendant's possession; and
- 1893 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,
- 1894 Sexual Offenses[, other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420].
- 1895 (5) In proving a violation of this section in relation to an identifiable minor, proof of the
- 1896 actual identity of the identifiable minor is not required.
- 1897 (6) The following are not criminally or civilly liable under this section when acting in good
- 1898 faith compliance with Section 77-4-201:
- 1899 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 1900 the scope of employment, for the good faith performance of:



- 1901 (i) reporting or data preservation duties required under federal or state law; or
- 1902 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse
- 1903 material on tangible or intangible property, or of detecting and reporting the
- 1904 presence of child sexual abuse material on the property;
- 1905 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an
- 1906 independent contractor who is contracted with a law enforcement agency, acting
- 1907 within the scope of a criminal investigation;
- 1908 (c) an employee of a court who may be required to view child sexual abuse material
- 1909 during the course of and within the scope of the employee's employment;
- 1910 (d) a juror who may be required to view child sexual abuse material during the course of
- 1911 the individual's service as a juror;
- 1912 (e) an attorney or employee of an attorney who is required to view child sexual abuse
- 1913 material during the course of a judicial process and while acting within the scope of
- 1914 employment;
- 1915 (f) an employee of the Department of Health and Human Services who is required to
- 1916 view child sexual abuse material within the scope of the employee's employment;
- 1917 (g) an employee, independent contractor, or designated interviewer of a Children's
- 1918 Justice Center, who is required to view child sexual abuse material within the scope
- 1919 of the employee's, independent contractor's, or designated interviewer's scope of
- 1920 employment or assignment; or
- 1921 (h) an attorney who is required to view child sexual abuse material within the scope of
- 1922 the attorney's responsibility to represent the Department of Health and Human
- 1923 Services, including the divisions and offices within the Department of Health and
- 1924 Human Services.

1925 Section 24. Section **76-7-101** is amended to read:

1926 **76-7-101 . Bigamy.**

- 1927 (1) An individual is guilty of bigamy if:
  - 1928 (a) the individual purports to marry another individual; and
  - 1929 (b) knows or reasonably should know that one or both of the individuals described in
  - 1930 Subsection (1)(a) are legally married to another individual.
- 1931 (2) An individual who violates Subsection (1) is guilty of an infraction.
- 1932 (3) An individual is guilty of a third degree felony if the individual induces bigamy:
  - 1933 (a) under fraudulent or false pretenses; or
  - 1934 (b) by threat or coercion.

- (4) An individual is guilty of a second degree felony if the individual:
- (a) cohabitates with another individual with whom the individual is engaged in bigamy as described in Subsection (1); and
  - (b) in furtherance of the conduct described in Subsection (4)(a)[,] :
    - (i) ~~[-] commits a felony [offense, or for Section 76-5-418, a misdemeanor offense, in]~~ violation of~~[- one or more of the following]:~~
      - ~~[(i)]~~ (A) Section 76-5-109, child abuse;
      - ~~[(ii)]~~ (B) Section 76-5-109.2, aggravated child abuse;
      - ~~[(iii)]~~ (C) Section 76-5-109.3, child abandonment;
      - ~~[(iv)]~~ (D) Section 76-5-109.4, child torture;
      - ~~[(v)]~~ (E) Section 76-5-111, abuse of a vulnerable adult;
      - ~~[(vi)]~~ (F) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
      - ~~[(vii)]~~ (G) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
      - ~~[(viii)]~~ (H) Section 76-5-111.4, financial exploitation of a vulnerable adult;
      - ~~[(ix)]~~ (I) Chapter 5, Part 2, Criminal Homicide;
      - ~~[(x)]~~ (J) Section 76-5-208, child abuse homicide;
      - ~~[(xi)]~~ (K) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
      - ~~[(xii)]~~ (L) Chapter 5, Part 4, Sexual Offenses~~[-, other than:]~~ ;
      - ~~[(A)]~~ Section 76-5-417, enticing a minor;
      - ~~[(B)]~~ Section 76-5-419, lewdness; or]
      - ~~[(C)]~~ Section 76-5-420, lewdness involving a child];
      - ~~[(xiii)]~~ (M) Section 76-7-201, criminal nonsupport;
      - ~~[(xiv)]~~ (N) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
      - ~~[(xv)]~~ (O) Title 78B, Chapter 7, Part 8, Criminal Protective Orders~~[-:]~~ ; or
    - (ii) commits a misdemeanor violation of Section 76-5-418, sexual battery.
- (5) It is a defense to prosecution under Subsection (2) that:
- (a) the individual ceased the practice of bigamy as described in Subsection (1) under reasonable fear of coercion or bodily harm;
  - (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
  - (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.

1969 Section 25. Section **77-2-9** is amended to read:

1970 **77-2-9 . Offenses ineligible for diversion.**

1971 (1) A magistrate may not grant a diversion for:

1972 (a) a capital felony;

1973 (b) a felony in the first degree;

1974 (c) any case involving a sexual offense against a victim who is under 14 years old;

1975 (d) any motor vehicle related offense involving alcohol or drugs;

1976 (e) any case involving using a motor vehicle in the commission of a felony;

1977 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended  
1978 license;

1979 (g) any case involving operating a commercial motor vehicle in a negligent manner  
1980 causing the death of another including the offenses of:

1981 (i) manslaughter under Section 76-5-205; or

1982 (ii) negligent homicide under Section 76-5-206; or

1983 (h) a crime of domestic violence as defined in Section 77-36-1.

1984 (2) When an individual is alleged to have committed any violation of Title 76, Chapter 5,  
1985 Part 4, Sexual Offenses[~~, other than a violation of Section 76-5-417, 76-5-418, 76-5-419,~~  
1986 ~~or 76-5-420;~~], while the individual is under 16 years old, the court may enter a diversion  
1987 in the matter if the court enters on the record the court's findings that:

1988 (a) the offenses could have been adjudicated in juvenile court but for the delayed  
1989 reporting or delayed filing of the information in the district court, unless the offenses  
1990 are before the court in accordance with Section 80-6-502 or 80-6-504;

1991 (b) the individual did not use coercion or force;

1992 (c) there is no more than three years' difference between the ages of the participants; and

1993 (d) it would be in the best interest of the person to grant diversion.

1994 Section 26. Section **77-7a-104** is amended to read:

1995 **77-7a-104 . Activation and use of body-worn cameras.**

1996 (1) As used in this section:

1997 (a) "Health care facility" means the same as that term is defined in Section 78B-3-403.

1998 (b) "Health care provider" means the same as that term is defined in Section 78B-3-403.

1999 (c) "Hospital" means the same as that term is defined in Section 78B-3-403.

2000 (d) "Human service program" means the same as that term is defined in Section  
2001 26B-2-101.

2002 (2) Except as provided in Subsection (5), an officer using a body-worn camera:

- (a) shall verify that the equipment is properly functioning as is reasonably within the officer's ability;
- (b) shall report any malfunctioning equipment to the officer's supervisor if:
- (i) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or
  - (ii) the officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty;
- (c) shall wear the body-worn camera so that it is clearly visible to the individual being recorded;
- (d) shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible;
- (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;
- (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;
- (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;
- (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;
- (i) may deactivate the body-worn camera:
- (i) to consult with a supervisor or another officer;
  - (ii) during a significant period of inactivity;
  - (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:
    - (A) the individual who is the subject of the recording requests that the officer deactivate the officer's body-worn camera; and
    - (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

(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:

(A) the officer is conducting an evidence-based lethality assessment;

(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

(C) the officer's body-worn camera is reactivated as soon as reasonably possible after the evidence-based lethality assessment is complete;

(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

(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.

(3) A violation of this section may not serve as the sole basis to dismiss a criminal case or charge.

(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.

(5) Subsections (2)(c), (d), (e), (g), (h), and (j) do not apply to an officer who:

(a) is assigned to a narcotics unit or task force that is engaged primarily in narcotics investigations; or

(b) is engaged in an undercover operation.

Section 27. Section **77-22-2.5** is amended to read:

**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.**

(1) As used in this section:

(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.

(ii) "Electronic communication" does not include:

(A) a wire or oral communication;

- 2071 (B) a communication made through a tone-only paging device;
- 2072 (C) a communication from a tracking device; or
- 2073 (D) electronic funds transfer information stored by a financial institution in a
- 2074 communications system used for the electronic storage and transfer of funds.
- 2075 (b) "Electronic communications service" means a service which provides for users the
- 2076 ability to send or receive wire or electronic communications.
- 2077 (c) "Electronic communications system" means a wire, radio, electromagnetic,
- 2078 photooptical, or photoelectronic facilities for the transmission of wire or electronic
- 2079 communications, and a computer facilities or related electronic equipment for the
- 2080 electronic storage of the communication.
- 2081 (d) "Internet service provider" means the same as that term is defined in Section
- 2082 76-5c-401.
- 2083 (e) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.
- 2084 (f) "Remote computing service" means the provision to the public of computer storage
- 2085 or processing services by means of an electronic communications system.
- 2086 (g)(~~+~~) "Sexual offense against a minor" means:
- 2087 [~~(A)~~] (i) sexual exploitation of a minor or attempted sexual exploitation of a minor in
- 2088 violation of Section 76-5b-201;
- 2089 [~~(B)~~] (ii) aggravated sexual exploitation of a minor or attempted aggravated sexual
- 2090 exploitation of a minor in violation of Section 76-5b-201.1;
- 2091 [~~(C)~~] (iii) a sexual offense or attempted sexual offense committed against a minor in
- 2092 violation of Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2093 [~~(D)~~] (iv) dealing in or attempting to deal in material harmful to a minor in violation
- 2094 of Section 76-5c-205 or 76-5c-206;
- 2095 [~~(E)~~] (v) human trafficking of a child in violation of Section 76-5-308.5; or
- 2096 [~~(F)~~] (vi) aggravated sexual extortion of a child in violation of Section 76-5b-204.
- 2097 [~~(ii) "Sexual offense against a minor" does not include an offense described in~~
- 2098 ~~Section 76-5-418, 76-5-419, or 76-5-420.~~]
- 2099 (2) When a law enforcement agency is investigating a sexual offense against a minor, an
- 2100 offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
- 2101 Section 76-5-301.1, and has reasonable suspicion that an electronic communications
- 2102 system or service or remote computing service has been used in the commission of a
- 2103 criminal offense, a law enforcement agent shall:
- 2104 (a) articulate specific facts showing reasonable grounds to believe that the records or

- 2105 other information sought, as designated in Subsections (2)(c)(i) through (v), are  
2106 relevant and material to an ongoing investigation;
- 2107 (b) present the request to a prosecutor for review and authorization to proceed; and
- 2108 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.  
2109 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or  
2110 remote computing service provider that owns or controls the Internet protocol  
2111 address, websites, email address, or service to a specific telephone number, requiring  
2112 the production of the following information, if available, upon providing in the court  
2113 order the Internet protocol address, email address, telephone number, or other  
2114 identifier, and the dates and times the address, telephone number, or other identifier  
2115 is suspected of being used in the commission of the offense:
- 2116 (i) names of subscribers, service customers, and users;
- 2117 (ii) addresses of subscribers, service customers, and users;
- 2118 (iii) records of session times and durations;
- 2119 (iv) length of service, including the start date and types of service utilized; and
- 2120 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
2121 including a temporarily assigned network address.
- 2122 (3) A court order issued under this section shall state that the electronic communications  
2123 system or service or remote computing service provider shall produce a record under  
2124 Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the  
2125 suspected criminal activity or offense as described in the court order.
- 2126 (4)(a) An electronic communications system or service or remote computing service  
2127 provider that provides information in response to a court order issued under this  
2128 section may charge a fee, not to exceed the actual cost, for providing the information.
- 2129 (b) The law enforcement agency conducting the investigation shall pay the fee.
- 2130 (5) The electronic communications system or service or remote computing service provider  
2131 served with or responding to the court order may not disclose the court order to the  
2132 account holder identified pursuant to the court order for a period of 90 days.
- 2133 (6) If the electronic communications system or service or remote computing service  
2134 provider served with the court order does not own or control the Internet protocol  
2135 address, websites, or email address, or provide service for the telephone number that is  
2136 the subject of the court order, the provider shall notify the investigating law enforcement  
2137 agency that the provider does not have the information.
- 2138 (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.

(8)(a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(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.

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

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

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

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

Section 28. Section **77-36-1** is amended to read:

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

As used in this chapter:

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

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

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

(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.

(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:

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

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

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

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

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



2173 (vi) electronic communication harassment under Sections 76-12-202, 76-12-203, and  
2174 76-12-204;

2175 (vii) kidnapping, child kidnapping, or aggravated kidnapping under Sections 76-5-301,  
2176 76-5-301.1, and 76-5-302;

2177 (viii) mayhem under Section 76-5-105;

2178 (ix) propelling a bodily substance or material, as described in Section 76-5-102.9;

2179 (x) sexual offenses under Title 76, Chapter 5, Part 4, Sexual Offenses, and sexual  
2180 exploitation of a minor and aggravated sexual exploitation of a minor, as  
2181 described in Sections 76-5b-201 and 76-5b-201.1;

2182 (xi) stalking under Section 76-5-106.5;

2183 (xii) unlawful detention and unlawful detention of a minor under Section 76-5-304;

2184 (xiii) violation of a protective order or ex parte protective order under Section  
2185 76-5-108;

2186 (xiv) an offense against property under Title 76, Chapter 6, Part 1, Property  
2187 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title  
2188 76, Chapter 6, Part 3, Robbery;

2189 (xv) disorderly conduct under Section 76-9-102, if a conviction or adjudication of  
2190 disorderly conduct is the result of a plea agreement in which the perpetrator was  
2191 originally charged with a domestic violence offense otherwise described in this  
2192 Subsection (4), except that a conviction or adjudication of disorderly conduct as a  
2193 domestic violence offense, in the manner described in this Subsection (4)(b)(xv),  
2194 does not constitute a misdemeanor crime of domestic violence under 18 U.S.C.  
2195 Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

2196 (xvi) child abuse under Section 76-5-114;

2197 (xvii) threatening violence under Section 76-5-107;

2198 (xviii) tampering with a witness under Section 76-8-508;

2199 (xix) retaliation against a witness, victim, or informant under Section 76-8-508.3;

2200 (xx) receiving or soliciting a bribe as a witness under Section 76-8-508.7;

2201 (xxi) unlawful distribution of an intimate image under Section 76-5b-203;

2202 (xxii) unlawful distribution of a counterfeit intimate image under Section 76-5b-205;

2203 (xxiii) threatening with or using a dangerous weapon in a fight or quarrel under  
2204 Section 76-11-207;

2205 (xxiv) possession of a dangerous weapon with criminal intent under Section  
2206 76-11-208;

- 2207 (xxv) improper discharging of a dangerous weapon under Section 76-11-209;
- 2208 (xxvi) voyeurism under Section 76-12-306;
- 2209 (xxvii) recorded or photographed voyeurism under Section 76-12-307;
- 2210 (xxviii) distribution of images obtained through voyeurism under Section 76-12-308;
- 2211 (xxix) damage to or interruption of a communication device under Section 76-6-108;
- 2212 or
- 2213 (xxx) an offense under Subsection 78B-7-806(1).
- 2214 ~~[(e) "Domestic violence" or "domestic violence offense" does not include:]~~
- 2215 ~~[(i) enticing a minor under Section 76-5-417;]~~
- 2216 ~~[(ii) lewdness under in Section 76-5-419; or]~~
- 2217 ~~[(iii) lewdness involving a child under Section 76-5-420.]~~
- 2218 (5) "Jail release agreement" means the same as that term is defined in Section 78B-7-801.
- 2219 (6) "Jail release court order" means the same as that term is defined in Section 78B-7-801.
- 2220 (7) "Marital status" means married and living together, divorced, separated, or not married.
- 2221 (8) "Married and living together" means a couple whose marriage was solemnized under
- 2222 Section 81-2-305 or 81-2-407 and who are living in the same residence.
- 2223 (9) "Not married" means any living arrangement other than married and living together,
- 2224 divorced, or separated.
- 2225 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).
- 2226 (11) "Pretrial protective order" means a written order:
- 2227 (a) specifying and limiting the contact a person who has been charged with a domestic
- 2228 violence offense may have with an alleged victim or other specified individuals; and
- 2229 (b) specifying other conditions of release under Section 78B-7-802 or 78B-7-803,
- 2230 pending trial in the criminal case.
- 2231 (12) "Sentencing protective order" means a written order of the court as part of sentencing
- 2232 in a domestic violence case that limits the contact an individual who is convicted or
- 2233 adjudicated of a domestic violence offense may have with a victim or other specified
- 2234 individuals under Section 78B-7-804.
- 2235 (13) "Separated" means a couple who have had their marriage solemnized under Section
- 2236 81-2-305 or 81-2-407 and who are not living in the same residence.
- 2237 (14) "Victim" means a cohabitant who has been subjected to domestic violence.
- 2238 Section 29. Section **77-37-2** is amended to read:
- 2239 **77-37-2 . Definitions.**
- 2240 As used in this chapter:

- 2241 (1) "Alleged sexual offender" means the same as that term is defined in Section 53-10-801.
- 2242 (2) "Child" means a person who is younger than 18 years old, unless otherwise specified in
- 2243 statute. The rights to information as extended in this chapter also apply to the parents,
- 2244 custodian, or legal guardians of children.
- 2245 (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.
- 2246 (4) "HIV infection" means the same as that term is defined in Section 53-10-801.
- 2247 (5) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.
- 2248 (6)(a) "Sexual offense" means any conduct described in:
- 2249 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2250 (ii) Title 76, Chapter 5b, Sexual Exploitation Act; or
- 2251 (iii) Section 76-7-102, incest.
- 2252 (b) "Sexual offense" does not include conduct described in[:]
- 2253 [~~(i) Section 76-5-417, enticing a minor;~~]
- 2254 [~~(ii) Section 76-5-420, lewdness involving a child; or~~]
- 2255 [~~(iii) Section 76-5b-206, failure to report child sexual abuse material by a computer~~
- 2256 technician.
- 2257 (7) "Victim" means an individual, including a minor, against whom an offense has been
- 2258 allegedly committed.
- 2259 (8) "Witness" means any person who has been subpoenaed or is expected to be summoned
- 2260 to testify for the prosecution or who by reason of having relevant information is subject
- 2261 to call or likely to be called as a witness for the prosecution, whether any action or
- 2262 proceeding has commenced.
- 2263 Section 30. Section **77-38-601** is amended to read:
- 2264 **77-38-601 . Definitions.**
- 2265 As used in this part:
- 2266 (1) "Abuse" means any of the following:
- 2267 (a) "abuse" as that term is defined in Section 76-5-111 or 80-1-102; or
- 2268 (b) "child abuse" as that term is defined in Section 76-5-109.
- 2269 (2) "Actual address" means the residential street address of the program participant that is
- 2270 stated in a program participant's application for enrollment or on a notice of a change of
- 2271 address under Section 77-38-610.
- 2272 (3) "Assailant" means an individual who commits or threatens to commit abuse, human
- 2273 trafficking, domestic violence, stalking, or a sexual offense against an applicant for the
- 2274 program or a minor or incapacitated individual residing with an applicant for the

- 2275 program.
- 2276 (4) "Assigned address" means an address designated by the commission and assigned to a  
2277 program participant.
- 2278 (5) "Authorization card" means a card issued by the commission that identifies a program  
2279 participant as enrolled in the program with the program participant's assigned address  
2280 and the date on which the program participant will no longer be enrolled in the program.
- 2281 (6) "Commission" means the State Commission on Criminal and Juvenile Justice created in  
2282 Section 63M-7-201.
- 2283 (7) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 2284 (8) "Human trafficking" means a human trafficking offense under Section 76-5-308.
- 2285 (9) "Incapacitated individual" means an individual who is incapacitated, as defined in  
2286 Section 75-1-201.
- 2287 (10)(a) "Mail" means first class letters or flats delivered by the United States Postal  
2288 Service, including priority, express, and certified mail.
- 2289 (b) "Mail" does not include a package, parcel, periodical, or catalogue, unless the  
2290 package, parcel, periodical, or catalogue is clearly identifiable as:
- 2291 (i) being sent by a federal, state, or local agency or another government entity; or  
2292 (ii) a pharmaceutical or medical item.
- 2293 (11) "Minor" means an individual who is younger than 18 years old.
- 2294 (12) "Notification form" means a form issued by the commission that a program participant  
2295 may send to a person demonstrating that the program participant is enrolled in the  
2296 program.
- 2297 (13) "Program" means the Safe at Home Program created in Section 77-38-602.
- 2298 (14) "Program assistant" means an individual designated by the commission under Section  
2299 77-38-604 to assist an applicant or program participant.
- 2300 (15) "Program participant" means an individual who is enrolled under Section 77-38-606 by  
2301 the commission to participate in the program.
- 2302 (16) "Record" means the same as that term is defined in Section 63G-2-103.
- 2303 (17)(a) "Sexual offense" means:
- 2304 (i) a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses; or  
2305 (ii) a sexual exploitation offense under Title 76, Chapter 5b, Part 2, Sexual  
2306 Exploitation.
- 2307 (b) "Sexual offense" does not include an offense under:
- 2308 [(i) Section 76-5-417, enticing a minor;]

- 2309           ~~[(ii) Section 76-5-418, sexual battery;]~~
- 2310           ~~[(iii)]~~ (i) Section 76-5-419, lewdness;
- 2311           ~~[(iv)]~~ (ii) Section 76-5-420, lewdness involving a child; or
- 2312           ~~[(v)]~~ (iii) Section 76-5b-206, failure to report child sexual abuse material by a
- 2313           computer technician.
- 2314 (18) "Stalking" means the same as that term is defined in Section 76-5-106.5.
- 2315 (19) "State or local government entity" means a county, municipality, higher education
- 2316 institution, special district, special service district, or any other political subdivision of
- 2317 the state or an administrative subunit of the executive, legislative, or judicial branch of
- 2318 this state, including:
- 2319       (a) a law enforcement entity or any other investigative entity, agency, department,
- 2320       division, bureau, board, or commission; or
- 2321       (b) an individual acting or purporting to act for or on behalf of a state or local entity,
- 2322       including an elected or appointed public official.
- 2323 (20) "Victim" means a victim of abuse, domestic violence, human trafficking, stalking, or a
- 2324 sexual ~~[assault]~~ offense.
- 2325       Section 31. Section **78B-7-502** is amended to read:
- 2326       **78B-7-502 . Definitions.**
- 2327       As used in this part:
- 2328 (1) "Ex parte sexual violence protective order" means an order issued without notice to the
- 2329 respondent under this part.
- 2330 (2) "Protective order" means:
- 2331       (a) a sexual violence protective order; or
- 2332       (b) an ex parte sexual violence protective order.
- 2333 (3)(a) "Sexual violence" means the commission or the attempt to commit:
- 2334       (i) any sexual offense described in:
- 2335           (A) Title 76, Chapter 5, Part 4, Sexual Offenses; or
- 2336           (B) Title 76, Chapter 5b, Part 2, Sexual Exploitation;
- 2337       (ii) human trafficking for sexual exploitation under Section 76-5-308.1; or
- 2338       (iii) aggravated human trafficking for forced sexual exploitation under Section
- 2339       76-5-310.
- 2340 (b) "Sexual violence" does not include an offense described in:
- 2341       ~~[(i) Section 76-5-417, enticing a minor;]~~
- 2342       ~~[(ii) Section 76-5-418, sexual battery;]~~

- 2343           ~~[(iii)]~~ (i) Section 76-5-419, lewdness;
- 2344           ~~[(iv)]~~ (ii) Section 76-5-420, lewdness involving a child; or
- 2345           ~~[(v)]~~ (iii) Section 76-5b-206, failure to report child sexual abuse material by a
- 2346           computer technician.
- 2347       (4) "Sexual violence protective order" means an order issued under this part after a hearing
- 2348       on the petition, of which the petitioner and respondent have been given notice.
- 2349       Section 32. Section **78B-7-801** is amended to read:
- 2350       **78B-7-801 . Definitions.**
- 2351       As used in this part:
- 2352       (1)(a) "Jail release agreement" means a written agreement that is entered into by an
- 2353       individual who is arrested or issued a citation, regardless of whether the individual is
- 2354       booked into jail:
- 2355           (i) under which the arrested or cited individual agrees to not engage in any of the
- 2356           following:
- 2357           (A) telephoning, contacting, or otherwise communicating with the alleged victim,
- 2358           directly or indirectly;
- 2359           (B) threatening or harassing the alleged victim; or
- 2360           (C) knowingly entering onto the premises of the alleged victim's residence or on
- 2361           premises temporarily occupied by the alleged victim, unless, after a law
- 2362           enforcement officer or the law enforcement officer's employing agency notifies
- 2363           or attempts to notify the alleged victim, the individual enters the premises
- 2364           while accompanied by a law enforcement officer for the purpose of retrieving
- 2365           the individual's personal belongings; and
- 2366           (ii) that specifies other conditions of release from jail or arrest.
- 2367       (b) "Jail release agreement" includes a written agreement that includes the conditions
- 2368       described in Section (1)(a) entered into by a minor who is taken into custody or
- 2369       placed in detention or a shelter facility under Section 80-6-201.
- 2370       (2) "Jail release court order" means a written court order that:
- 2371           (a) orders an arrested or cited individual not to engage in any of the following:
- 2372           (i) telephoning, contacting, or otherwise communicating with the alleged victim,
- 2373           directly or indirectly;
- 2374           (ii) threatening or harassing the alleged victim; or
- 2375           (iii) knowingly entering onto the premises of the alleged victim's residence or on
- 2376           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

(b) specifies other conditions of release from jail.

(3) "Minor" means the same as that term is defined in Section 80-1-102.

(4) "Offense against a child or vulnerable adult" means the commission or attempted commission of an offense described in:

(a) Section 76-5-109, child abuse;

(b) Section 76-5-109.2, aggravated child abuse;

(c) Section 76-5-109.3, child abandonment;

(d) Section 76-5-109.4, child torture;

(e) Section 76-5-110, abuse or neglect of a child with a disability;

(f) Section 76-5-111, abuse of a vulnerable adult;

(g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

(h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

(i) Section 76-5-111.4, financial exploitation of a vulnerable adult;

(j) Section 76-5-114, commission of domestic violence in the presence of a child; or

(k) Section 76-5-418, sexual battery.

(5)(a) "Qualifying offense" means:

(i) domestic violence;

(ii) an offense against a child or vulnerable adult; or

(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.

(b) "Qualifying offense" does not include an offense described in:

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

[(ii)] (i) Section 76-5-419, lewdness; or

[(iii)] (ii) Section 76-5-420, lewdness involving a child.

Section 33. Section **80-1-102** is amended to read:

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

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

(1)(a) "Abuse" means:

(i)(A) nonaccidental harm of a child;

(B) threatened harm of a child;

- 2411 (C) sexual exploitation;  
2412 (D) sexual abuse; or  
2413 (E) human trafficking of a child in violation of Section 76-5-308.5; or  
2414 (ii) that a child's parent:  
2415 (A) intentionally, knowingly, or recklessly causes the death of another parent of  
2416 the child;  
2417 (B) is identified by a law enforcement agency as the primary suspect in an  
2418 investigation for intentionally, knowingly, or recklessly causing the death of  
2419 another parent of the child; or  
2420 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
2421 recklessly causing the death of another parent of the child.  
2422 (b) "Abuse" does not include:  
2423 (i) reasonable discipline or management of a child, including withholding privileges;  
2424 (ii) conduct described in Section 76-2-401; or  
2425 (iii) the use of reasonable and necessary physical restraint or force on a child:  
2426 (A) in self-defense;  
2427 (B) in defense of others;  
2428 (C) to protect the child; or  
2429 (D) to remove a weapon in the possession of a child for any of the reasons  
2430 described in Subsections (1)(b)(iii)(A) through (C).  
2431 (2) "Abused child" means a child who has been subjected to abuse.  
2432 (3)(a) "Adjudication" means, except as provided in Subsection (3)(b):  
2433 (i) for a delinquency petition or criminal information under Chapter 6, Juvenile  
2434 Justice:  
2435 (A) a finding by the juvenile court that the facts alleged in a delinquency petition  
2436 or criminal information alleging that a minor committed an offense have been  
2437 proved;  
2438 (B) an admission by a minor in the juvenile court as described in Section 80-6-306;  
2439 or  
2440 (C) a plea of no contest by minor in the juvenile court; or  
2441 (ii) for all other proceedings under this title, a finding by the juvenile court that the  
2442 facts alleged in the petition have been proved.  
2443 (b) "Adjudication" does not include:  
2444 (i) an admission by a minor described in Section 80-6-306 until the juvenile court



- 2445 enters the minor's admission; or
- 2446 (ii) a finding of not competent to proceed in accordance with Section 80-6-402.
- 2447 (4)(a) "Adult" means an individual who is 18 years old or older.
- 2448 (b) "Adult" does not include an individual:
- 2449 (i) who is 18 years old or older; and
- 2450 (ii) who is a minor.
- 2451 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
- 2452 78A-2-801.
- 2453 (6) "Board" means the Board of Juvenile Court Judges.
- 2454 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18
- 2455 years old.
- 2456 (8) "Child and family plan" means a written agreement between a child's parents or
- 2457 guardian and the Division of Child and Family Services as described in Section 80-3-307.
- 2458 (9) "Child placing" means the same as that term is defined in Section 26B-2-101.
- 2459 (10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.
- 2460 (11) "Child protection team" means a team consisting of:
- 2461 (a) the child welfare caseworker assigned to the case;
- 2462 (b) if applicable, the child welfare caseworker who made the decision to remove the
- 2463 child;
- 2464 (c) a representative of the school or school district where the child attends school;
- 2465 (d) if applicable, the law enforcement officer who removed the child from the home;
- 2466 (e) a representative of the appropriate Children's Justice Center, if one is established
- 2467 within the county where the child resides;
- 2468 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
- 2469 with the child's circumstances;
- 2470 (g) if appropriate, a representative of law enforcement selected by the chief of police or
- 2471 sheriff in the city or county where the child resides; and
- 2472 (h) any other individuals determined appropriate and necessary by the team coordinator
- 2473 and chair.
- 2474 (12)(a) "Chronic abuse" means repeated or patterned abuse.
- 2475 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 2476 (13)(a) "Chronic neglect" means repeated or patterned neglect.
- 2477 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 2478 (14) "Clandestine laboratory operation" means the same as that term is defined in Section

2479 58-37d-3.

2480 (15) "Commit" or "committed" means, unless specified otherwise:

2481 (a) with respect to a child, to transfer legal custody; and

2482 (b) with respect to a minor who is at least 18 years old, to transfer custody.

2483 (16) "Community-based program" means a nonsecure residential or nonresidential program,  
2484 designated to supervise and rehabilitate juvenile offenders, that prioritizes the least  
2485 restrictive setting, consistent with public safety, and operated by or under contract with  
2486 the Division of Juvenile Justice and Youth Services.

2487 (17) "Community placement" means placement of a minor in a community-based program  
2488 described in Section 80-5-402.

2489 (18) "Correctional facility" means:

2490 (a) a county jail; or

2491 (b) a secure correctional facility as defined in Section 64-13-1.

2492 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a  
2493 minor's likelihood of reoffending.

2494 (20) "Department" means the Department of Health and Human Services created in Section  
2495 26B-1-201.

2496 (21) "Dependent child" or "dependency" means a child who is without proper care through  
2497 no fault of the child's parent, guardian, or custodian.

2498 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a  
2499 parent or a previous custodian to another person, agency, or institution.

2500 (23) "Detention" means home detention or secure detention.

2501 (24) "Detention facility" means a facility, established by the Division of Juvenile Justice  
2502 and Youth Services in accordance with Section 80-5-501, for minors held in detention.

2503 (25) "Detention risk assessment tool" means an evidence-based tool established under  
2504 Section 80-5-203 that:

2505 (a) assesses a minor's risk of failing to appear in court or reoffending before  
2506 adjudication; and

2507 (b) is designed to assist in making a determination of whether a minor shall be held in  
2508 detention.

2509 (26) "Developmental immaturity" means incomplete development in one or more domains  
2510 that manifests as a functional limitation in the minor's present ability to:

2511 (a) consult with counsel with a reasonable degree of rational understanding; and

2512 (b) have a rational as well as factual understanding of the proceedings.

- 2513 (27) "Disposition" means an order by a juvenile court, after the adjudication of a minor,  
2514 under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.
- 2515 (28) "Educational neglect" means that, after receiving a notice of compulsory education  
2516 violation under Section 53G-6-202, the parent or guardian fails to make a good faith  
2517 effort to ensure that the child receives an appropriate education.
- 2518 (29) "Educational series" means an evidence-based instructional series:  
2519 (a) obtained at a substance abuse program that is approved by the Division of Integrated  
2520 Healthcare in accordance with Section 26B-5-104; and  
2521 (b) designed to prevent substance use or the onset of a mental health disorder.
- 2522 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 2523 (31) "Evidence-based" means a program or practice that has had multiple randomized  
2524 control studies or a meta-analysis demonstrating that the program or practice is effective  
2525 for a specific population or has been rated as effective by a standardized program  
2526 evaluation tool.
- 2527 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 2528 (33) "Formal probation" means a minor is:  
2529 (a) supervised in the community by, and reports to, a juvenile probation officer or an  
2530 agency designated by the juvenile court; and  
2531 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2532 (34) "Gender identity" means the same as that term is defined in Section 34A-5-102.
- 2533 (35) "Group rehabilitation therapy" means psychological and social counseling of one or  
2534 more individuals in the group, depending upon the recommendation of the therapist.
- 2535 (36) "Guardian" means a person appointed by a court to make decisions regarding a minor,  
2536 including the authority to consent to:  
2537 (a) marriage;  
2538 (b) enlistment in the armed forces;  
2539 (c) major medical, surgical, or psychiatric treatment; or  
2540 (d) legal custody, if legal custody is not vested in another individual, agency, or  
2541 institution.
- 2542 (37) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 2543 (38) "Harm" means:  
2544 (a) physical or developmental injury or damage;  
2545 (b) emotional damage that results in a serious impairment in the child's growth,  
2546 development, behavior, or psychological functioning;

- 2547 (c) sexual abuse; or  
2548 (d) sexual exploitation.
- 2549 (39) "Home detention" means placement of a minor:
- 2550 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent  
2551 of the minor's parent, guardian, or custodian, under terms and conditions established  
2552 by the Division of Juvenile Justice and Youth Services or the juvenile court; or
- 2553 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the  
2554 minor's home, or in a surrogate home with the consent of the minor's parent,  
2555 guardian, or custodian, under terms and conditions established by the Division of  
2556 Juvenile Justice and Youth Services or the juvenile court.
- 2557 (40)(a) "Incest" means engaging in sexual intercourse with an individual whom the  
2558 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,  
2559 aunt, nephew, niece, or first cousin.
- 2560 (b) "Incest" includes:
- 2561 (i) blood relationships of the whole or half blood, regardless of whether the  
2562 relationship is legally recognized;
- 2563 (ii) relationships of parent and child by adoption; and
- 2564 (iii) relationships of stepparent and stepchild while the marriage creating the  
2565 relationship of a stepparent and stepchild exists.
- 2566 (41) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 2567 (42) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 2568 (43) "Indigent defense service provider" means the same as that term is defined in Section  
2569 78B-22-102.
- 2570 (44) "Indigent defense services" means the same as that term is defined in Section  
2571 78B-22-102.
- 2572 (45) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
- 2573 (46)(a) "Intake probation" means a minor is:
- 2574 (i) monitored by a juvenile probation officer; and
- 2575 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2576 (b) "Intake probation" does not include formal probation.
- 2577 (47) "Intellectual disability" means a significant subaverage general intellectual functioning  
2578 existing concurrently with deficits in adaptive behavior that constitutes a substantial  
2579 limitation to the individual's ability to function in society.
- 2580 (48) "Juvenile offender" means:

- 2581 (a) a serious youth offender; or  
2582 (b) a youth offender.
- 2583 (49) "Juvenile probation officer" means a probation officer appointed under Section  
2584 78A-6-205.
- 2585 (50) "Juvenile receiving center" means a nonsecure, nonresidential program established by  
2586 the Division of Juvenile Justice and Youth Services, or under contract with the Division  
2587 of Juvenile Justice and Youth Services, that is responsible for minors taken into  
2588 temporary custody under Section 80-6-201.
- 2589 (51) "Legal custody" means a relationship embodying:  
2590 (a) the right to physical custody of the minor;  
2591 (b) the right and duty to protect, train, and discipline the minor;  
2592 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
2593 medical care;  
2594 (d) the right to determine where and with whom the minor shall live; and  
2595 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2596 (52) "Licensing Information System" means the Licensing Information System maintained  
2597 by the Division of Child and Family Services under Section 80-2-1002.
- 2598 (53) "Management Information System" means the Management Information System  
2599 developed by the Division of Child and Family Services under Section 80-2-1001.
- 2600 (54) "Mental illness" means:  
2601 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,  
2602 behavioral, or related functioning; or  
2603 (b) the same as that term is defined in:  
2604 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders  
2605 published by the American Psychiatric Association; or  
2606 (ii) the current edition of the International Statistical Classification of Diseases and  
2607 Related Health Problems.
- 2608 (55) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:  
2609 (a) a child; or  
2610 (b) an individual:  
2611 (i)(A) who is at least 18 years old and younger than 21 years old; and  
2612 (B) for whom the Division of Child and Family Services has been specifically  
2613 ordered by the juvenile court to provide services because the individual was an  
2614 abused, neglected, or dependent child or because the individual was

2615 adjudicated for an offense;

2616 (ii)(A) who is at least 18 years old and younger than 25 years old; and

2617 (B) whose case is under the jurisdiction of the juvenile court in accordance with  
2618 Subsection 78A-6-103(1)(b); or

2619 (iii)(A) who is at least 18 years old and younger than 21 years old; and

2620 (B) whose case is under the jurisdiction of the juvenile court in accordance with  
2621 Subsection 78A-6-103(1)(c).

2622 (56) "Mobile crisis outreach team" means the same as that term is defined in Section  
2623 26B-5-101.

2624 (57) "Molestation" means that an individual, with the intent to arouse or gratify the sexual  
2625 desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,  
2626 or the breast of a female child, or takes indecent liberties with a child as defined in  
2627 Section 76-5-401.1.

2628 (58)(a) "Neglect" means action or inaction causing:

2629 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe  
2630 Relinquishment of a Newborn Child;

2631 (ii) lack of proper parental care of a child by reason of the fault or habits of the  
2632 parent, guardian, or custodian;

2633 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or  
2634 necessary subsistence or medical care, or any other care necessary for the child's  
2635 health, safety, morals, or well-being;

2636 (iv) a child to be at risk of being neglected or abused because another child in the  
2637 same home is neglected or abused;

2638 (v) abandonment of a child through an unregulated child custody transfer under  
2639 Section 81-14-203; or

2640 (vi) educational neglect.

2641 (b) "Neglect" does not include:

2642 (i) a parent or guardian legitimately practicing religious beliefs and who, for that  
2643 reason, does not provide specified medical treatment for a child;

2644 (ii) a health care decision made for a child by the child's parent or guardian, unless  
2645 the state or other party to a proceeding shows, by clear and convincing evidence,  
2646 that the health care decision is not reasonable and informed;

2647 (iii) a parent or guardian exercising the right described in Section 80-3-304; or

2648 (iv) permitting a child, whose basic needs are met and who is of sufficient age and

- 2649 maturity to avoid harm or unreasonable risk of harm, to engage in independent  
2650 activities, including:
- 2651 (A) traveling to and from school, including by walking, running, or bicycling;
  - 2652 (B) traveling to and from nearby commercial or recreational facilities;
  - 2653 (C) engaging in outdoor play;
  - 2654 (D) remaining in a vehicle unattended, except under the conditions described in  
2655 Subsection 76-5-115(2);
  - 2656 (E) remaining at home unattended; or
  - 2657 (F) engaging in a similar independent activity.
- 2658 (59) "Neglected child" means a child who has been subjected to neglect.
- 2659 (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation  
2660 officer, without an adjudication of the minor's case under Section 80-6-701, upon the  
2661 consent in writing of:
- 2662 (a) the assigned juvenile probation officer; and
  - 2663 (b)(i) the minor; or
  - 2664 (ii) the minor and the minor's parent, guardian, or custodian.
- 2665 (61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual  
2666 disability or related condition, or developmental immaturity, lacks the ability to:
- 2667 (a) understand the nature of the proceedings against the minor or of the potential  
2668 disposition for the offense charged; or
  - 2669 (b) consult with counsel and participate in the proceedings against the minor with a  
2670 reasonable degree of rational understanding.
- 2671 (62)(a) "Parent" means, except as provided in Section 80-3-302, an individual with a  
2672 parent-child relationship to a minor under Section 81-5-201.
- 2673 (b) "Parent" includes the minor's noncustodial parent as defined in Section 81-1-101.
- 2674 (63) "Parole" means a conditional release of a juvenile offender from residency in secure  
2675 care to live outside of secure care under the supervision of the Division of Juvenile  
2676 Justice and Youth Services, or another person designated by the Division of Juvenile  
2677 Justice and Youth Services.
- 2678 (64) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2679 (65)(a) "Probation" means a legal status created by court order, following an  
2680 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the  
2681 minor's home under prescribed conditions.
- 2682 (b) "Probation" includes intake probation or formal probation.

- 2683 (66) "Prosecuting attorney" means:
- 2684 (a) the attorney general and any assistant attorney general;
- 2685 (b) any district attorney or deputy district attorney;
- 2686 (c) any county attorney or assistant county attorney; and
- 2687 (d) any other attorney authorized to commence an action on behalf of the state.
- 2688 (67) "Protective custody" means the shelter of a child by the Division of Child and Family
- 2689 Services from the time the child is removed from the home until the earlier of:
- 2690 (a) the day on which the shelter hearing is held under Section 80-3-301; or
- 2691 (b) the day on which the child is returned home.
- 2692 (68) "Protective services" means expedited services that are provided:
- 2693 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 2694 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 2695 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
- 2696 causes of neglect or abuse; and
- 2697 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 2698 (c) in cases where the child's welfare is endangered:
- 2699 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 2700 enforcement agency;
- 2701 (ii) to cause a protective order to be issued for the protection of the child, when
- 2702 appropriate; and
- 2703 (iii) to protect the child from the circumstances that endanger the child's welfare
- 2704 including, when appropriate:
- 2705 (A) removal from the child's home;
- 2706 (B) placement in substitute care; and
- 2707 (C) petitioning the court for termination of parental rights.
- 2708 (69) "Protective supervision" means a legal status created by court order, following an
- 2709 adjudication on the ground of abuse, neglect, or dependency, whereby:
- 2710 (a) the minor is permitted to remain in the minor's home; and
- 2711 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
- 2712 by an agency designated by the juvenile court.
- 2713 (70)(a) "Related condition" means a condition that:
- 2714 (i) is found to be closely related to intellectual disability;
- 2715 (ii) results in impairment of general intellectual functioning or adaptive behavior
- 2716 similar to that of an intellectually disabled individual;



- 2717 (iii) is likely to continue indefinitely; and
- 2718 (iv) constitutes a substantial limitation to the individual's ability to function in society.
- 2719 (b) "Related condition" does not include mental illness, psychiatric impairment, or
- 2720 serious emotional or behavioral disturbance.
- 2721 (71)(a) "Residual parental rights and duties" means the rights and duties remaining with
- 2722 a parent after legal custody or guardianship, or both, have been vested in another
- 2723 person or agency, including:
- 2724 (i) the responsibility for support;
- 2725 (ii) the right to consent to adoption;
- 2726 (iii) the right to determine the child's religious affiliation; and
- 2727 (iv) the right to reasonable parent-time unless restricted by the court.
- 2728 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
- 2729 right to consent to:
- 2730 (i) marriage;
- 2731 (ii) enlistment; and
- 2732 (iii) major medical, surgical, or psychiatric treatment.
- 2733 (72) "Runaway" means a child, other than an emancipated child, who willfully leaves the
- 2734 home of the child's parent or guardian, or the lawfully prescribed residence of the child,
- 2735 without permission.
- 2736 (73) "Secure care" means placement of a minor, who is committed to the Division of
- 2737 Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under
- 2738 contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour
- 2739 supervision and confinement of the minor.
- 2740 (74) "Secure care facility" means a facility, established in accordance with Section 80-5-503,
- 2741 for juvenile offenders in secure care.
- 2742 (75) "Secure detention" means temporary care of a minor who requires secure custody in a
- 2743 physically restricting facility operated by, or under contract with, the Division of
- 2744 Juvenile Justice and Youth Services:
- 2745 (a) before disposition of an offense that is alleged to have been committed by the minor;
- 2746 or
- 2747 (b) under Section 80-6-704.
- 2748 (76) "Serious youth offender" means an individual who:
- 2749 (a) is at least 14 years old, but under 25 years old;
- 2750 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction

2751 of the juvenile court was extended over the individual's case until the individual was  
2752 25 years old in accordance with Section 80-6-605; and

2753 (c) is committed by the juvenile court to the Division of Juvenile Justice and Youth  
2754 Services for secure care under Sections 80-6-703 and 80-6-705.

2755 (77) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

2756 (78) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
2757 child.

2758 (79)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection  
2759 (79)(b):

2760 (i) if committed by an individual who is 18 years old or older:

2761 (A) chronic abuse;

2762 (B) severe abuse;

2763 (C) sexual abuse;

2764 (D) sexual exploitation;

2765 (E) abandonment;

2766 (F) chronic neglect; or

2767 (G) severe neglect; or

2768 (ii) if committed by an individual who is under 18 years old:

2769 (A) causing serious injury, as defined in Subsection 76-5-109(1), to another child  
2770 that indicates a significant risk to other children; or

2771 (B) sexual behavior with or upon another child that indicates a significant risk to  
2772 other children.

2773 (b) "Severe type of child abuse or neglect" does not include:

2774 (i) the use of reasonable and necessary physical restraint by an educator in  
2775 accordance with Section 53G-8-301 or Section 76-2-401;

2776 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the  
2777 use of reasonable and necessary physical restraint or force in self-defense or  
2778 otherwise appropriate to the circumstances to obtain possession of a weapon or  
2779 other dangerous object in the possession or under the control of a child or to  
2780 protect the child or another individual from physical injury; or

2781 (iii) a health care decision made for a child by a child's parent or guardian, unless,  
2782 subject to Subsection (79)(c), the state or other party to the proceeding shows, by  
2783 clear and convincing evidence, that the health care decision is not reasonable and  
2784 informed.

(c) Subsection (79)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(80)(a) "Sexual abuse" means:

(i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(ii) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(A) there is an indication of force or coercion;

(B) the children are related, as described in Subsection (40), including siblings by marriage while the marriage exists or by adoption; or

(C) the act or attempted act constitutes unlawful sexual activity as described in Section 76-5-401.3.

(iii) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:

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

(B) child bigamy, Section 76-7-101.5;

(C) incest, Section 76-7-102;

(D) voyeurism, Section 76-12-306;

(E) recorded or photographed voyeurism, Section 76-12-307; or

(F) distribution of images obtained through voyeurism, Section 76-12-308; or

(iv) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(b) "Sexual abuse" does not include engaging in any conduct with a child that would constitute an offense described in[:]

[~~(i)~~] Section 76-5-401, unlawful sexual activity with a minor, if the alleged perpetrator of the offense is a minor[~~;~~or] .

[~~(ii)~~ Section 76-5-417, enticing a minor.]

(81) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or

- 2819 simulated sexual conduct;
- 2820 (b) displaying, distributing, possessing for the purpose of distribution, or selling material
- 2821 depicting a child:
- 2822 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2823 (ii) engaging in sexual or simulated sexual conduct; or
- 2824 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
- 2825 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
- 2826 exploitation of a minor, regardless of whether the individual who engages in the
- 2827 conduct is actually charged with, or convicted of, the offense.
- 2828 (82) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 2829 pending a disposition or transfer to another jurisdiction.
- 2830 (83) "Shelter facility" means a nonsecure facility that provides shelter for a minor.
- 2831 (84) "Significant risk" means a risk of harm that is determined to be significant in
- 2832 accordance with risk assessment tools and rules established by the Division of Child and
- 2833 Family Services in accordance with Title 63G, Chapter 3, Utah Administrative
- 2834 Rulemaking Act, that focus on:
- 2835 (a) age;
- 2836 (b) social factors;
- 2837 (c) emotional factors;
- 2838 (d) sexual factors;
- 2839 (e) intellectual factors;
- 2840 (f) family risk factors; and
- 2841 (g) other related considerations.
- 2842 (85) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- 2843 (86) "Status offense" means an offense that would not be an offense but for the age of the
- 2844 offender.
- 2845 (87) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or
- 2846 excessive use of alcohol or other drugs or substances.
- 2847 (88) "Substantiated" or "substantiation" means a judicial finding based on a preponderance
- 2848 of the evidence, and separate consideration of each allegation made or identified in the
- 2849 case, that abuse, neglect, or dependency occurred.
- 2850 (89) "Substitute care" means:
- 2851 (a) the placement of a minor in a family home, group care facility, or other placement
- 2852 outside the minor's own home, either at the request of a parent or other responsible

relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or

(c) the licensing and supervision of a substitute care facility.

(90) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of each allegation made or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

(91) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(92) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in the division's or agency's custody; or

(b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(93) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(94) "Torture" means:

(a) the infliction of a serious injury upon a child in an exceptionally cruel or exceptionally depraved manner that causes the child to experience extreme physical or psychological pain or anguish; or

(b) the infliction of a serious injury, or more than one serious injury, upon a child as part of a course of conduct or over a prolonged period of time.

(95) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the child, the child's family, or others; or

(c) results in the situations described in Subsections (95)(a) and (b).

(96) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(97) "Unsupported" means a finding by the Division of Child and Family Services at the

completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(98) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(99) "Without merit" means a finding at the completion of an investigation by the Division of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

(100) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

Section 34. Section **80-6-304** is amended to read:

**80-6-304 . Nonjudicial adjustments. -- Requirement to seek legal counsel before declination.**

(1) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:

(a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established under Subsection (5);

(b) pay restitution to any victim;

(c) complete community or compensatory service;

(d) attend counseling or treatment with an appropriate provider;

(e) attend substance abuse treatment or counseling;

(f) comply with specified restrictions on activities or associations;

(g) attend victim-offender mediation if requested by the victim; and

(h) comply with any other reasonable action that is in the interest of the minor, the community, or the victim.

(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.

(b) The victim shall be responsible to provide to the juvenile probation officer upon request:

(i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and

- 2921 out-of-pocket loss;
- 2922 (ii) documentation and evidence of compensation or reimbursement from an
- 2923 insurance company or an agency of the state, any other state, or the federal
- 2924 government received as a direct result of the crime for injury, loss of earnings, or
- 2925 out-of-pocket loss; and
- 2926 (iii) proof of identification, including home and work address and telephone numbers.
- 2927 (c) The inability, failure, or refusal of the victim to provide all or part of the requested
- 2928 information shall result in the juvenile probation officer determining restitution based
- 2929 on the best information available.
- 2930 (3) The juvenile probation officer may not predicate acceptance of an offer of a nonjudicial
- 2931 adjustment on an admission of guilt.
- 2932 (4)(a) A minor may not decline to enter into a nonjudicial adjustment without first being
- 2933 advised of their right to consult with counsel, subject to the requirements of this
- 2934 section.
- 2935 (b) If a minor seeks to decline a nonjudicial adjustment, the juvenile probation officer
- 2936 shall inform the minor of:
- 2937 (i) the minor's right to consult with counsel; and
- 2938 (ii) the availability of resources for the minor to receive legal advice provided by the
- 2939 Office of Indigent Defense Services created in Section 78B-22-451.
- 2940 (c) If a minor seeks to decline a nonjudicial adjustment, and also declines to seek the
- 2941 advice of counsel after being informed as required under Subsection (4)(b), the
- 2942 juvenile probation officer shall:
- 2943 (i) sign an acknowledgment that the juvenile probation officer provided the minor
- 2944 with the information required by Subsection (4)(b);
- 2945 (ii) have the minor sign an acknowledgment that the minor received the information
- 2946 required by Subsection (4)(b) and knowingly and voluntarily declined to seek the
- 2947 advice of counsel; and
- 2948 (iii) permit the minor to decline the nonjudicial adjustment.
- 2949 (d) No provision of this section affects a court's obligation to ensure a minor's right to
- 2950 counsel in the event a petition is filed.
- 2951 (5)(a) The juvenile probation officer may not deny a minor an offer of a nonjudicial
- 2952 adjustment due to a minor's inability to pay a financial penalty under Subsection (1).
- 2953 (b) The juvenile probation officer shall base a fee, fine, or the restitution for a
- 2954 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.

(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.

(b) A juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under Subsection (6)(a):

(i) for a minor who is:

(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

(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

(ii) the judge determines that:

(A) the nonjudicial adjustment requires specific treatment for the sexual offense;

(B) the treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and

(C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor.

(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.

(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.

Section 35. Section **81-9-202** is amended to read:

**81-9-202 . Advisory guidelines for a custody and parent-time arrangement.**

(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.

(2) A parent-time schedule mutually agreed upon by both parents is preferable to a court-imposed solution.



- (3) A parent-time schedule shall be used to maximize the continuity and stability of the minor child's life.
- (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, 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.
- (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.
- (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.
- (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
- (i) have the minor child ready for parent-time at the time the minor child is to be picked up; and
  - (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.
- (d) If the custodial parent will be transporting the minor child, the noncustodial parent shall:
- (i) be at the appointed place at the time the noncustodial parent is to receive the minor child; and
  - (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.
- (6) A parent may not interrupt regular school hours for a school-age minor child for the exercise of parent-time.
- (7) The court may:
- (a) make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents; and
  - (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.
- (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.
- (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.
- (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.

(b) The noncustodial parent is entitled to attend and participate fully in the functions described in Subsection (10)(a).

(c) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records.

(d) A parent shall immediately notify the other parent in the event of a medical emergency.

(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.

(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.

(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:

(i) the best interests of the minor child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

(13)(a) Parental care is presumed to be better care for the minor child than surrogate care.

(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.

(c) Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(14) Each parent shall:

(a) provide all surrogate care providers with the name, current address, and telephone number of the other parent; and

(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.

(15)(a) Each parent is entitled to an equal division of major religious holidays celebrated by the parents.

(b) The parent who celebrates a religious holiday that the other parent does not celebrate

- 3057 shall have the right to be together with the minor child on the religious holiday.
- 3058 (16) If the minor child is on a different parent-time schedule than a sibling, based on
- 3059 Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for
- 3060 parent-time with all the minor children so that parent-time is uniform between school
- 3061 aged and nonschool aged children, is appropriate.
- 3062 (17)(a) When one or both parents are servicemembers or contemplating joining a
- 3063 uniformed service, the parents should resolve issues of custodial responsibility in the
- 3064 event of deployment as soon as practicable through reaching a voluntary agreement
- 3065 pursuant to Section 81-10-201 or through court order obtained pursuant to this part.
- 3066 (b) Service members shall ensure their family care plan reflects orders and agreements
- 3067 entered and filed pursuant to Chapter 10, Uniform Deployed Parents Custody,
- 3068 Parent-time, and Visitation Act.
- 3069 (18) A parent shall immediately notify the other parent if:
- 3070 (a) the parent resides with an individual or provides an individual with access to the
- 3071 minor child; and
- 3072 (b) the parent knows that the individual:
- 3073 (i) is required to register as a sex offender, a kidnap offender, or a child abuse
- 3074 offender for an offense committed against a minor child under Title 53, Chapter 29,
- 3075 Sex, Kidnap, and Child Abuse Offender Registry; or
- 3076 (ii) has been convicted of:
- 3077 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,
- 3078 76-5-109.4, 76-5-114, or 76-5-208;
- 3079 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
- 3080 Offenses~~[, other than an offense under Section 76-5-417, 76-5-418, or 76-5-419];~~
- 3081 (C) an offense for kidnapping or human trafficking of a minor child under Title
- 3082 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 3083 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
- 3084 Sexual Exploitation Act; or
- 3085 (E) an offense that is substantially similar to an offense under Subsections
- 3086 (18)(b)(ii)(A) through (D).
- 3087 (19)(a) For emergency purposes, whenever the minor child travels with a parent, the
- 3088 parent shall provide the following information to the other parent:
- 3089 (i) an itinerary of travel dates;
- 3090 (ii) destinations;

- (iii) places where the minor child or traveling parent can be reached; and
- (iv) the name and telephone number of an available third person who would be knowledgeable of the minor child's location.

(b) Unchaperoned travel of a minor child under the age of five years is not recommended.

Section 36. Section **81-9-208** is amended to read:

**81-9-208 . Modification or termination of a custody or parent-time order --  
Noncompliance with a parent-time order.**

(1) The court has continuing jurisdiction to make subsequent changes to modify:

(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

(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.

(2) A substantial and material change in circumstances under Subsection (1)(a) includes a showing by a parent that the other parent:

(a) resides with an individual or provides an individual with access to the minor child; and

(b) knows that the individual:

(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

(ii) has been convicted of:

(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;

(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]~~;

(C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation Act; or

(E) an offense that is substantially similar to an offense under Subsections (2)(b)(ii)(A) through (D).

(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:

- (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;
- (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
- (c)(i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 81-9-205(8); or
- (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.

(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.

(b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:

- (i) a substantial and material change of circumstance has occurred; and
- (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.

(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.

(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.

(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.

(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.

- (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.
- (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.
- (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.
- (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:
- (a) may award to the prevailing party:
    - (i) actual attorney fees incurred;
    - (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:
      - (A) court costs;
      - (B) child care expenses;
      - (C) transportation expenses actually incurred;
      - (D) lost wages, if ascertainable; or
      - (E) counseling for a parent or a minor child if ordered or approved by the court; or
    - (iii) any other appropriate equitable remedy; and
  - (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.

Section 37. **Effective Date.**

This bill takes effect on May 6, 2026.