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Sexual Offenses Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor:

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LONG TITLE

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General Description:

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

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Highlighted Provisions:

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This bill:

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- clarifies what constitutes a sexual offense throughout the Utah Code; and

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- makes technical and conforming changes.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

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None

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Utah Code Sections Affected:

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AMENDS:

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

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

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

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

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

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

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

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

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

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

26

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

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

28

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

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

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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

52
 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

65 nonprofit corporation if it is established that:

- 66 (a)(i) the directors are deadlocked in the management of the corporate affairs;
 67 (ii) the members, if any, are unable to break the deadlock; and
 68 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;
 69 (b) the directors or those in control of the nonprofit corporation have acted, are acting, or
 70 will act in a manner that is illegal, oppressive, or fraudulent;
 71 (c) the members are deadlocked in voting power and have failed, for a period that
 72 includes at least two consecutive annual meeting dates, to elect successors to
 73 directors whose terms have expired or would have expired upon the election of their
 74 successors; or
 75 (d) the corporate assets are being misapplied or wasted.

76 (3) A creditor may bring an action in a court with jurisdiction under Title 78A, Judiciary
 77 and Judicial Administration, to dissolve a nonprofit corporation if it is established that:

- 78 (a)(i) the creditor's claim has been reduced to judgment;
 79 (ii) the execution on the judgment has been returned unsatisfied; and
 80 (iii) the nonprofit corporation is insolvent; or
 81 (b)(i) the nonprofit corporation is insolvent; and
 82 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due
 83 and owing.

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

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

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

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

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

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

97 (b) If a person brings a misconduct claim in an action against a nonprofit corporation,
 98 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:

- 133 (a)(i) "Applicant" means an individual who is associated with a certification,
134 contract, or licensee with the department under this part and has direct access,
135 including:
- 136 (A) an adoptive parent or prospective adoptive parent, including an applicant for
137 an adoption in accordance with Section 78B-6-128;
 - 138 (B) a foster parent or prospective foster parent;
 - 139 (C) an individual who provides respite care to a foster parent or an adoptive parent
140 on more than one occasion;
 - 141 (D) an individual who transports a child for a youth transportation company;
 - 142 (E) an individual who provides certified peer support, as defined in Section
143 26B-5-610;
 - 144 (F) an individual who provides peer supports, has a disability or a family member
145 with a disability, or is in recovery from a mental illness or a substance use
146 disorder;
 - 147 (G) an individual who has lived experience with the services provided by the
148 department, and uses that lived experience to provide support, guidance, or
149 services to promote resiliency and recovery;
 - 150 (H) an individual who is identified as a mental health professional, licensed under
151 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in
152 the practice of mental health therapy, as defined in Section 58-60-102;
 - 153 (I) an individual, other than the child or vulnerable adult receiving the service,
154 who is 12 years old or older and resides in a home, that is licensed or certified
155 by the division;
 - 156 (J) an individual who is 12 years old or older and is associated with a certification,
157 contract, or licensee with the department under this part and has or will likely
158 have direct access;
 - 159 (K) a foster home licensee that submits an application for an annual background
160 screening as required by Subsection 26B-2-105(4)(d)(iii); or
 - 161 (L) a short-term relief care provider.
- 162 (ii) "Applicant" does not include:
- 163 (A) an individual who is in the custody of the Division of Child and Family
164 Services or the Division of Juvenile Justice and Youth Services;
 - 165 (B) an individual who applies for employment with, or is employed by, the
166 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

- 201 described in Section 80-2-1001;
- 202 (ii) the Division of Child and Family Services' Licensing Information System
- 203 described in Section 80-2-1002;
- 204 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
- 205 exploitation database described in Section 26B-6-210;
- 206 (iv) juvenile court arrest, adjudication, and disposition records;
- 207 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53,
- 208 Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
- 209 offender registry; or
- 210 (vi) a state child abuse or neglect registry.
- 211 (j) "Office" means the Office of Background Processing within the department.
- 212 (k) "Personal identifying information" means:
- 213 (i) current name, former names, nicknames, and aliases;
- 214 (ii) date of birth;
- 215 (iii) physical address and email address;
- 216 (iv) telephone number;
- 217 (v) driver license or other government-issued identification;
- 218 (vi) social security number;
- 219 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
- 220 specified by the office; and
- 221 (viii) other information specified by the office by rule made in accordance with Title
- 222 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 223 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
- 224 following to the office:
- 225 (a) personal identifying information;
- 226 (b) a fee established by the office under Section 63J-1-504;
- 227 (c) a disclosure form, specified by the office, for consent for:
- 228 (i) an initial background check upon association with a certification, contract, or
- 229 licensee with the department;
- 230 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
- 231 certification, contract, or licensee with the department for 180 days;
- 232 (iii) a background check when the office determines that reasonable cause exists; and
- 233 (iv) retention of personal identifying information, including fingerprints, for
- 234 monitoring and notification as described in Subsections (3)(c) and (4);

- 235 (d) if an applicant resided outside of the United States and its territories during the five
236 years immediately preceding the day on which the information described in
237 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
238 whether the applicant was convicted of a crime during the time that the applicant
239 resided outside of the United States or its territories; and
- 240 (e) an application showing an applicant's association with a certification, contract, or a
241 licensee with the department, for the purpose of the office tracking the direct access
242 qualified status of the applicant, which expires 180 days after the date on which the
243 applicant is no longer associated with a certification, contract, or a licensee with the
244 department.
- 245 (3) The office:
- 246 (a) shall perform the following duties as part of a background check of an applicant
247 before the office grants or denies direct access qualified status to an applicant:
- 248 (i) check state and regional criminal background databases for the applicant's
249 criminal history by:
- 250 (A) submitting personal identifying information to the bureau for a search; or
251 (B) using the applicant's personal identifying information to search state and
252 regional criminal background databases as authorized under Section 53-10-108;
- 253 (ii) submit the applicant's personal identifying information and fingerprints to the
254 bureau for a criminal history search of applicable national criminal background
255 databases;
- 256 (iii) search the Division of Child and Family Services' Licensing Information System
257 described in Section 80-2-1002;
- 258 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title
259 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national
260 sex offender registry for an applicant 18 years old or older;
- 261 (v) search the Division of Child and Family Services' Management Information
262 System in Section 80-2-1001, if the applicant is:
- 263 (A) a prospective foster or adoptive parent;
264 (B) an employee of a congregate care program; or
265 (C) an adult who lives in a foster home.
- 266 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
267 or exploitation database described in Section 26B-6-210;
- 268 (vii) search the juvenile court records for substantiated findings of severe child abuse

- 269 or neglect described in Section 80-3-404 or 80-3-504; and
270 (viii) search the juvenile court arrest, adjudication, and disposition records, as
271 provided under Section 78A-6-209;
- 272 (b) may conduct all or portions of a background check in connection with determining
273 whether an applicant is direct access qualified, as provided by rule, made by the
274 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
275 (i) for an annual renewal; or
276 (ii) when the office determines that reasonable cause exists;
- 277 (c) may submit an applicant's personal identifying information, including fingerprints, to
278 the bureau for checking, retaining, and monitoring of state and national criminal
279 background databases and for notifying the office of new criminal activity associated
280 with the applicant;
- 281 (d) shall track the status of an applicant under this section to ensure that the applicant is
282 not required to duplicate the submission of the applicant's fingerprints if the applicant
283 is associated with more than one certification, contract, or licensee with the
284 department;
- 285 (e) shall notify the bureau when a direct access qualified individual has not been
286 associated with a certification, contract, or licensee with the department for a period
287 of 180 days;
- 288 (f) shall adopt measures to strictly limit access to personal identifying information solely
289 to the individuals responsible for processing and entering the applications for
290 background checks and to protect the security of the personal identifying information
291 the office reviews under this Subsection (3);
- 292 (g) as necessary to comply with the federal requirement to check a state's child abuse
293 and neglect registry regarding any applicant working in a congregate care program,
294 shall:
295 (i) search the Division of Child and Family Services' Licensing Information System
296 described in Section 80-2-1002; and
297 (ii) require the child abuse and neglect registry be checked in each state where an
298 applicant resided at any time during the five years immediately preceding the day
299 on which the application is submitted to the office; and
- 300 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
301 Rulemaking Act, to implement the provisions of this Subsection (3) relating to
302 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:

- 337 (A) an offense identified as domestic violence, lewdness, voyeurism, battery,
338 cruelty to animals, or bestiality;
- 339 (B) a violation of any pornography law, including sexual exploitation of a minor
340 or aggravated sexual exploitation of a minor;
- 341 (C) sexual solicitation or prostitution;
- 342 (D) a violent offense committed in the presence of a child, as described in Section
343 76-3-203.10;
- 344 (E) an offense included in Title 76, Chapter 5, Part 1, 2, 3, 4, or 7;
- 345 (F) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act~~[-other~~
346 ~~than Section 76-5b-206]~~;
- 347 (G) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 348 (H) an offense included in Title 76, Chapter 12, Part 3, Privacy Offenses;
- 349 (I) an offense included in Title 76, Chapter 15, Part 3, Weapons of Mass
350 Destruction;
- 351 (J) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
352 Injunctions;
- 353 (K) aggravated arson, as described in Section 76-6-103;
- 354 (L) aggravated burglary, as described in Section 76-6-203;
- 355 (M) aggravated exploitation of prostitution, as described in Section 76-5d-208;
- 356 (N) aggravated robbery, as described in Section 76-6-302;
- 357 (O) endangering persons in a human services program, as described in Section
358 26B-2-113;
- 359 (P) failure to report, as described in Section 80-2-609;
- 360 (Q) identity fraud crime, as described in Section 76-6-1102;
- 361 (R) riot, as described in Section 76-9-101; or
- 362 (S) threatening with or using a dangerous weapon in a fight or quarrel, as
363 described in Section 76-11-207; or
- 364 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
365 in the state, would constitute a violation of an offense described in Subsection
366 (5)(a)(i).
- 367 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
368 peer support provider or a mental health professional, if the applicant provides
369 services in a program that serves only adults with a primary mental health
370 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

- 405 the date of conviction;
- 406 (f) has a misdemeanor charge or conviction that is no more than three years from the
407 date on which the office conducts the background check for an offense not described
408 in Subsection (5)(a);
- 409 (g) has a misdemeanor charge or conviction that is more than three years from the date
410 on which the office conducts the background check, for an offense not described in
411 Subsection (5)(a), with criminal or non-criminal findings after the date of charge or
412 conviction;
- 413 (h) is currently subject to a plea in abeyance or diversion agreement for an offense
414 described in Subsection (5)(a);
- 415 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title
416 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
417 offender registry;
- 418 (j) has a record of an adjudication in juvenile court for an act that, if committed by an
419 adult, would be a felony or misdemeanor, if the applicant is:
- 420 (i) under 28 years old; or
- 421 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is
422 currently subject to a plea in abeyance or diversion agreement for a felony or a
423 misdemeanor offense described in Subsection (5)(a);
- 424 (k) has a pending charge for an offense described in Subsection (5)(a);
- 425 (l) has a supported finding that occurred no more than 15 years from the date on which
426 the office conducts the background check in the Division of Child and Family
427 Services' Licensing Information System described in Section 80-2-1002;
- 428 (m) has a supported finding that occurred more than 15 years from the date on which the
429 office conducts the background check in the Division of Child and Family Services'
430 Licensing Information System described in Section 80-2-1002, with criminal or
431 non-criminal findings after the date of the listing;
- 432 (n) has a listing that occurred no more than 15 years from the date on which the office
433 conducts the background check in the Division of Aging and Adult Services'
434 vulnerable adult abuse, neglect, or exploitation database described in Section
435 26B-6-210;
- 436 (o) has a listing that occurred more than 15 years from the date on which the office
437 conducts the background check in the Division of Aging and Adult Services'
438 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.

- 473 (9)(a) The office may conditionally grant direct access qualified status to an applicant,
474 for a maximum of 60 days after the day on which the office sends written notice,
475 without requiring that the applicant be directly supervised, if the office:
- 476 (i) is awaiting the results of the criminal history search of national criminal
477 background databases; and
 - 478 (ii) would otherwise grant direct access qualified status to the applicant under this
479 section.
- 480 (b) The office may conditionally grant direct access qualified status to an applicant, for a
481 maximum of one year after the day on which the office sends written notice, without
482 requiring that the applicant be directly supervised if the office:
- 483 (i) is awaiting the results of an out-of-state registry for providers other than foster and
484 adoptive parents; and
 - 485 (ii) would otherwise grant direct access qualified status to the applicant under this
486 section.
- 487 (c) Upon receiving the results of the criminal history search of a national criminal
488 background database, the office shall grant or deny direct access qualified status to
489 the applicant in accordance with this section.
- 490 (10)(a) Each time an applicant is associated with a licensee, the department shall review
491 the current status of the applicant's background check to ensure the applicant is still
492 eligible for direct access qualified status in accordance with this section.
- 493 (b) A licensee may not permit an individual to have direct access to a child or a
494 vulnerable adult without being directly supervised unless:
- 495 (i) the individual is the parent or guardian of the child, or the guardian of the
496 vulnerable adult;
 - 497 (ii) the individual is approved by the parent or guardian of the child, or the guardian
498 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
 - 499 (iii) the individual is only permitted to have direct access to a vulnerable adult who
500 voluntarily invites the individual to visit; or
 - 501 (iv) the individual only provides incidental care for a foster child on behalf of a foster
502 parent who has used reasonable and prudent judgment to select the individual to
503 provide the incidental care for the foster child.
- 504 (c) Notwithstanding any other provision of this section, an applicant who is denied direct
505 access qualified status shall not have direct access to a child or vulnerable adult
506 unless the office grants direct access qualified status to the applicant through a

- 507 subsequent application in accordance with this section.
- 508 (11) If the office denies direct access qualified status to an applicant, the applicant may
509 request a hearing in the department's Office of Administrative Hearings to challenge the
510 office's decision.
- 511 (12)(a) This Subsection (12) applies to an applicant associated with a certification,
512 contract, or licensee serving adults only.
- 513 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee
514 shall comply with this section.
- 515 (c) The office shall conduct a comprehensive review for an applicant if:
- 516 (i) the applicant is seeking a position:
- 517 (A) as a peer support provider;
- 518 (B) as a mental health professional; or
- 519 (C) in a program that serves only adults with a primary mental health diagnosis,
520 with or without a co-occurring substance use disorder; and
- 521 (ii) within three years from the date on which the office conducts the background
522 check, the applicant has a felony or misdemeanor charge or conviction or a
523 non-criminal finding.
- 524 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate
525 care program, an applicant seeking to provide a prospective foster home, an applicant
526 seeking to provide a prospective adoptive home, and each adult living in the home of
527 the prospective foster or prospective adoptive home.
- 528 (b) As federally required, the office shall:
- 529 (i) check the child abuse and neglect registry in each state where each applicant
530 resided in the five years immediately preceding the day on which the applicant
531 applied to be a foster or adoptive parent, to determine whether the prospective
532 foster or adoptive parent is listed in the registry as having a substantiated or
533 supported finding of child abuse or neglect; and
- 534 (ii) except for applicants seeking a position in a congregate care program, check the
535 child abuse and neglect registry in each state where each adult living in the home
536 of the prospective foster or adoptive home resided in the five years immediately
537 preceding the day on which the applicant applied to be a foster or adoptive parent,
538 to determine whether the adult is listed in the registry as having a substantiated or
539 supported finding of child abuse or neglect.
- 540 (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

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

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

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

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

621 **26B-4-501 . Definitions.**

622 As used in this part:

- 623 (1) "Controlled substance" means the same as that term is defined in Title 58, Chapter 37,
 624 Utah Controlled Substances Act.
- 625 (2) "Critical access hospital" means a critical access hospital that meets the criteria of 42
 626 U.S.C. Sec. 1395i-4(c)(2).
- 627 (3) "Designated facility" means:
 628 (a) a freestanding urgent care center;
 629 (b) a general acute hospital; or
 630 (c) a critical access hospital.
- 631 (4) "Dispense" means the same as that term is defined in Section 58-17b-102.
- 632 (5) "Division" means the Division of Professional Licensing created in Section 58-1-103.
- 633 (6) "Emergency contraception" means the use of a substance, approved by the United States
 634 Food and Drug Administration, to prevent pregnancy after sexual intercourse.
- 635 (7) "Freestanding urgent care center" means the same as that term is defined in Section
 636 59-12-801.
- 637 (8) "General acute hospital" means the same as that term is defined in Section 26B-2-201.
- 638 (9) "Health care facility" means a hospital, a hospice inpatient residence, a nursing facility,
 639 a dialysis treatment facility, an assisted living residence, an entity that provides home-
 640 and community-based services, a hospice or home health care agency, or another facility
 641 that provides or contracts to provide health care services, which facility is licensed under
 642 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

- 677 (l) an individual.
- 678 (16) "Patient counseling" means the same as that term is defined in Section 58-17b-102.
- 679 (17) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
- 680 (18) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.
- 681 (19) "Physician" means the same as that term is defined in Section 58-67-102.
- 682 (20) "Practitioner" means:
- 683 (a) a physician; or
- 684 (b) any other person who is permitted by law to prescribe emergency contraception.
- 685 (21) "Prescribe" means the same as that term is defined in Section 58-17b-102.
- 686 (22)(a) "Self-administered hormonal contraceptive" means a self-administered hormonal
- 687 contraceptive that is approved by the United States Food and Drug Administration to
- 688 prevent pregnancy.
- 689 (b) "Self-administered hormonal contraceptive" includes an oral hormonal contraceptive,
- 690 a hormonal vaginal ring, and a hormonal contraceptive patch.
- 691 (c) "Self-administered hormonal contraceptive" does not include any drug intended to
- 692 induce an abortion, as that term is defined in Section 76-7-301.
- 693 (23)[(a)] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5,
- 694 Part 4, Sexual Offenses, that may result in a pregnancy.
- 695 [~~(b) "Sexual assault" does not include criminal conduct described in:~~]
- 696 [(i) ~~Section 76-5-417, enticing a minor;~~]
- 697 [(ii) ~~Section 76-5-418, sexual battery;~~]
- 698 [(iii) ~~Section 76-5-419, lewdness; or~~]
- 699 [(iv) ~~Section 76-5-420, lewdness involving a child.~~]
- 700 (24) "Victim of sexual assault" means any person who presents to receive, or receives,
- 701 medical care in consequence of being subjected to sexual assault.
- 702 Section 4. Section **31A-21-501** is amended to read:
- 703 **31A-21-501 . Definitions.**
- 704 [~~For purposes of~~] As used in this part:
- 705 (1) "Applicant" means:
- 706 (a) in the case of an individual life or accident and health policy, the person who seeks to
- 707 contract for insurance benefits; or
- 708 (b) in the case of a group life or accident and health policy, the proposed certificate
- 709 holder.
- 710 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an

711 individual who is 16 years old or older who:

712 (a) is or was a spouse of the other party;

713 (b) is or was living as if a spouse of the other party;

714 (c) is related by blood or marriage to the other party;

715 (d) has one or more children in common with the other party; or

716 (e) resides or has resided in the same residence as the other party.

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

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

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

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

723 (4)~~(a)~~ "Domestic violence" means any criminal offense involving violence or physical
724 harm or threat of violence or physical harm, or any attempt, conspiracy, or
725 solicitation to commit a criminal offense involving violence or physical harm, when
726 committed by one cohabitant against another and includes commission or attempt to
727 commit, any of the following offenses by one cohabitant against another:

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

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

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

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

732 ~~(v)~~ (e) electronic communication harassment, as described in Section 76-12-202,
733 76-12-203, or 76-12-204;

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

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

737 ~~(viii)~~ (h) sexual offenses, as described in Sections 76-5b-201 and 76-5b-201.1 and in
738 Title 76, Chapter 5, Part 4, Sexual Offenses;

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

740 ~~(x)~~ (j) unlawful detention or unlawful detention of a minor, as described in Section
741 76-5-304;

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

744 ~~(xii)~~ (l) any offense against property described in Title 76, Chapter 6, Part 1, Property

745 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
 746 ~~[(xiii)]~~ (m) possession of a dangerous weapon with criminal intent, as described in
 747 Section 76-11-208; or
 748 ~~[(xiv)]~~ (n) discharge of a firearm from a vehicle, near a highway, or in the direction of
 749 any individual, building, or vehicle, as described in Section 76-11-209.

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

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

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

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

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

755 (5) "Subject of domestic abuse" means an individual who is, has been, may currently be, or
 756 may have been subject to domestic violence or child abuse.

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

758 **34-52-201 . Public employer requirements.**

759 (1) Except as provided in Subsections (3) and (6), a public employer may not:

760 (a) exclude an applicant from an initial interview because of:

761 (i) a past criminal conviction, an expunged conviction, an arrest for an offense that
 762 occurred before the applicant was 18 years old, or a juvenile adjudication; or

763 (ii) if the applicant is a mental health professional applicant, an arrest for an offense
 764 that occurred before the applicant was 18 years old;

765 (b) make an inquiry related to an applicant's expunged criminal or juvenile delinquency
 766 history;

767 (c) when making a hiring decision regarding a mental health professional applicant,
 768 consider:

769 (i) an arrest for an offense that occurred before the mental health professional
 770 applicant was 18 years old;

771 (ii) an arrest not followed by a criminal conviction or juvenile adjudication;

772 (iii) a juvenile adjudication; or

773 (iv) a past criminal conviction if:

774 (A) the sentence for the criminal conviction is terminated; and

775 (B) the mental health professional applicant was not incarcerated for the past
 776 criminal conviction or the mental health professional applicant's incarceration
 777 for the past criminal conviction ended at least three years before the day on
 778 which the mental health professional applicant applied for employment; or

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

- 813 (6)(a) Subsections (1) through (4) do not apply:
- 814 (i) if federal, state, or local law, including corresponding administrative rules,
- 815 requires the consideration of an applicant's criminal conviction, an expunged
- 816 conviction, an arrest for an offense that occurred before the applicant was 18 years
- 817 old, or juvenile delinquency history;
- 818 (ii) to a public employer that is a law enforcement agency;
- 819 (iii) to a public employer that is part of the criminal or juvenile justice system;
- 820 (iv) to a public employer seeking a nonemployee volunteer;
- 821 (v) to a public employer that works with children or vulnerable adults;
- 822 (vi) to the Department of Alcoholic Beverage Services created in Section 32B-2-203;
- 823 (vii) to the State Tax Commission;
- 824 (viii) to a public employer whose primary purpose is performing financial or
- 825 fiduciary functions; or
- 826 (ix) to a public transit district hiring or promoting an individual for a safety sensitive
- 827 position described in Section 17B-2a-825.
- 828 (b) Subsections (1)(c)(iv) and (1)(d) do not apply to a criminal conviction for:
- 829 (i) a violent felony as defined in Section 76-3-203.5; or
- 830 (ii) a felony related to a criminal sexual act under:
- 831 (A) Title 76, Chapter 5, Part 4, Sexual Offenses~~[-other than Section 76-5-417,~~
- 832 ~~76-5-419, or 76-5-420]~~; or
- 833 (B) Title 76, Chapter 5b, Sexual Exploitation Act.
- 834 (c) Subsections (1)(a)(ii), (1)(c), (1)(d), and (3) apply to a person under contract with a
- 835 public employer.

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

837 **34A-5-114 . Limitations on enforceability of nondisclosure and**

838 **non-disparagement clauses -- Retaliation prohibited.**

- 839 (1) As used in this section:
- 840 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement clause.
- 841 (b) "Employee" means a current or a former employee.
- 842 (c) "Nondisclosure clause" means an agreement between an employee and employer that
- 843 prevents, or has the effect of preventing, an employee from disclosing or discussing:
- 844 (i) sexual assault;
- 845 (ii) allegations of sexual assault;
- 846 (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)~~(i)~~ "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).

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

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

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

923 **53-10-801 . Definitions.**

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

- 925 (1) "Alleged sexual offender" means an individual or a minor regarding whom an
 926 indictment, petition, or an information has been filed or an arrest has been made alleging
 927 the commission of a sexual offense or an attempted sexual offense and regarding which:
 928 (a) a judge has signed an accompanying arrest warrant, pickup order, or any other order
 929 based upon probable cause regarding the alleged offense; and
 930 (b) the judge has found probable cause to believe that the alleged victim has been
 931 exposed to conduct or activities that may result in an HIV infection as a result of the
 932 alleged offense.
- 933 (2) "Department of Health and Human Services" means the Department of Health and
 934 Human Services created in Section 26B-1-201.
- 935 (3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV)
 936 infection determined by current medical standards and detected by any of the following:
 937 (a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as
 938 Western blot or other method approved by the Utah State Health Laboratory.
 939 Western blot interpretation will be based on criteria currently recommended by the
 940 Association of State and Territorial Public Health Laboratory Directors;
 941 (b) presence of HIV antigen;
 942 (c) isolation of HIV; or
 943 (d) demonstration of HIV proviral DNA.
- 944 (4) "HIV positive individual" means an individual who is HIV positive as determined by
 945 the State Health Laboratory.
- 946 (5) "Local department of health" means a local health department as defined in Section
 947 26A-1-102.
- 948 (6) "Minor" means an individual younger than 18 years old.

- 949 (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).
 950 (8)(a) "Sexual offense" means a violation of any offense under Title 76, Chapter 5, Part
 951 4, Sexual Offenses.
 952 (b) "Sexual offense" does not include a violation of Section 76-5-417[;] or 76-5-418[;
 953 76-5-419, or 76-5-420].
 954 (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in
 955 accordance with standards recommended by the Department of Health and Human
 956 Services.

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

958 **53G-8-201 . Definitions.**

959 As used in this part:

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

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

972 **57-22-5.1 . Crime victim's right to new locks -- Domestic violence victim's right**
 973 **to terminate rental agreement -- Limits an owner relating to assistance from public**
 974 **safety agency.**

975 (1) As used in this section:

- 976 (a)(i) "Court order" means, except as provided in Subsection (1)(a)(ii):
 977 (A) a civil protective order, as defined in Section 78B-7-102;
 978 (B) a civil stalking injunction, as defined in Section 78B-7-102;
 979 (C) a criminal protective order, as defined in Section 78B-7-102; or
 980 (D) a criminal stalking injunction, as defined in Section 78B-7-102.
 981 (ii) "Court order" does not include:
 982 (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

- 1017 to the renter's residential rental unit if the renter:
- 1018 (i) provides the owner with an acceptable form of documentation of an act listed in
1019 Subsection (1); and
- 1020 (ii) pays for the cost of installing the new lock.
- 1021 (b) An owner may comply with Subsection (3)(a) by:
- 1022 (i) rekeying the lock if the lock is in good working condition; or
1023 (ii) changing the entire locking mechanism with a locking mechanism of equal or
1024 greater quality than the lock being replaced.
- 1025 (c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the
1026 key that opens the new lock.
- 1027 (d) Notwithstanding any rental agreement, an owner who installs a new lock under
1028 Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to
1029 the perpetrator of the act listed in Subsection (1).
- 1030 (e) Notwithstanding Section 78B-6-814, if an owner refuses to provide a copy of the key
1031 under Subsection (3)(d) to a perpetrator who is not barred from the residential rental
1032 unit by a protective order but is a renter on the rental agreement, the perpetrator may
1033 file a petition with a court of competent jurisdiction within 30 days to:
- 1034 (i) establish whether the perpetrator should be given a key and allowed access to the
1035 residential rental unit; or
- 1036 (ii) establish whether the perpetrator should be relieved of further liability under the
1037 rental agreement because of the owner's exclusion of the perpetrator from the
1038 residential rental unit.
- 1039 (f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further
1040 liability under the rental agreement if the perpetrator is found by the court to have
1041 committed the act upon which the landlord's exclusion of the perpetrator is based.
- 1042 (4) A renter who is a victim of domestic violence may terminate all of the renter's future
1043 obligations under a rental agreement if the renter:
- 1044 (a) except as provided in Subsection (5), is in compliance with all obligations under the
1045 rental agreement, including the requirements of Section 57-22-5;
- 1046 (b) provides the owner with:
- 1047 (i) a court order protecting the renter from a domestic violence perpetrator; or
1048 (ii) a copy of a police report documenting that the renter is a victim of domestic
1049 violence and is not the predominant aggressor under Subsection 77-36-2.2(3);
- 1050 (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

1085 terminate the rental agreement for any other person entitled under the rental agreement
 1086 to occupy the residential rental unit.

1087 (10) An owner may not:

1088 (a) impose a restriction on a renter's ability to request assistance from a public safety
 1089 agency; or

1090 (b) penalize or evict a renter because the renter makes reasonable requests for assistance
 1091 from a public safety agency.

1092 Section 10. Section **59-27-105** is amended to read:

1093 **59-27-105 . Sexually Explicit Business and Escort Service Fund -- Administrative**
 1094 **charge.**

1095 (1) There is created an expendable special revenue fund called the "Sexually Explicit
 1096 Business and Escort Service Fund."

1097 (2)(a) Except as provided in Subsection (3), the fund consists of all amounts collected by
 1098 the commission under this chapter.

1099 (b)(i) The money in the fund shall be invested by the state treasurer pursuant to Title
 1100 51, Chapter 7, State Money Management Act.

1101 (ii) All interest or other earnings derived from the fund money shall be deposited in
 1102 the fund.

1103 (3) Notwithstanding any other provision of this chapter, the commission shall retain and
 1104 deposit an administrative charge in accordance with Section 59-1-306 from the revenues
 1105 the commission collects from a tax under this chapter.

1106 (4)(a) Fund money shall be used as provided in this Subsection (4).

1107 (b) The Department of Corrections shall use 60% of the money in the fund, in addition
 1108 to existing budgets, to provide treatment services to nonworking or indigent adults
 1109 who:

1110 (i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual

1111 Offenses[~~, other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420~~]; and

1112 (ii) are not currently confined or incarcerated in a jail or prison.

1113 (c) The Division of Adult Probation and Parole created in Section 64-14-202 shall use

1114 15% of the money in the fund to provide outpatient treatment services to individuals
 1115 who:

1116 (i) have been convicted of an offense under Title 76, Chapter 5, Part 4, Sexual

1117 Offenses[~~, other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420~~]; and

1118 (ii) are not currently confined or incarcerated in a jail or prison.

1119 (d) The Department of Corrections shall use 10% of the money in the fund, in addition
 1120 to existing budgets, to implement treatment programs for juveniles who have been
 1121 convicted of an offense under Title 76, Chapter 5, Part 4, Sexual Offenses[~~other~~
 1122 ~~than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420~~].

1123 (e) The attorney general shall use 15% of the money in the fund to provide funding for
 1124 any task force:

1125 (i) administered through the Office of the Attorney General; and

1126 (ii) that investigates and prosecutes individuals who use the Internet to commit
 1127 crimes against children.

1128 Section 11. Section **63M-7-502** is amended to read:

1129 **63M-7-502 . Definitions.**

1130 As used in this part:

1131 (1) "Accomplice" means an individual who has engaged in criminal conduct as described in
 1132 Section 76-2-202.

1133 (2) "Advocacy services provider" means the same as that term is defined in Section
 1134 77-38-403.

1135 (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

1136 (4) "Claimant" means any of the following claiming reparations under this part:

1137 (a) a victim;

1138 (b) a dependent of a deceased victim; or

1139 (c) an individual or representative who files a reparations claim on behalf of a victim.

1140 (5) "Child" means an unemancipated individual who is under 18 years old.

1141 (6) "Collateral source" means any source of benefits or advantages for economic loss
 1142 otherwise reparable under this part that the claimant has received, or that is readily
 1143 available to the claimant from:

1144 (a) the offender;

1145 (b) the insurance of the offender or the victim;

1146 (c) the United States government or any of its agencies, a state or any of its political
 1147 subdivisions, or an instrumentality of two or more states, except in the case on
 1148 nonobligatory state-funded programs;

1149 (d) social security, Medicare, and Medicaid;

1150 (e) state-required temporary nonoccupational income replacement insurance or disability
 1151 income insurance;

1152 (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

- 1187 legally responsible for care or support.
- 1188 (b) "Dependent" includes a child of the victim born after the victim's death.
- 1189 (11) "Dependent's economic loss" means loss after the victim's death of contributions of
1190 things of economic value to the victim's dependent, not including services the dependent
1191 would have received from the victim if the victim had not suffered the fatal injury, less
1192 expenses of the dependent avoided by reason of victim's death.
- 1193 (12) "Dependent's replacement services loss" means loss reasonably and necessarily
1194 incurred by the dependent after the victim's death in obtaining services in lieu of those
1195 the decedent would have performed for the victim's benefit if the victim had not suffered
1196 the fatal injury, less expenses of the dependent avoided by reason of the victim's death
1197 and not subtracted in calculating the dependent's economic loss.
- 1198 (13) "Director" means the director of the office.
- 1199 (14) "Disposition" means the sentencing or determination of penalty or punishment to be
1200 imposed upon an individual:
- 1201 (a) convicted of a crime;
- 1202 (b) found delinquent; or
- 1203 (c) against whom a finding of sufficient facts for conviction or finding of delinquency is
1204 made.
- 1205 (15)(a) "Economic loss" means economic detriment consisting only of allowable
1206 expense, work loss, replacement services loss, and if injury causes death, dependent's
1207 economic loss and dependent's replacement service loss.
- 1208 (b) "Economic loss" includes economic detriment even if caused by pain and suffering
1209 or physical impairment.
- 1210 (c) "Economic loss" does not include noneconomic detriment.
- 1211 (16) "Elderly victim" means an individual who is 60 years old or older and who is a victim.
- 1212 (17) "Fraudulent claim" means a filed reparations based on material misrepresentation of
1213 fact and intended to deceive the reparations staff for the purpose of obtaining reparation
1214 funds for which the claimant is not eligible.
- 1215 (18) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.
- 1216 (19)(a) "Interpersonal violence" means an act involving violence, physical harm, or a
1217 threat of violence or physical harm, that is committed by an individual who is or has
1218 been in a domestic, dating, sexual, or intimate relationship with the victim.
- 1219 (b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act
1220 described in Subsection (19)(a).

- 1221 (20) "Law enforcement agency" means a public or private agency having general police
1222 power and charged with making arrests in connection with enforcement of the criminal
1223 statutes and ordinances of this state or any political subdivision of this state.
- 1224 (21) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
- 1225 (22)(a) "Medical examination" means a physical examination necessary to document
1226 criminally injurious conduct.
- 1227 (b) "Medical examination" does not include mental health evaluations for the
1228 prosecution and investigation of a crime.
- 1229 (23) "Mental health counseling" means outpatient and inpatient counseling necessitated as a
1230 result of criminally injurious conduct, is subject to rules made by the office in
1231 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1232 (24) "Misconduct" means conduct by the victim that was attributable to the injury or death
1233 of the victim as provided by rules made by the office in accordance with Title 63G,
1234 Chapter 3, Utah Administrative Rulemaking Act.
- 1235 (25) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment,
1236 and other nonpecuniary damage, except as provided in this part.
- 1237 (26) "Nongovernment organization victim advocate" means the same as that term is defined
1238 in Section 77-38-403.
- 1239 (27) "Nonpublic restitution record" means a restitution record that contains a claimant's
1240 medical or mental health information.
- 1241 (28) "Pecuniary loss" does not include loss attributable to pain and suffering except as
1242 otherwise provided in this part.
- 1243 (29) "Offender" means an individual who has violated Title 76, Utah Criminal Code,
1244 through criminally injurious conduct regardless of whether the individual is arrested,
1245 prosecuted, or convicted.
- 1246 (30) "Offense" means a violation of Title 76, Utah Criminal Code.
- 1247 (31) "Office" means the director, the reparations and assistance officers, and any other staff
1248 employed for the purpose of carrying out the provisions of this part.
- 1249 (32) "Perpetrator" means the individual who actually participated in the criminally injurious
1250 conduct.
- 1251 (33) "Public restitution record" means a restitution record that does not contain a claimant's
1252 medical or mental health information.
- 1253 (34)(a) "Rape crisis and services center" means a nonprofit entity that assists victims of
1254 sexual assault and victims' families by offering sexual assault crisis intervention and

- 1255 counseling through a sexual assault counselor.
- 1256 (b) "Rape crisis and services center" does not include a qualified institutional victim
1257 services provider as defined in Section 53H-14-401.
- 1258 (35) "Reparations award" means money or other benefits provided to a claimant or to
1259 another on behalf of a claimant after the day on which a reparations claim is approved
1260 by the office.
- 1261 (36) "Reparations claim" means a claimant's request or application made to the office for a
1262 reparations award.
- 1263 (37)(a) "Reparations officer" means an individual employed by the office to investigate
1264 a claimant's request for reparations and award reparations under this part.
- 1265 (b) "Reparations officer" includes the director when the director is acting as a
1266 reparations officer.
- 1267 (38) "Replacement service loss" means expenses reasonably and necessarily incurred in
1268 obtaining ordinary and necessary services in lieu of those the injured individual would
1269 have performed, not for income but the benefit of the injured individual or the injured
1270 individual's dependents if the injured individual had not been injured.
- 1271 (39)(a) "Representative" means the victim, immediate family member, legal guardian,
1272 attorney, conservator, executor, or an heir of an individual.
- 1273 (b) "Representative" does not include a service provider or collateral source.
- 1274 (40) "Restitution" means the same as that term is defined in Section 77-38b-102.
- 1275 (41)(a) "Restitution record" means a record documenting payments made to, or on
1276 behalf of, a claimant by the office that the office relies on to support a restitution
1277 request made in accordance with Section 77-38b-205.
- 1278 (b) "Restitution record" includes:
- 1279 (i) a notice of restitution;
- 1280 (ii) an itemized list of payments;
- 1281 (iii) an invoice, receipt, or bill submitted to the office for reimbursement; and
- 1282 (iv) any documentation that the office relies on to establish a nexus between an
1283 offender's criminally injurious conduct and a reparations award made by the office.
- 1284 (42) "Secondary victim" means an individual who is traumatically affected by the
1285 criminally injurious conduct subject to rules made by the office in accordance with Title
1286 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1287 (43) "Service provider" means an individual or agency who provides a service to a claimant
1288 for a monetary fee, except attorneys as provided in Section 63M-7-524.

- 1289 (44) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.
- 1290 (45)[(a)] "Sexual assault" means any criminal conduct described in Title 76, Chapter 5,
- 1291 Part 4, Sexual Offenses.
- 1292 [(b) "Sexual assault" does not include criminal conduct described in:]
- 1293 [(i) Section 76-5-417, enticing a minor;]
- 1294 [(ii) Section 76-5-418, sexual battery;]
- 1295 [(iii) Section 76-5-419, lewdness; or]
- 1296 [(iv) Section 76-5-420, lewdness involving a child.]
- 1297 (46) "Sexual assault counselor" means an individual who:
- 1298 (a) is employed by or volunteers at a rape crisis and services center;
- 1299 (b) has a minimum of 40 hours of training in counseling and assisting victims of sexual
- 1300 assault; and
- 1301 (c) is under the supervision of the director of a rape crisis and services center or the
- 1302 director's designee.
- 1303 (47) "Strangulation" means any act involving the use of unlawful force or violence that:
- 1304 (a) impedes breathing or the circulation of blood; and
- 1305 (b) is likely to produce a loss of consciousness by:
- 1306 (i) applying pressure to the neck or throat of an individual; or
- 1307 (ii) obstructing the nose, mouth, or airway of an individual.
- 1308 (48) "Substantial bodily injury" means the same as that term is defined in Section
- 1309 76-1-101.5.
- 1310 (49)(a) "Victim" means an individual who suffers bodily or psychological injury or
- 1311 death as a direct result of:
- 1312 (i) criminally injurious conduct; or
- 1313 (ii) the production of pornography in violation of Section 76-5b-201 or 76-5b-201.1
- 1314 if the individual is a minor.
- 1315 (b) "Victim" does not include an individual who participated in or observed the judicial
- 1316 proceedings against an offender unless otherwise provided by statute or rule made in
- 1317 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1318 (50) "Work loss" means loss of income from work the injured victim would have performed
- 1319 if the injured victim had not been injured and expenses reasonably incurred by the
- 1320 injured victim in obtaining services in lieu of those the injured victim would have
- 1321 performed for income, reduced by any income from substitute work the injured victim
- 1322 was capable of performing but unreasonably failed to undertake.

1323 Section 12. Section **76-2-306** is amended to read:

1324 **76-2-306 . Voluntary intoxication.**

1325 (1) Voluntary intoxication is not a defense to a criminal charge unless such intoxication
1326 negates the existence of the mental state which is an element of the offense. If
1327 recklessness or criminal negligence establishes an element of an offense and the actor is
1328 unaware of the risk because of voluntary intoxication, [his] the actor's unawareness is
1329 immaterial in a prosecution for that offense.

1330 (2) Voluntary intoxication is not a defense to a sexual [offenses] offense, as described in
1331 Title 76, Chapter 5, Part 4, Sexual Offenses[~~, other than Section 76-5-417, 76-5-418,~~
1332 ~~76-5-419, or 76-5-420~~].

1333 Section 13. Section **76-3-203.1** is amended to read:

1334 **76-3-203.1 . Enhanced penalty for offenses committed in or for a certain group.**

1335 (1) As used in this section:

1336 (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.

1337 (b) "In concert with two or more individuals" means:

1338 (i) the actor was aided or encouraged by at least two other individuals in committing
1339 an offense and was aware of this aid or encouragement; and

1340 (ii) each of the other individuals:

1341 (A) was physically present; and

1342 (B) participated as a party to an offense listed in Subsection (6) or (7).

1343 (c) "In concert with two or more individuals" means, regarding intent:

1344 (i) any other individual participating as a party need not have the intent to engage in
1345 the same offense or degree of offense as the actor; and

1346 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
1347 minor were an adult.

1348 (d) "Organized criminal group" means a group of three or more individuals, whether
1349 operating formally or informally, that:

1350 (i) has as one of the group's purposes the commission of criminal offenses; and

1351 (ii) whose members collectively engage in committing criminal offenses for the
1352 financial or other material benefit of the members or group.

1353 (e) "Principal place of residence" means the single location where an individual's

1354 habitation is fixed and to which, whenever the individual is absent, the individual has
1355 the intention of returning, as evidenced by:

1356 (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;

- 1391 (c) a felony offense described in Chapter 5, Part 3, Kidnapping, Trafficking, and
 1392 Smuggling;
- 1393 (d) a felony offense described in Chapter 5, Part 4, Sexual Offenses~~[, other than enticing~~
 1394 ~~a minor under Section 76-5-417, lewdness under Section 76-5-419, or lewdness~~
 1395 ~~involving a child under Section 76-5-420]~~;
- 1396 (e) a felony violation of aiding prostitution as described in Section 76-5d-206;
- 1397 (f) exploiting prostitution as described in Section 76-5d-207;
- 1398 (g) aggravated exploitation of prostitution under Section 76-5d-208;
- 1399 (h) robbery as described in Section 76-6-202;
- 1400 (i) burglary as described in Subsection 76-6-202(3)(b);
- 1401 (j) aggravated burglary as described in Section 76-6-203;
- 1402 (k) burglary of a research facility as described in Section 76-6-207;
- 1403 (l) aggravated robbery as described in Section 76-6-302;
- 1404 (m) an offense described in Chapter 11, Weapons; and
- 1405 (n) transporting or harboring aliens as described in Section 76-14-209.
- 1406 (7) The offenses referred to in Subsection (3) are:
- 1407 (a) criminal solicitation of a minor as described in Section 76-4-205;
- 1408 (b) an offense described in Chapter 6, Part 1, Property Destruction;
- 1409 (c) an offense described in Chapter 6, Part 4, Theft;
- 1410 (d) an offense described in Chapter 6, Part 6, Retail Theft;
- 1411 (e) an offense described in Chapter 6, Part 11, Identity Fraud Act;
- 1412 (f) communications fraud as described in Section 76-6-525; and
- 1413 (g) an offense described in Chapter 9, Part 16, Money Laundering and Currency
 1414 Transaction Reporting Act.
- 1415 (8) A court may, if not otherwise prohibited from doing so by another section of the code,
 1416 suspend a sentence imposed under this section and place the actor on probation.
- 1417 (9) It is not a bar to imposing the enhanced penalties under this section that the individuals
 1418 with whom the actor is alleged to have acted in concert are not identified, apprehended,
 1419 charged, or convicted, or that any of those individuals are charged with or convicted of a
 1420 different or lesser offense.

1421 Section 14. Section **76-3-203.5** is amended to read:

1422 **76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.**

1423 (1) As used in this section:

- 1424 (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;

- 1493 (WW) unlawful conduct involving an explosive, chemical, or incendiary device as
1494 described in Section 76-15-210;
- 1495 (XX) unlawful conduct involving an explosive, chemical, or incendiary part as
1496 described in Section 76-15-211;
- 1497 (YY) unlawful discharge of a firearm or hurling of a missile into a bus or terminal
1498 as described in Section 76-9-1504; and
- 1499 (ZZ) felony discharge of a firearm as described in Section 76-11-210.
- 1500 (ii) any felony violation of a criminal statute of any other state, the United States, or
1501 any district, possession, or territory of the United States which would constitute a
1502 violent felony as defined in this Subsection (1) if committed in this state.
- 1503 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier
1504 of fact determines beyond a reasonable doubt that the person is a habitual violent
1505 offender under this section, the penalty for a:
- 1506 (a) third degree felony is as if the conviction were for a first degree felony;
- 1507 (b) second degree felony is as if the conviction were for a first degree felony; or
- 1508 (c) first degree felony remains the penalty for a first degree penalty except:
- 1509 (i) the convicted person is not eligible for probation; and
- 1510 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
1511 habitual violent offender as an aggravating factor in determining the length of
1512 incarceration.
- 1513 (3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
1514 notice in the information or indictment that the defendant is subject to punishment as
1515 a habitual violent offender under this section. Notice shall include the case number,
1516 court, and date of conviction or commitment of any case relied upon by the
1517 prosecution.
- 1518 (b)(i) The defendant shall serve notice in writing upon the prosecutor if the defendant
1519 intends to deny that:
- 1520 (A) the defendant is the person who was convicted or committed;
- 1521 (B) the defendant was represented by counsel or had waived counsel; or
- 1522 (C) the defendant's plea was understandingly or voluntarily entered.
- 1523 (ii) The notice of denial shall be served not later than five days prior to trial and shall
1524 state in detail the defendant's contention regarding the previous conviction and
1525 commitment.
- 1526 (4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a

- 1527 jury, the jury may not be told, until after it returns its verdict on the underlying felony
1528 charge, of the:
- 1529 (i) defendant's previous convictions for violent felonies, except as otherwise provided
1530 in the Utah Rules of Evidence; or
 - 1531 (ii) allegation against the defendant of being a habitual violent offender.
- 1532 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
1533 being an habitual violent offender by the same jury, if practicable, unless the
1534 defendant waives the jury, in which case the allegation shall be tried immediately to
1535 the court.
- 1536 (c)(i) Before or at the time of sentencing the trier of fact shall determine if this
1537 section applies.
- 1538 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
1539 and the defendant shall be afforded an opportunity to present any necessary
1540 additional evidence.
 - 1541 (iii) Before sentencing under this section, the trier of fact shall determine whether this
1542 section is applicable beyond a reasonable doubt.
- 1543 (d) If any previous conviction and commitment is based upon a plea of guilty or no
1544 contest, there is a rebuttable presumption that the conviction and commitment were
1545 regular and lawful in all respects if the conviction and commitment occurred after
1546 January 1, 1970. If the conviction and commitment occurred prior to January 1,
1547 1970, the burden is on the prosecution to establish by a preponderance of the
1548 evidence that the defendant was then represented by counsel or had lawfully waived
1549 the right to have counsel present, and that the defendant's plea was understandingly
1550 and voluntarily entered.
- 1551 (e) If the trier of fact finds this section applicable, the court shall enter that specific
1552 finding on the record and shall indicate in the order of judgment and commitment
1553 that the defendant has been found by the trier of fact to be a habitual violent offender
1554 and is sentenced under this section.
- 1555 (5)(a) The sentencing enhancement provisions of Section 76-3-407 supersede the
1556 provisions of this section.
- 1557 (b)[(i)] Notwithstanding Subsection (5)(a) [~~and except as provided in Subsection~~
1558 ~~(5)(b)(ii)]~~, the "violent felony" offense defined in Subsection (1)(c) shall include
1559 any felony sexual offense violation of Chapter 5, Part 4, Sexual Offenses, to
1560 determine if the convicted person is a habitual violent offender.

1561 ~~[(ii) The "violent felony" offense defined in Subsection (1)(c) does not include any~~
 1562 ~~felony sexual offense violation of:]~~
 1563 ~~[(A) enticing a minor, Section 76-5-417;]~~
 1564 ~~[(B) lewdness, Section 76-5-419; or]~~
 1565 ~~[(C) lewdness involving a child, Section 76-5-420.]~~

1566 (6) The sentencing enhancement described in this section does not apply if:

1567 (a) the offense for which the person is being sentenced is:

1568 (i) a grievous sexual offense;

1569 (ii) child kidnapping, Section 76-5-301.1;

1570 (iii) aggravated kidnapping, Section 76-5-302; or

1571 (iv) forcible sexual abuse, Section 76-5-404; and

1572 (b) applying the sentencing enhancement provided for in this section would result in a
 1573 lower maximum penalty than the penalty provided for under the section that
 1574 describes the offense for which the person is being sentenced.

1575 Section 15. Section **76-3-203.12** is amended to read:

1576 **76-3-203.12 . Enhanced penalty for sexual offenses committed by a person with**
 1577 **human immunodeficiency virus, acquired immunodeficiency virus, hepatitis B, or**
 1578 **hepatitis C.**

1579 (1) As used in this section:

1580 (a) "Sexual offense" means an offense described in Chapter 5, Part 4, Sexual Offenses.

1581 (b) "Sexual offense" does not include:

1582 ~~[(i) enticing a minor, as described in Section 76-5-417;]~~

1583 ~~[(ii) sexual battery, as described in Section 76-5-418;]~~

1584 ~~[(iii)]~~ (i) lewdness, as described in Section 76-5-419; or

1585 ~~[(iv)]~~ (ii) lewdness involving a child, as described in Section 76-5-420.

1586 (2) A person convicted of a sexual offense is subject to an enhanced penalty if at the time of
 1587 the sexual offense the person was infected with human immunodeficiency virus,
 1588 acquired immunodeficiency virus, hepatitis B, or hepatitis C and the person knew of the
 1589 infection.

1590 (3)(a) Except as provided in Subsection (3)(b), the enhancement of a penalty described
 1591 in Subsection (2) shall be an enhancement of one classification higher than the root
 1592 offense for which the person was convicted.

1593 (b) A felony of the first degree is not enhanced under this section.

1594 Section 16. Section **76-3-209** is amended to read:

1595 **76-3-209 . Limitation on sentencing for crimes committed by juveniles.**

- 1596 (1) As used in this section[?],
- 1597 [(a) "~~Qualifying~~] "qualifying sexual offense" means an offense described in Chapter 5,
- 1598 Part 4, Sexual Offenses.
- 1599 [(b) "~~Qualifying sexual offense~~" does not include ~~enticing a minor as described in~~
- 1600 ~~Section 76-5-417.~~]
- 1601 (2)(a) This Subsection (2) only applies prospectively to an individual sentenced on or
- 1602 after May 10, 2016.
- 1603 (b) Notwithstanding any provision of law, an individual may not be sentenced to life
- 1604 without parole if:
- 1605 (i) the individual is convicted of a crime punishable by life without parole; and
- 1606 (ii) at the time the individual committed the crime, the individual was under 18 years
- 1607 old.
- 1608 (c) The maximum punishment that may be imposed on an individual described in
- 1609 Subsection (2)(b) is an indeterminate prison term of not less than 25 years and that
- 1610 may be for life.
- 1611 (3) Except as provided in Subsection (4), if an individual is convicted in district court of a
- 1612 qualifying sexual offense and, at the time of the offense, the individual was at least 14
- 1613 years old, but under 18 years old:
- 1614 (a) the district court shall impose a sentence consistent with the disposition that would
- 1615 have been made in juvenile court; and
- 1616 (b) the district court may not impose incarceration unless the court enters specific
- 1617 written findings that incarceration is warranted based on a totality of the
- 1618 circumstances, taking into account:
- 1619 (i) the time that elapsed after the individual committed the offense;
- 1620 (ii) the age of the individual at the time of the offense;
- 1621 (iii) the age of the victim at the time of the offense;
- 1622 (iv) the criminal history of the individual after the individual committed the offense;
- 1623 (v) any treatment assessments or validated risk tools; and
- 1624 (vi) public safety concerns.
- 1625 (4) Subsection (3) does not apply if:
- 1626 (a) before the individual described in Subsection (3) is convicted of the qualifying
- 1627 sexual offense, the individual is convicted of a qualifying sexual offense that the
- 1628 individual committed when the individual was 18 years old or older;

- 1629 (b) the individual is convicted in district court, before the victim is 18 years old, of a
 1630 violation of Section 76-5-405, aggravated sexual assault; or
 1631 (c) the conviction occurred in district court after the individual was:
 1632 (i) charged by criminal information in the juvenile court for the qualifying sexual
 1633 offense in accordance with Section 80-6-503; and
 1634 (ii) bound over to the district court for the qualifying sexual offense in accordance
 1635 with Section 80-6-504.
- 1636 (5) If the district court imposes incarceration under Subsection (3)(b), the term of
 1637 incarceration may not exceed:
 1638 (a) seven years for a violation of Section 76-5-405, aggravated sexual assault;
 1639 (b) except as provided in Subsection (5)(a), four years for a felony violation of Chapter
 1640 5, Part 4, Sexual Offenses~~[, other than Section 76-5-417, 76-5-419, or 76-5-420]~~; or
 1641 (c) the maximum sentence described in Section 76-3-204 for a misdemeanor violation of
 1642 Chapter 5, Part 4, Sexual Offenses~~[, other than Section 76-5-417]~~.

1643 Section 17. Section **76-3-407** is amended to read:

1644 **76-3-407 . Repeat and habitual sex offenders -- Additional prison term for prior**
 1645 **felony convictions. -- Mandatory imprisonment for entire term of imprisonment.**

1646 (1) As used in this section:

1647 (a)~~[(+)]~~ "Prior sexual offense" means:

1648 ~~[(A)]~~ (i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;

1649 ~~[(B)]~~ (ii) sexual exploitation of a minor, Section 76-5b-201;

1650 ~~[(C)]~~ (iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

1651 ~~[(D)]~~ (iv) a felony attempt to commit an offense described in Subsections ~~[(+)(a)(i)(A)~~
 1652 ~~through (C)]~~ (1)(a)(i) through (iii); or

1653 ~~[(E)]~~ (v) an offense in another state, territory, or district of the United States that, if
 1654 committed in Utah, would constitute an offense described in Subsections [
 1655 ~~(+)(a)(i)(A) through (D)]~~ (1)(a)(i) through (iv).

1656 ~~[(ii)]~~ "Prior sexual offense" does not include:]

1657 ~~[(A)]~~ lewdness, as described in Section 76-5-419; or]

1658 ~~[(B)]~~ lewdness involving a child, as described in Section 76-5-420.]

1659 (b)~~[(+)]~~ "Sexual offense" means:

1660 ~~[(A)]~~ (i) an offense that is a second or third degree felony, or an attempted offense,
 1661 which attempt is a second or third degree felony, described in Chapter 5, Part 4,
 1662 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;

- 1697 (d) one of [the] the following offenses is a first degree felony that is punishable by
 1698 imprisonment for an indeterminate term of not fewer than three years and which may
 1699 be for life:
- 1700 (i) child kidnapping under Section 76-5-301.1; or
 1701 (ii) except as provided in Subsection (1)(e), a felony described in Title 76, Chapter 5,
 1702 Part 4, Sexual Offenses[~~-, other than Section 76-5-417;~~] , that is a first degree
 1703 felony;
- 1704 (e) except as provided in Subsection (3), one of the following offenses is a first degree
 1705 felony that is punishable by imprisonment for an indeterminate term of not fewer
 1706 than 15 years and which may be for life:
- 1707 (i) rape of a child under Section 76-5-402.1;
 1708 (ii) object rape of a child under Section 76-5-402.3; or
 1709 (iii) sodomy on a child under Section 76-5-403.1;
- 1710 (f) a second degree felony is a third degree felony;
 1711 (g) a third degree felony is a class A misdemeanor;
 1712 (h) a class A misdemeanor is a class B misdemeanor;
 1713 (i) a class B misdemeanor is a class C misdemeanor; and
 1714 (j) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty
 1715 for a class C misdemeanor.
- 1716 (2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term
 1717 than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court
 1718 states the reasons for this finding on the record, the court may impose a term of
 1719 imprisonment of not less than:
- 1720 (a) 10 years and which may be for life; or
 1721 (b) six years and which may be for life.
- 1722 (3) If, when imposing a sentence under Subsection (1)(e), a court finds that a lesser term
 1723 than the term described in Subsection (1)(e) is in the interests of justice and states the
 1724 reasons for this finding on the record, the court may impose a term of imprisonment of
 1725 not less than:
- 1726 (a) 10 years and which may be for life;
 1727 (b) six years and which may be for life; or
 1728 (c) three years and which may be for life.
- 1729 Section 19. Section **76-4-202** is amended to read:
 1730 **76-4-202 . Conspiracy -- Classification of offenses.**

- 1731 Conspiracy to commit:
- 1732 (1) a capital felony is a first degree felony;
- 1733 (2) a first degree felony is a second degree felony, except that conspiracy to commit child
1734 kidnaping, in violation of Section 76-5-301.1 or to commit any of those felonies
1735 described in Title 76, Chapter 5, Part 4, Sexual Offenses[~~-, other than Section 76-5-417~~],
1736 which are first degree felonies, is a first degree felony punishable by imprisonment for
1737 an indeterminate term of not less than three years and which may be for life;
- 1738 (3) a second degree felony is a third degree felony;
- 1739 (4) a third degree felony is a class A misdemeanor;
- 1740 (5) a class A misdemeanor is a class B misdemeanor;
- 1741 (6) a class B misdemeanor is a class C misdemeanor; or
- 1742 (7) [A] a class C misdemeanor is punishable by a penalty not exceeding one half the penalty
1743 for a class C misdemeanor.

1744 Section 20. Section **76-4-203** is amended to read:

1745 **76-4-203 . Criminal solicitation of an adult.**

- 1746 (1)(a) As used in this section:
- 1747 (i) "Adult" means an individual who is 18 years old or older.
- 1748 (ii) "Solicit" means to ask, command, encourage, importune, offer to hire, or request.
- 1749 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1750 (2) An actor commits criminal solicitation of an adult if, with the intent that a felony
1751 offense be committed, the actor solicits an adult to engage in specific conduct that, under
1752 the circumstances as the actor believes the circumstances to be, would be a felony
1753 offense or would cause the adult to be a party to the commission of a felony offense.
- 1754 (3) A violation of Subsection (2) where the actor solicits the adult to commit:
- 1755 (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a
1756 first degree felony;
- 1757 (b) except as provided in Subsection (3)(c) or (d), a first degree felony is a second
1758 degree felony;
- 1759 (c) any of the following felony offenses is a first degree felony punishable by
1760 imprisonment for an indeterminate term of not fewer than three years and which may
1761 be for life:
- 1762 (i) murder, as described in Subsection 76-5-203(2)(a);
- 1763 (ii) child kidnaping, as described in Section 76-5-301.1; or
- 1764 (iii) except as provided in Subsection (3)(d), an offense described in Title 76, Chapter

- 1765 5, Part 4, Sexual Offenses~~[-other than Section 76-5-417]~~, that is a first degree
 1766 felony;
- 1767 (d) except as provided in Subsection (4), any of the following felony offenses is a first
 1768 degree felony punishable by a term of imprisonment of not less than 15 years and
 1769 which may be for life:
- 1770 (i) rape of a child, Section 76-5-402.1;
- 1771 (ii) object rape of a child, Section 76-5-402.3; or
- 1772 (iii) sodomy on a child, Section 76-5-403.1;
- 1773 (e) a second degree felony is a third degree felony; and
- 1774 (f) a third degree felony is a class A misdemeanor.
- 1775 (4) If a court finds that a lesser term than the term described in Subsection (3)(d) is in the
 1776 interests of justice and states the reasons for this finding on the record, the court may
 1777 impose a term of imprisonment of not less than:
- 1778 (a) 10 years and which may be for life;
- 1779 (b) six years and which may be for life; or
- 1780 (c) three years and which may be for life.
- 1781 (5) An actor may be convicted under this section only if the solicitation is made under
 1782 circumstances strongly corroborative of the actor's intent that the offense be committed.
- 1783 (6) It is not a defense to a violation of this section that:
- 1784 (a) the adult solicited by the actor:
- 1785 (i) does not agree to act upon the solicitation;
- 1786 (ii) does not commit an overt act;
- 1787 (iii) does not engage in conduct constituting a substantial step toward the commission
 1788 of any offense;
- 1789 (iv) is not criminally responsible for the felony offense solicited;
- 1790 (v) was acquitted, was not prosecuted or convicted, or was convicted of a different
 1791 offense or of a different type or degree of offense; or
- 1792 (vi) is immune from prosecution; or
- 1793 (b) the actor:
- 1794 (i) belongs to a class of persons that by definition is legally incapable of committing
 1795 the offense in an individual capacity; or
- 1796 (ii) fails to communicate with the adult that the actor solicits to commit an offense if
 1797 the intent of the actor's conduct was to effect the communication.
- 1798 (7) Nothing in this section prevents an actor who otherwise solicits an adult to engage, or

1799 intentionally aids an adult in engaging, in conduct that constitutes an offense from being
 1800 prosecuted and convicted as a party to the offense under Section 76-2-202 if the adult
 1801 actually commits the offense.

1802 Section 21. Section **76-5-107** is amended to read:

1803 **76-5-107 . Threat of violence.**

1804 (1) Terms defined in Section 76-1-101.5 apply to this section.

1805 (2) An actor commits a threat of violence if the actor:

1806 (a)(i) threatens to commit an offense:

1807 (A) under Title 76, Chapter 5, Part 4, Sexual Offenses[~~other than Section~~
 1808 ~~76-5-417, 76-5-418, 76-5-419, or 76-5-420~~]; or

1809 (B) involving bodily injury, death, or substantial property damage; and

1810 (ii) acts with intent to place an individual in fear:

1811 (A) that the actor will imminently commit an offense under Title 76, Chapter 5,
 1812 Part 4, Sexual Offenses, [~~other than Section 76-5-417, 76-5-418, 76-5-419, or~~
 1813 ~~76-5-420,~~]against the individual; or

1814 (B) of imminent serious bodily injury, substantial bodily injury, or death; or

1815 (b) makes a threat, accompanied by a show of immediate force or violence, to do bodily
 1816 injury to an individual.

1817 (3)(a) A violation of Subsection (2) is a class B misdemeanor.

1818 (b) An actor who commits an offense under this section is subject to punishment for that
 1819 offense, in addition to any other offense committed, including the carrying out of the
 1820 threatened act.

1821 (4) It is not a defense under this section that the actor did not attempt to or was incapable of
 1822 carrying out the threat.

1823 (5) A threat under Subsection (2) may be express or implied.

1824 Section 22. Section **76-5-302** is amended to read:

1825 **76-5-302 . Aggravated kidnapping.**

1826 (1)(a) As used in this section, "in the course of committing unlawful detention or
 1827 kidnapping" means in the course of committing, attempting to commit, or in the
 1828 immediate flight after the attempt or commission of a violation of:

1829 (i) Section 76-5-301, kidnapping; or

1830 (ii) Section 76-5-304, unlawful detention.

1831 (b) Terms defined in Section 76-1-101.5 apply to this section.

1832 (2) An actor commits aggravated kidnapping if the actor, in the course of committing

- 1833 unlawful detention or kidnapping:
- 1834 (a) uses or threatens to use a dangerous weapon; or
- 1835 (b) acts with the intent to:
- 1836 (i) hold the victim for ransom or reward, as a shield or hostage, or to compel a third
- 1837 person to engage in particular conduct or to forbear from engaging in particular
- 1838 conduct;
- 1839 (ii) facilitate the commission, attempted commission, or flight after commission or
- 1840 attempted commission of a felony;
- 1841 (iii) hinder or delay the discovery of or reporting of a felony;
- 1842 (iv) inflict bodily injury on or to terrorize the victim or another individual;
- 1843 (v) interfere with the performance of any governmental or political function; or
- 1844 (vi) commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual
- 1845 Offenses, other than Section [~~76-5-417, 76-5-418,~~]76-5-419[.] or 76-5-420.
- 1846 (3)(a) A violation of Subsection (2) in the course of committing unlawful detention is a
- 1847 third degree felony.
- 1848 (b) A violation of Subsection (2) in the course of committing kidnapping is a first degree
- 1849 felony.
- 1850 (4) An actor convicted of a violation of Subsection (3)(b) shall be sentenced to
- 1851 imprisonment of:
- 1852 (a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and
- 1853 which may be for life;
- 1854 (b) except as provided in Subsection (4)(c) or (5), life without parole, if the trier of fact
- 1855 finds that during the course of the commission of the aggravated kidnapping the
- 1856 defendant caused serious bodily injury to the victim or another individual; or
- 1857 (c) life without parole, if the trier of fact finds that at the time of the commission of the
- 1858 aggravated kidnapping, the defendant was previously convicted of a grievous sexual
- 1859 offense.
- 1860 (5) If, when imposing a sentence under Subsection (4)(a) or (b), a court finds that a lesser
- 1861 term than the term described in Subsection (4)(a) or (b) is in the interests of justice and
- 1862 states the reasons for this finding on the record, the court may impose a term of
- 1863 imprisonment of not less than:
- 1864 (a) for purposes of Subsection (4)(b), 15 years and which may be for life; or
- 1865 (b) for purposes of Subsection (4)(a) or (b):
- 1866 (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.

- 1935 (4) An individual is guilty of a second degree felony if the individual:
- 1936 (a) cohabitates with another individual with whom the individual is engaged in bigamy
- 1937 as described in Subsection (1); and
- 1938 (b) in furtherance of the conduct described in Subsection (4)(a)[,] :
- 1939 (i) [~~]~~ commits a felony [~~offense, or for Section 76-5-418, a misdemeanor offense, in]~~
- 1940 violation of[~~one or more of the following~~]:
- 1941 [(i)] (A) Section 76-5-109, child abuse;
- 1942 [(ii)] (B) Section 76-5-109.2, aggravated child abuse;
- 1943 [(iii)] (C) Section 76-5-109.3, child abandonment;
- 1944 [(iv)] (D) Section 76-5-109.4, child torture;
- 1945 [(v)] (E) Section 76-5-111, abuse of a vulnerable adult;
- 1946 [(vi)] (F) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1947 [(vii)] (G) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1948 [(viii)] (H) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1949 [(ix)] (I) Chapter 5, Part 2, Criminal Homicide;
- 1950 [(x)] (J) Section 76-5-208, child abuse homicide;
- 1951 [(xi)] (K) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 1952 [(xii)] (L) Chapter 5, Part 4, Sexual Offenses[~~, other than:~~] ;
- 1953 [~~(A) Section 76-5-417, enticing a minor;~~]
- 1954 [~~(B) Section 76-5-419, lewdness; or]~~
- 1955 [~~(C) Section 76-5-420, lewdness involving a child];~~
- 1956 [(xiii)] (M) Section 76-7-201, criminal nonsupport;
- 1957 [(xiv)] (N) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
- 1958 [(xv)] (O) Title 78B, Chapter 7, Part 8, Criminal Protective Orders[~~:~~] ; or
- 1959 (ii) commits a misdemeanor violation of Section 76-5-418, sexual battery.
- 1960 (5) It is a defense to prosecution under Subsection (2) that:
- 1961 (a) the individual ceased the practice of bigamy as described in Subsection (1) under
- 1962 reasonable fear of coercion or bodily harm;
- 1963 (b) the individual entered the practice of bigamy, as described in Subsection (1), as a
- 1964 minor and ceased the practice of bigamy at any time after the individual entered the
- 1965 practice of bigamy; or
- 1966 (c) law enforcement discovers that the individual practices bigamy, as described in
- 1967 Subsection (1), as a result of the individual's efforts to protect the safety and welfare
- 1968 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:

- 2003 (a) shall verify that the equipment is properly functioning as is reasonably within the
2004 officer's ability;
- 2005 (b) shall report any malfunctioning equipment to the officer's supervisor if:
2006 (i) the body-worn camera issued to the officer is not functioning properly upon initial
2007 inspection; or
2008 (ii) the officer determines that the officer's body-worn camera is not functioning
2009 properly at any time while the officer is on duty;
- 2010 (c) shall wear the body-worn camera so that it is clearly visible to the individual being
2011 recorded;
- 2012 (d) shall activate the body-worn camera prior to any law enforcement encounter, or as
2013 soon as reasonably possible;
- 2014 (e) shall record in an uninterrupted manner until after the conclusion of a law
2015 enforcement encounter, except as an interruption of a recording is allowed under this
2016 section;
- 2017 (f) shall, when going on duty and off duty, record the officer's name, identification
2018 number, and the current time and date, unless the information is already available due
2019 to the functionality of the body-worn camera;
- 2020 (g) shall, if the body-worn camera was present during a law enforcement encounter,
2021 document the presence of the body-worn camera in any report or other official record
2022 of a contact;
- 2023 (h) except as provided in Subsection (2)(i), when the body-worn camera has been
2024 activated during the officer's direct participation in a law enforcement encounter,
2025 keep the body-worn camera activated until the officer's direct participation in the law
2026 enforcement encounter is complete;
- 2027 (i) may deactivate the body-worn camera:
2028 (i) to consult with a supervisor or another officer;
2029 (ii) during a significant period of inactivity;
2030 (iii) during a conversation with a sensitive victim of crime, a witness of a crime, or an
2031 individual who wishes to report or discuss criminal activity if:
2032 (A) the individual who is the subject of the recording requests that the officer
2033 deactivate the officer's body-worn camera; and
2034 (B) the officer believes that the value of the information outweighs the value of
2035 the potential recording and records the request by the individual to deactivate
2036 the body-worn camera; or

2037 (iv) during a conversation with a victim of a domestic violence offense as defined in
 2038 Section 77-36-1, or a sexual offense, as described in Title 76, Chapter 5, Part 4,
 2039 Sexual Offenses, [~~other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420~~]
 2040 if:

2041 (A) the officer is conducting an evidence-based lethality assessment;
 2042 (B) the victim or the officer believes that deactivating the body-worn camera
 2043 recording will encourage complete and accurate information sharing by the
 2044 victim, or is necessary to protect the safety or identity of the victim; and
 2045 (C) the officer's body-worn camera is reactivated as soon as reasonably possible
 2046 after the evidence-based lethality assessment is complete;

2047 (j) shall, if the officer deactivates or fails to activate the body-worn camera in violation
 2048 of this section, document in a written report the reason for deactivating or for failing
 2049 to activate the body-worn camera; and

2050 (k) may not activate a body-worn camera in a hospital, health care facility, human
 2051 service program, or the clinic of a health care provider, except during a law
 2052 enforcement encounter, and with notice under Section 77-7a-105.

2053 (3) A violation of this section may not serve as the sole basis to dismiss a criminal case or
 2054 charge.

2055 (4) This section does not preclude a law enforcement agency from establishing internal
 2056 agency policies for an officer's failure to comply with the requirements of this section.

2057 (5) Subsections (2)(c), (d), (e), (g), (h), and (j) do not apply to an officer who:

2058 (a) is assigned to a narcotics unit or task force that is engaged primarily in narcotics
 2059 investigations; or

2060 (b) is engaged in an undercover operation.

2061 Section 27. Section **77-22-2.5** is amended to read:

2062 **77-22-2.5 . Court orders for criminal investigations for records concerning an**
 2063 **electronic communications system or service or remote computing service -- Content --**
 2064 **Fee for providing information.**

2065 (1) As used in this section:

2066 (a)(i) "Electronic communication" means any transfer of signs, signals, writing,
 2067 images, sounds, data, or intelligence of any nature transmitted in whole or in part
 2068 by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

2069 (ii) "Electronic communication" does not include:

2070 (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

2139 service, or the provider or service's officers, employees, agents, or other specified
2140 persons, for providing information, facilities, or assistance in accordance with the terms
2141 of the court order issued under this section or statutory authorization.

2142 (8)(a) A court order issued under this section is subject to the provisions of Title 77,
2143 Chapter 23b, Access to Electronic Communications.

2144 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
2145 Access to Electronic Communications, apply to providers and subscribers subject to a
2146 court order issued under this section.

2147 (9) A prosecutorial agency shall annually on or before February 15 report to the
2148 Commission on Criminal and Juvenile Justice:

2149 (a) the number of requests for court orders authorized by the prosecutorial agency;

2150 (b) the number of orders issued by the court and the criminal offense, pursuant to
2151 Subsection (2), each order was used to investigate; and

2152 (c) if the court order led to criminal charges being filed, the type and number of offenses
2153 charged.

2154 Section 28. Section **77-36-1** is amended to read:

2155 **77-36-1 . Definitions.**

2156 As used in this chapter:

2157 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

2158 (2) "Department" means the Department of Public Safety.

2159 (3) "Divorced" means an individual who has obtained a divorce under Title 81, Chapter 4,
2160 Part 4, Divorce.

2161 (4)(a) "Domestic violence" or "domestic violence offense" means any criminal offense
2162 involving violence or physical harm or threat of violence or physical harm, or any
2163 attempt, conspiracy, or solicitation to commit a criminal offense involving violence
2164 or physical harm, when committed by one cohabitant against another.

2165 (b) "Domestic violence" or "domestic violence offense" includes the commission of or
2166 attempt to commit, any of the following offenses by one cohabitant against another:

2167 (i) aggravated assault under Section 76-5-103;

2168 (ii) aggravated cruelty to an animal under Section 76-13-203, with the intent to harass
2169 or threaten the other cohabitant;

2170 (iii) assault under Section 76-5-102;

2171 (iv) criminal homicide under Section 76-5-201;

2172 (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

2377 enforcement officer or the law enforcement officer's employing agency notifies or
 2378 attempts to notify the alleged victim, the individual enters the premises while
 2379 accompanied by a law enforcement officer for the purpose of retrieving the
 2380 individual's personal belongings; and

2381 (b) specifies other conditions of release from jail.

2382 (3) "Minor" means the same as that term is defined in Section 80-1-102.

2383 (4) "Offense against a child or vulnerable adult" means the commission or attempted
 2384 commission of an offense described in:

2385 (a) Section 76-5-109, child abuse;

2386 (b) Section 76-5-109.2, aggravated child abuse;

2387 (c) Section 76-5-109.3, child abandonment;

2388 (d) Section 76-5-109.4, child torture;

2389 (e) Section 76-5-110, abuse or neglect of a child with a disability;

2390 (f) Section 76-5-111, abuse of a vulnerable adult;

2391 (g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

2392 (h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

2393 (i) Section 76-5-111.4, financial exploitation of a vulnerable adult;

2394 (j) Section 76-5-114, commission of domestic violence in the presence of a child; or

2395 (k) Section 76-5-418, sexual battery.

2396 (5)(a) "Qualifying offense" means:

2397 (i) domestic violence;

2398 (ii) an offense against a child or vulnerable adult; or

2399 (iii) the commission or attempted commission of an offense described in [Section
 2400 ~~76-5-418, sexual battery, or~~] Title 76, Chapter 5, Part 4, Sexual Offenses.

2401 (b) "Qualifying offense" does not include an offense described in:

2402 [(i) ~~Section 76-5-417, enticing a minor;~~]

2403 [(ii)] (i) Section 76-5-419, lewdness; or

2404 [(iii)] (ii) Section 76-5-420, lewdness involving a child.

2405 Section 33. Section **80-1-102** is amended to read:

2406 **80-1-102 . Juvenile Code definitions.**

2407 Except as provided in Section 80-6-1103, as used in this title:

2408 (1)(a) "Abuse" means:

2409 (i)(A) nonaccidental harm of a child;

2410 (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.

- 2785 (c) Subsection (79)(b)(iii) does not prohibit a parent or guardian from exercising the
 2786 right to obtain a second health care opinion.
- 2787 (80)(a) "Sexual abuse" means:
- 2788 (i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
 2789 adult directed towards a child;
- 2790 (ii) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
 2791 committed by a child towards another child if:
- 2792 (A) there is an indication of force or coercion;
- 2793 (B) the children are related, as described in Subsection (40), including siblings by
 2794 marriage while the marriage exists or by adoption; or
- 2795 (C) the act or attempted act constitutes unlawful sexual activity as described in
 2796 Section 76-5-401.3.
- 2797 (iii) engaging in any conduct with a child that would constitute an offense under any
 2798 of the following, regardless of whether the individual who engages in the conduct
 2799 is actually charged with, or convicted of, the offense:
- 2800 (A) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 2801 (B) child bigamy, Section 76-7-101.5;
- 2802 (C) incest, Section 76-7-102;
- 2803 (D) voyeurism, Section 76-12-306;
- 2804 (E) recorded or photographed voyeurism, Section 76-12-307; or
- 2805 (F) distribution of images obtained through voyeurism, Section 76-12-308; or
- 2806 (iv) subjecting a child to participate in or threatening to subject a child to participate
 2807 in a sexual relationship, regardless of whether that sexual relationship is part of a
 2808 legal or cultural marriage.
- 2809 (b) "Sexual abuse" does not include engaging in any conduct with a child that would
 2810 constitute an offense described in[;]
- 2811 [(†)] Section 76-5-401, unlawful sexual activity with a minor, if the alleged
 2812 perpetrator of the offense is a minor[; or] .
- 2813 [~~(ii) Section 76-5-417, enticing a minor.~~]
- 2814 (81) "Sexual exploitation" means knowingly:
- 2815 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2816 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2817 (ii) engage in any sexual or simulated sexual conduct for the purpose of
 2818 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

- 2853 relative, or upon court order, when it is determined that continuation of care in the
2854 minor's own home would be contrary to the minor's welfare;
- 2855 (b) services provided for a minor in the protective custody of the Division of Child and
2856 Family Services, or a minor in the temporary custody or custody of the Division of
2857 Child and Family Services, as those terms are defined in Section 80-2-102; or
- 2858 (c) the licensing and supervision of a substitute care facility.
- 2859 (90) "Supported" means a finding by the Division of Child and Family Services based on
2860 the evidence available at the completion of an investigation, and separate consideration
2861 of each allegation made or identified during the investigation, that there is a reasonable
2862 basis to conclude that abuse, neglect, or dependency occurred.
- 2863 (91) "Termination of parental rights" means the permanent elimination of all parental rights
2864 and duties, including residual parental rights and duties, by court order.
- 2865 (92) "Therapist" means:
- 2866 (a) an individual employed by a state division or agency for the purpose of conducting
2867 psychological treatment and counseling of a minor in the division's or agency's
2868 custody; or
- 2869 (b) any other individual licensed or approved by the state for the purpose of conducting
2870 psychological treatment and counseling.
- 2871 (93) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that
2872 the child is at an unreasonable risk of harm or neglect.
- 2873 (94) "Torture" means:
- 2874 (a) the infliction of a serious injury upon a child in an exceptionally cruel or
2875 exceptionally depraved manner that causes the child to experience extreme physical
2876 or psychological pain or anguish; or
- 2877 (b) the infliction of a serious injury, or more than one serious injury, upon a child as part
2878 of a course of conduct or over a prolonged period of time.
- 2879 (95) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
2880 (a) results in behavior that is beyond the control or ability of the child, or the parent or
2881 guardian, to manage effectively;
- 2882 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
- 2883 (c) results in the situations described in Subsections (95)(a) and (b).
- 2884 (96) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
2885 conclude that abuse, neglect, or dependency occurred.
- 2886 (97) "Unsupported" means a finding by the Division of Child and Family Services at the

2887 completion of an investigation, after the day on which the Division of Child and Family
2888 Services concludes the alleged abuse, neglect, or dependency is not without merit, that
2889 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

2890 (98) "Validated risk and needs assessment" means an evidence-based tool that assesses a
2891 minor's risk of reoffending and a minor's criminogenic needs.

2892 (99) "Without merit" means a finding at the completion of an investigation by the Division
2893 of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or
2894 dependency did not occur, or that the alleged perpetrator was not responsible for the
2895 abuse, neglect, or dependency.

2896 (100) "Youth offender" means an individual who is:

2897 (a) at least 12 years old, but under 21 years old; and

2898 (b) committed by the juvenile court to the Division of Juvenile Justice and Youth
2899 Services for secure care under Sections 80-6-703 and 80-6-705.

2900 Section 34. Section **80-6-304** is amended to read:

2901 **80-6-304 . Nonjudicial adjustments. -- Requirement to seek legal counsel before**
2902 **declination.**

2903 (1) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:

2904 (a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the
2905 terms established under Subsection (5);

2906 (b) pay restitution to any victim;

2907 (c) complete community or compensatory service;

2908 (d) attend counseling or treatment with an appropriate provider;

2909 (e) attend substance abuse treatment or counseling;

2910 (f) comply with specified restrictions on activities or associations;

2911 (g) attend victim-offender mediation if requested by the victim; and

2912 (h) comply with any other reasonable action that is in the interest of the minor, the
2913 community, or the victim.

2914 (2)(a) Within seven days of receiving a referral that appears to be eligible for a
2915 nonjudicial adjustment in accordance with Section 80-6-303.5, the juvenile probation
2916 officer shall provide an initial notice to reasonably identifiable and locatable victims
2917 of the offense contained in the referral.

2918 (b) The victim shall be responsible to provide to the juvenile probation officer upon
2919 request:

2920 (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

2955 pay as determined by a statewide sliding scale developed in accordance with Section
2956 63M-7-208.

2957 (6)(a) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile
2958 court judge extends the nonjudicial adjustment for an additional 90 days.

2959 (b) A juvenile court judge may extend a nonjudicial adjustment beyond the 180 days
2960 permitted under Subsection (6)(a):

2961 (i) for a minor who is:

2962 (A) offered a nonjudicial adjustment for a sexual offense under Title 76, Chapter
2963 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12
2964 years old~~[-, other than an offense under Section 76-5-417, 76-5-418, 76-5-419,~~
2965 ~~or 76-5-420]~~; or

2966 (B) referred to a prosecuting attorney for a sexual offense under Title 76, Chapter
2967 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12
2968 years old~~[-, other than an offense under Section 76-5-417, 76-5-418, 76-5-419,~~
2969 ~~or 76-5-420]~~; and

2970 (ii) the judge determines that:

2971 (A) the nonjudicial adjustment requires specific treatment for the sexual offense;

2972 (B) the treatment cannot be completed within 180 days after the day on which the
2973 minor entered into the nonjudicial adjustment; and

2974 (C) the treatment is necessary based on a clinical assessment that is
2975 developmentally appropriate for the minor.

2976 (c) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection
2977 (6)(b), the judge may extend the nonjudicial adjustment until the minor completes the
2978 specific treatment, but the judge may only grant each extension for 90 days at a time.

2979 (7) If a minor violates Section 76-9-1106, the minor may be required to pay a fine or
2980 penalty and participate in a court-approved tobacco education program with a
2981 participation fee.

2982 Section 35. Section **81-9-202** is amended to read:

2983 **81-9-202 . Advisory guidelines for a custody and parent-time arrangement.**

2984 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304,
2985 the following advisory guidelines are suggested to govern a custody and parent-time
2986 arrangement between parents.

2987 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a
2988 court-imposed solution.

- 2989 (3) A parent-time schedule shall be used to maximize the continuity and stability of the
2990 minor child's life.
- 2991 (4) Each parent shall give special consideration to make the minor child available to attend
2992 family functions including funerals, weddings, family reunions, religious holidays,
2993 important ceremonies, and other significant events in the life of the minor child or in the
2994 life of either parent which may inadvertently conflict with the parent-time schedule.
- 2995 (5)(a) The court shall determine the responsibility for the pick up, delivery, and return of
2996 the minor child when the parent-time order is entered.
- 2997 (b) The court may change the responsibility described in Subsection (5)(a) at any time a
2998 subsequent modification is made to the parent-time order.
- 2999 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
3000 (i) have the minor child ready for parent-time at the time the minor child is to be
3001 picked up; and
3002 (ii) be present at the custodial home or make reasonable alternate arrangements to
3003 receive the minor child at the time the minor child is returned.
- 3004 (d) If the custodial parent will be transporting the minor child, the noncustodial parent
3005 shall:
3006 (i) be at the appointed place at the time the noncustodial parent is to receive the
3007 minor child; and
3008 (ii) have the minor child ready to be picked up at the appointed time and place or
3009 have made reasonable alternate arrangements for the custodial parent to pick up
3010 the minor child.
- 3011 (6) A parent may not interrupt regular school hours for a school-age minor child for the
3012 exercise of parent-time.
- 3013 (7) The court may:
3014 (a) make alterations in the parent-time schedule to reasonably accommodate the work
3015 schedule of both parents; and
3016 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the
3017 standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 3018 (8) The court may make alterations in the parent-time schedule to reasonably accommodate
3019 the distance between the parties and the expense of exercising parent-time.
- 3020 (9) A parent may not withhold parent-time or child support due to the other parent's failure
3021 to comply with a court-ordered parent-time schedule.
- 3022 (10)(a) The custodial parent shall notify the noncustodial parent within 24 hours of

- 3023 receiving notice of all significant school, social, sports, and community functions in
3024 which the minor child is participating or being honored.
- 3025 (b) The noncustodial parent is entitled to attend and participate fully in the functions
3026 described in Subsection (10)(a).
- 3027 (c) The noncustodial parent shall have access directly to all school reports including
3028 preschool and daycare reports and medical records.
- 3029 (d) A parent shall immediately notify the other parent in the event of a medical
3030 emergency.
- 3031 (11) Each parent shall provide the other with the parent's current address and telephone
3032 number, email address, and other virtual parent-time access information within 24 hours
3033 of any change.
- 3034 (12)(a) Each parent shall permit and encourage, during reasonable hours, reasonable and
3035 uncensored communications with the minor child, in the form of mail privileges and
3036 virtual parent-time if the equipment is reasonably available.
- 3037 (b) If the parents cannot agree on whether the equipment is reasonably available, the
3038 court shall decide whether the equipment for virtual parent-time is reasonably
3039 available by taking into consideration:
- 3040 (i) the best interests of the minor child;
- 3041 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
3042 (iii) any other factors the court considers material.
- 3043 (13)(a) Parental care is presumed to be better care for the minor child than surrogate care.
- 3044 (b) The court shall encourage the parties to cooperate in allowing the noncustodial
3045 parent, if willing and able to transport the minor child, to provide the child care.
- 3046 (c) Child care arrangements existing during the marriage are preferred as are child care
3047 arrangements with nominal or no charge.
- 3048 (14) Each parent shall:
- 3049 (a) provide all surrogate care providers with the name, current address, and telephone
3050 number of the other parent; and
- 3051 (b) provide the noncustodial parent with the name, current address, and telephone
3052 number of all surrogate care providers unless the court for good cause orders
3053 otherwise.
- 3054 (15)(a) Each parent is entitled to an equal division of major religious holidays celebrated
3055 by the parents.
- 3056 (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;

- 3091 (iii) places where the minor child or traveling parent can be reached; and
 3092 (iv) the name and telephone number of an available third person who would be
 3093 knowledgeable of the minor child's location.

- 3094 (b) Unchaperoned travel of a minor child under the age of five years is not
 3095 recommended.

3096 Section 36. Section **81-9-208** is amended to read:

3097 **81-9-208 . Modification or termination of a custody or parent-time order --**
 3098 **Noncompliance with a parent-time order.**

- 3099 (1) The court has continuing jurisdiction to make subsequent changes to modify:
 3100 (a) custody of a minor child if there is a showing of a substantial and material change in
 3101 circumstances since the entry of the order; and
 3102 (b) parent-time for a minor child if there is a showing that there is a change in
 3103 circumstances since the entry of the order.
- 3104 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a
 3105 showing by a parent that the other parent:
 3106 (a) resides with an individual or provides an individual with access to the minor child;
 3107 and
 3108 (b) knows that the individual:
 3109 (i) is required to register as a sex offender, a kidnap offender, or a child abuse
 3110 offender for an offense committed against a minor child under Title 53, Chapter 29,
 3111 Sex, Kidnap, and Child Abuse Offender Registry; or
 3112 (ii) has been convicted of:
 3113 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,
 3114 76-5-109.4, 76-5-114, or 76-5-208;
 3115 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
 3116 Offenses~~[, other than an offense under Section 76-5-417, 76-5-418, or 76-5-419]~~;
 3117 (C) an offense for kidnapping or human trafficking of a minor child under Title
 3118 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
 3119 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
 3120 Sexual Exploitation Act; or
 3121 (E) an offense that is substantially similar to an offense under Subsections
 3122 (2)(b)(ii)(A) through (D).
- 3123 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if
 3124 they are not the parents, the court may, after a hearing, modify or terminate an order that

- 3125 established joint legal custody or joint physical custody if:
- 3126 (a) the verified petition or accompanying affidavit initially alleges that admissible
3127 evidence will show that there has been a substantial and material change in the
3128 circumstances of the minor child or one or both parents or joint legal or physical
3129 custodians since the entry of the order to be modified;
- 3130 (b) a modification of the terms and conditions of the order would be an improvement for
3131 and in the best interest of the minor child; and
- 3132 (c)(i) both parents have complied in good faith with the dispute resolution procedure
3133 in accordance with Subsection 81-9-205(8); or
- 3134 (ii) if no dispute resolution procedure is contained in the order that established joint
3135 legal custody or joint physical custody, the court orders the parents to participate
3136 in a dispute resolution procedure in accordance with Subsection 81-9-205(13)
3137 unless the parents certify that, in good faith, they have used a dispute resolution
3138 procedure to resolve their dispute.
- 3139 (4)(a) In determining whether the best interest of a minor child will be served by either
3140 modifying or terminating the joint legal custody or joint physical custody order, the
3141 court shall, in addition to other factors the court considers relevant, consider the
3142 factors described in Sections 81-9-204 and 81-9-205.
- 3143 (b) A court order modifying or terminating an existing joint legal custody or joint
3144 physical custody order shall contain written findings that:
- 3145 (i) a substantial and material change of circumstance has occurred; and
3146 (ii) a modification of the terms and conditions of the order would be an improvement
3147 for and in the best interest of the minor child.
- 3148 (c) The court shall give substantial weight to the existing joint legal custody or joint
3149 physical custody order when the minor child is thriving, happy, and well-adjusted.
- 3150 (5) The court shall, in every case regarding a petition for termination of a joint legal
3151 custody or joint physical custody order, consider reasonable alternatives to preserve the
3152 existing order in accordance with Section 81-9-204.
- 3153 (6) The court may modify the terms and conditions of the existing order in accordance with
3154 this chapter and may order the parents to file a parenting plan in accordance with
3155 Section 81-9-203.
- 3156 (7) A parent requesting a modification from sole custody to joint legal custody or joint
3157 physical custody or both, or any other type of shared parenting arrangement, shall file
3158 and serve a proposed parenting plan with the petition to modify in accordance with

- 3159 Section 81-9-203.
- 3160 (8) If an issue before the court involves custodial responsibility in the event of deployment
3161 of one or both parents who are service members, and the service member has not yet
3162 been notified of deployment, the court shall resolve the issue based on the standards in
3163 Sections 81-10-306 through 81-10-309.
- 3164 (9) If the court finds that an action to modify custody or parent-time is filed or answered
3165 frivolously and, in a manner, designed to harass the other party, the court shall assess
3166 attorney fees as costs against the offending party.
- 3167 (10) If a petition to modify custody or parent-time provisions of a court order is made and
3168 denied, the court shall order the petitioner to pay the reasonable attorney fees expended
3169 by the prevailing party in that action if the court determines that the petition was without
3170 merit and not asserted or defended against in good faith.
- 3171 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a
3172 visitation order by a grandparent or other member of the immediate family where a
3173 visitation or parent-time right has been previously granted by the court, the court:
- 3174 (a) may award to the prevailing party:
- 3175 (i) actual attorney fees incurred;
- 3176 (ii) the costs incurred by the prevailing party because of the other party's failure to
3177 provide or exercise court-ordered visitation or parent-time, including:
- 3178 (A) court costs;
- 3179 (B) child care expenses;
- 3180 (C) transportation expenses actually incurred;
- 3181 (D) lost wages, if ascertainable; or
- 3182 (E) counseling for a parent or a minor child if ordered or approved by the court; or
- 3183 (iii) any other appropriate equitable remedy; and
- 3184 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up
3185 parent-time is not in the best interest of the minor child.

3186 Section 37. **Effective Date.**

3187 This bill takes effect on May 6, 2026.