

Tyler Clancy proposes the following substitute bill:

Sexual Offense Evidence and Reporting Procedures Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor:

LONG TITLE

General Description:

This bill amends evidence and reporting procedures that occur after a sexual offense is committed.

Highlighted Provisions:

This bill:

- defines terms;
- amends injury reporting requirements for a health care provider for certain sexual offenses;
- allows certain victims of a sexual offense the option of:
 - receiving medical treatment, without any report of the sexual offense to law enforcement;
 - with or without medical treatment, providing either a full report or a limited report of the sexual offense to law enforcement;
 - allowing evidence collection for the sexual offense, including a sexual assault medical forensic examination that collects a sexual assault kit; and
 - designating the sexual assault kit as either an unrestricted kit with full disclosure and processing or as a restricted kit that can either be stored without testing or subjected to limited testing;
- requires limited victim information to be shared with law enforcement with a restricted kit;
- requires that payment of costs for medical treatment and evidence collection for a victim of a sexual offense be the same regardless of whether the victim opts to make a full or limited report to law enforcement or if the victim opts only for medical treatment without reporting the sexual offense to law enforcement;
- requires the Bureau of Forensic Services to conduct testing of certain restricted kits;

▸ requires the Department of Public Safety's statewide sexual assault kit tracking system to provide limited access to a victim who has submitted a restricted kit for forensic testing to track the kit's processing status;

▸ establishes procedures for contacting a victim through a victim advocate to request the victim's consent to certain disclosures if a law enforcement agency determines that:

- there may be a serial sexual offender in a particular area; and
- evidence in the victim's restricted kit may provide relevant evidence in the investigation;

▸ revises and reorganizes statutory procedures and requirements that occur after certain sexual offenses are committed;

▸ amends the definition of "medical examination" for the Utah Office for Victims of Crime to include certain treatments, testing, and medications for a victim;

▸ amends the definition of "sexual offense" for certain sexual offense procedures and victim rights provisions;

▸ inserts the former definition of "sexual offense" into statutes that had relied on the definition of "sexual offense" that this bill amends; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-8-232, as renumbered and amended by Laws of Utah 2023, Chapter 306

53-10-904, as renumbered and amended by Laws of Utah 2022, Chapter 430

53-10-909, as renumbered and amended by Laws of Utah 2022, Chapter 430

53-10-910, as last amended by Laws of Utah 2025, Chapter 271

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

77-11c-101, as last amended by Laws of Utah 2025, Chapter 291

77-11c-202, as last amended by Laws of Utah 2024, Chapters 150, 164

77-11c-302, as enacted by Laws of Utah 2024, Chapter 150

77-11c-401, as last amended by Laws of Utah 2024, Chapters 150, 164

77-37-2, as last amended by Laws of Utah 2025, Chapter 173

77-37-3, as last amended by Laws of Utah 2025, First Special Session, Chapter 11

63 **78A-6-104**, as last amended by Laws of Utah 2025, Chapter 426

64 **80-4-301**, as last amended by Laws of Utah 2024, Chapters 164, 293

65 **81-9-204**, as last amended by Laws of Utah 2025, Chapter 426

66 **81-9-305**, as last amended by Laws of Utah 2025, Chapter 426

67 ENACTS:

68 **53-10-903.1**, Utah Code Annotated 1953

69 **53-10-906.1**, Utah Code Annotated 1953

70 RENUMBERS AND AMENDS:

71 **53-10-901.1**, (Renumbered from 53-10-902, as last amended by Laws of Utah 2024,
72 Chapter 164)

73 **53-10-902.1**, (Renumbered from 53-10-906, as last amended by Laws of Utah 2023,
74 Chapter 99)

75 **53-10-904.1**, (Renumbered from 53-10-903, as renumbered and amended by Laws of
76 Utah 2022, Chapter 430)

77 **53-10-905.1**, (Renumbered from 53-10-907, as renumbered and amended by Laws of
78 Utah 2022, Chapter 430)

79 **53-10-911**, (Renumbered from 53-10-905, as repealed and reenacted by Laws of Utah
80 2024, Chapter 164)

81 REPEALS:

82 **53-10-901**, as renumbered and amended by Laws of Utah 2022, Chapter 430

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

85 Section 1. Section **26B-8-232** is amended to read:

86 **26B-8-232 . Injury reporting requirements by health care provider -- Contents of**
87 **report -- Penalties.**

88 (1) As used in this section:

89 (a)(i) "Health care provider" means any person, firm, corporation, or association [
90 which] that furnishes treatment or care to persons who have suffered bodily injury[;
91 and] .

92 (ii) "Health care provider" includes hospitals, clinics, podiatrists, dentists and dental
93 hygienists, nurses, nurse practitioners, physicians and physicians' assistants,
94 osteopathic physicians, naturopathic practitioners, chiropractors, acupuncturists,
95 paramedics, and emergency medical technicians.

96 (b) "Injury" does not include any psychological or physical condition brought about

solely through the voluntary administration of prescribed controlled substances.

(c) "Law enforcement agency" means the municipal or county law enforcement agency:

(i) having jurisdiction over the location where the injury occurred; or

(ii) if the reporting health care provider is unable to identify or contact the law enforcement agency with jurisdiction over the injury, "law enforcement agency" means the agency nearest to the location of the reporting health care provider.

(d) "Rape crisis and services center" means the same as that term is defined in Section 77-38-203.

(e) "Report to a law enforcement agency" means to report, by telephone or other spoken communication, the facts known regarding an injury subject to reporting under [Section 26B-8-232] this section to the dispatch desk or other staff person designated by the law enforcement agency to receive reports from the public.

(f) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.

(g) "Sexual offense" means the same as that term is defined in Section 77-37-2.

(h) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

(2)(a) [~~Any~~] Except as provided in Subsection (3), a health care provider who treats or cares for any person who suffers from any wound or other injury inflicted by the person's own act or by the act of another by means of a knife, gun, pistol, explosive, infernal device, or deadly weapon, or by violation of any criminal statute of this state, shall immediately report to a law enforcement agency the facts regarding the injury.

(b) [~~The report~~] A report described in Subsection (2)(a) shall state the name and address of the injured person, if known, the person's whereabouts, the character and extent of the person's injuries, and the name, address, and telephone number of the person making the report.

(3)(a) For a sexual offense that occurs on or after January 1, 2027, unless the sexual offense is subject to mandatory reporting under Subsection (3)(c), a victim may opt to, in accordance with Section 53-10-903.1:

(i) receive only medical treatment for the sexual offense, without a health care provider making a report to a law enforcement agency; or

(ii) receive or reject medical treatment and permit a health care provider to:

(A) provide a full report of the sexual offense to a law enforcement agency under Subsection (2); or

(B) provide a limited report of the sexual offense to a law enforcement agency, which shall include the information described in Subsection (3)(b).

(b) A limited report under Subsection (3)(a)(ii)(B) shall include:

(i) the date of the victim's interaction with the health care provider;

(ii) the health care provider's contact information;

(iii) the gender of the victim;

(iv) the age band of the victim, selected from the following:

(A) 18 to 25 years old;

(B) 26 to 35 years old;

(C) 36 to 45 years old;

(D) 46 to 55 years old;

(E) 56 to 64 years old; or

(F) over 65 years old; and

(v) if known, the zip code of the offense.

(c) A sexual offense is subject to mandatory reporting to a law enforcement agency if:

(i) the victim is:

(A) 17 years old or younger; or

(B) a vulnerable adult; or

(ii) the victim sustained a serious bodily injury from the sexual offense.

(d) A health care provider who assists a victim under Subsection (3)(a)(i) or (3)(a)(ii)(B)

shall refer the victim to the closest rape crisis and services center.

~~[(3)]~~ (4) A health care provider may not be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

~~[(4)]~~ (5) A person may not incur any civil or criminal liability as a result of making any report required by this section.

~~[(5)]~~ (6) A health care provider who has personal knowledge that the report of a wound or injury has been made in compliance with this section is under no further obligation to make a report regarding that wound or injury under this section.

~~[(6)]~~ (7) ~~[Any]~~ A health care provider who intentionally or knowingly violates any provision of this section is guilty of a class B misdemeanor.

Section 2. Section **53-10-901.1**, which is renumbered from Section 53-10-902 is renumbered and amended to read:

[53-10-902] 53-10-901.1 . Definitions.

As used in this part:

(1) "Bureau" means the Bureau of Forensic Services created in Section 53-10-401.

(2) "Collecting facility" means a hospital, health care facility, or other facility that performs

sexual assault examinations.

(3) "Rape crisis and services center" means the same as that term is defined in Section 77-38-203.

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

[(3)] (4) "Restricted kit" means a sexual assault kit:

(a) that is collected by a collecting facility; [and]

(b) for which the victim:

(i) opts to provide a limited report to law enforcement regarding the sexual offense that does not include the victim's name or other identifying information; and

(ii) selects whether to have the victim's kit:

(A) stored by a law enforcement agency without any forensic testing; or

(B) subjected to forensic testing by the bureau and then stored by a law

enforcement agency, without having the results of the forensic testing used for

investigative purposes or compared to DNA profiles in DNA databases; and

(c) for which the associated sexual assault examination form is:

(i) not shared with law enforcement; and

(ii) is shared with the bureau, if the victim consents to forensic testing by the bureau.

[(b) for which a victim who is 18 years old or older at the time of the sexual assault kit evidence collection declines:]

[(i) to have his or her sexual assault kit processed; and]

[(ii) to have the sexual assault examination form shared with any entity outside of the collection facility.]

[(4)] (5) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.

(6) "Sexual assault kit" means a package of items that is used by medical personnel to gather and preserve biological and physical evidence following an allegation of a sexual offense.

[(5)] (7) "Sexual offense" means the same as that term is defined in Section 77-37-2.

(8) "Tracking system" means the statewide sexual assault kit tracking system described in Section 53-10-905.1.

[(6)] (9) "Trauma-informed, victim-centered" means policies, procedures, programs, and practices that:

(a) have demonstrated an ability to minimize retraumatization associated with the criminal justice process by recognizing the presence of trauma symptoms and acknowledging the role that trauma has played in the life of a victim; and

(b) encourage law enforcement officers to interact with victims with compassion and sensitivity in a nonjudgmental manner.

(10) "Unrestricted kit" means a sexual assault kit:

(a) that is not a restricted kit; and

(b) for which the associated sexual assault examination form is shared with law enforcement and the bureau.

~~[(7)]~~ (11) "Victim" means an individual against whom a sexual offense has been committed or allegedly been committed.

(12) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

Section 3. Section **53-10-902.1**, which is renumbered from Section 53-10-906 is renumbered and amended to read:

[53-10-906] 53-10-902.1 . Victim notification of rights.

~~[(4)]~~ Collecting facility personnel who conduct sexual assault examinations shall inform each victim of a sexual ~~[assault]~~ offense of:

~~[(a)]~~ (1) available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric conditions;

~~[(b)]~~ (2) available crisis intervention or other mental health services provided;

~~[(c)]~~ (3) the option to receive prophylactic medication to prevent sexually transmitted infections and pregnancy; and

~~[(d) the right to determine:]~~

~~[(i) whether to provide a personal statement about the sexual assault to law enforcement; and]~~

~~[(ii) if law enforcement should have access to any paperwork from the forensic examination; and]~~

~~[(e)]~~ (4) the victim's rights as provided in Section 77-37-3.

~~[(2) The collecting facility shall notify law enforcement as soon as practicable if the victim of a sexual assault decides to interview and discuss the assault with law enforcement.]~~

~~[(3) If a victim of a sexual assault declines to provide a personal statement about the sexual assault to law enforcement, the collecting facility shall provide a written notice to the victim that contains the following information:]~~

~~[(a) where the sexual assault kit will be stored;]~~

~~[(b) notice that the victim may choose to contact law enforcement any time after declining to provide a personal statement;]~~

~~[(c) the name, phone number, and email address of the law enforcement agency having~~

jurisdiction; and]

[(d) the name and phone number of a local rape crisis and services center.]

Section 4. Section **53-10-903.1** is enacted to read:

53-10-903.1 . Reporting of a sexual offense -- Collection of evidence -- Procedures.

(1)(a) In accordance with Section 26B-8-232, a sexual offense is subject to mandatory reporting to law enforcement by a collecting facility if:

(i) the victim is:

(A) 17 years old or younger; or

(B) a vulnerable adult; or

(ii) the victim sustained a serious bodily injury from the sexual offense.

(b) A collecting facility that collects evidence in a sexual assault kit during a sexual assault medical forensic examination of a victim of a sexual offense that is subject to mandatory reporting shall designate the victim's sexual assault kit as an unrestricted kit.

(2) In accordance with Section 26B-8-232, for a sexual offense that occurs on or after January 1, 2027, a victim of a sexual offense that is not subject to mandatory reporting under Subsection (1) may opt to:

(a) receive medical treatment for the sexual offense, without any report made to law enforcement; or

(b) receive or reject medical treatment and:

(i) provide a full report of the sexual offense to law enforcement, with evidence collected in a sexual assault kit designated as an unrestricted kit; or

(ii) provide a limited report to law enforcement under Subsection (3), with evidence collected in a sexual assault kit designated as a restricted kit.

(3) If a victim opts to provide a limited report to law enforcement under Subsection (2)(b)(ii):

(a) the collecting facility shall:

(i) collect evidence in a sexual assault kit and designate the kit as a restricted kit;

(ii) contact the law enforcement agency with jurisdiction over the location of the offense, if known, or the collection facility, if the location of the offense is unknown, and request a case number for the restricted kit, providing to law enforcement only the information described in Subsection (3)(c); and

(iii) ensure:

(A) the date of evidence collection, the law enforcement case number, and the

- 267 name of the collecting facility are included on the restricted kit; and
268 (B) the victim's name or other identifying information are not included on the
269 restricted kit;
- 270 (b) the victim shall decide whether to have the victim's restricted kit:
271 (i) stored, without any testing, at the law enforcement agency that supplied the
272 restricted kit's case number; or
273 (ii) submitted to the bureau for forensic testing and then stored as described in
274 Subsection (3)(b)(i), without having the results of the testing:
275 (A) used for investigative purposes; or
276 (B) compared to DNA profiles in DNA databases; and
- 277 (c) the limited report to law enforcement under Subsection (3)(a)(ii) shall include:
278 (i) the date of the victim's evidence collection;
279 (ii) the names of the collecting facility and treating personnel;
280 (iii) the gender of the victim;
281 (iv) the age band of the victim, selected from the following:
282 (A) 18 to 25 years old;
283 (B) 26 to 35 years old;
284 (C) 36 to 45 years old;
285 (D) 46 to 55 years old;
286 (E) 56 to 64 years old; or
287 (F) over 65 years old; and
288 (v) if known, the zip code of the offense.
- 289 (4) A collecting facility shall provide the victim of a restricted kit with:
290 (a) the case number associated with the victim's restricted kit and the name and contact
291 information for the law enforcement agency that provided the case number;
292 (b) contact information for the closest rape crisis and services center;
293 (c) methods for fully reporting the sexual offense to law enforcement if the victim
294 decides to do so at a later time, which will cause the restricted kit to be processed as
295 an unrestricted kit;
296 (d) information regarding potential future contact from a victim advocate if there is
297 reason to believe that the evidence from the victim's restricted kit may be linked to a
298 serial sexual offender; and
299 (e) if the victim has consented to testing of the restricted kit under Subsection (3)(b)(ii),
300 information on how to access the tracking system so that the victim may follow the

processing status of the victim's restricted kit.

(5)(a) A victim who consents only to medical treatment under Subsection (2)(a) or to a limited report to law enforcement under Subsection (3) may receive recommended medical treatment and evidence collection for the sexual offense in the same manner as a victim who has consented to a full report of the sexual offense to law enforcement.

(b)(i) A victim who receives medical treatment and evidence collection under Subsection (5)(a) is entitled to receive the medical treatment and evidence collection without charge to the victim to the same extent that the medical treatment and evidence collection would be provided to a victim who consents to a full report of the sexual offense to law enforcement.

(ii) Charges described in Subsection (5)(b)(i) include charges for evidence testing and retention.

Section 5. Section **53-10-904** is amended to read:

53-10-904 . Sexual assault kit processing -- Restricted kits.

- (1) Unless the health care provider designates a sexual assault kit as a restricted kit, the collecting facility shall enter the required victim information into the ~~[statewide sexual assault kit tracking system, defined in Section 53-10-907,]~~ tracking system within 24 hours of performing a sexual assault examination.
- (2) A ~~[restricted kit]~~ sexual assault kit may only be designated as a restricted kit:
 - (a) by a health care provider; ~~[and]~~
 - (b) at the time of collection; and
 - (c) in accordance with Section 53-10-903.1.
- (3) Each sexual assault kit collected by medical personnel shall be taken into custody by a law enforcement agency as soon as possible and within one business day of notice from the collecting facility.
- (4) The law enforcement agency that receives a sexual assault kit shall enter the required information into the ~~[statewide sexual assault kit tracking system, provided in Section 53-10-907,]~~ tracking system within five business days of receiving a sexual assault kit from a collecting facility.
- (5) ~~[Each sexual assault kit received by a]~~ A law enforcement agency that receives a sexual assault kit from a collecting facility that relates to an incident that occurred outside of the jurisdiction of the law enforcement agency shall ~~[be transferred]~~ transfer the sexual assault kit to the law enforcement agency with jurisdiction over the incident within 10

days of learning that ~~[another]~~ the other law enforcement agency has jurisdiction.

(6)(a) ~~Except [for restricted kits] as provided in Subsection (6)(b), each sexual assault kit and restricted kit shall be submitted to the [Utah Bureau of Forensic Services] bureau as soon as possible, but no later than 30 days after receipt by a law enforcement agency.~~

~~(b) [Restricted kits may not be submitted to the Utah Bureau of Forensic Services.]~~

~~[(c) Restricted kits shall be maintained by the law enforcement agency with jurisdiction, in accordance with the provisions of this part.]~~

~~[(d) A restricted kit may be changed to an unrestricted kit if -] A law enforcement agency shall store a restricted kit for which the victim has not permitted forensic testing by the bureau unless the victim later informs the designated law enforcement agency that [he or she] the victim wants to have the sexual assault kit processed and agrees to release of the sexual assault examination form associated with the sexual assault kit.~~

~~(c) [Once a victim indicates that he or she wants the sexual assault kit processed:]~~

~~[(i) the kit may no longer be classified as restricted; and]~~

~~[(ii) the kit shall be transmitted to the Utah Bureau of Forensic Services] After a law enforcement agency has received a victim's notification under Subsection (6)(b), the law enforcement agency shall transmit the victim's sexual assault kit to the bureau as soon as possible, but no later than 30 days after the [victim chooses to unrestrict his or her kit with law enforcement] day on which the victim notifies the law enforcement agency under Subsection (6)(b).~~

(7) If available, for an unrestricted kit, a suspect standard or a consensual partner elimination standard shall be submitted to the ~~[Utah Bureau of Forensic Services]~~ bureau:

(a) with the sexual assault kit, if available, at the time the sexual assault kit is submitted; or

(b) as soon as possible, but no later than 30 days ~~[from the date]~~ after the day on which the kit was obtained by the law enforcement agency, if not obtained until after the sexual assault kit is submitted.

(8)(a) For a restricted kit for which the victim has consented to limited testing under Subsection 53-10-903.1(3)(b)(ii), the bureau shall conduct the same forensic testing as an unrestricted kit but may not:

(i) compare evidence obtained in the restricted kit to DNA profiles in DNA databases; or

(ii) provide the victim's name or other identifying information with the results of the

- 369 testing except as described in Subsection (8)(c).
- 370 (b) The bureau shall:
- 371 (i) update the status of the testing described in Subsection (8)(a) in the tracking
- 372 system, including:
- 373 (A) if the kit has been submitted to the bureau;
- 374 (B) if the kit analysis is in process; and
- 375 (C) if the kit analysis is completed; and
- 376 (ii) once the limited testing is complete, transfer the restricted kit to the appropriate
- 377 law enforcement agency for storage.
- 378 (c) Once a victim has consented to a full report of the sexual offense to law enforcement,
- 379 the bureau may treat the victim's restricted kit as an unrestricted kit, including
- 380 comparing evidence obtained in the restricted kit to DNA profiles in DNA databases.
- 381 [(8)] (9) Failure to meet a deadline established in this part or as part of any rules established
- 382 by the department is not a basis for dismissal of a criminal action or a bar to the
- 383 admissibility of the evidence in a criminal action.
- 384 Section 6. Section **53-10-904.1**, which is renumbered from Section 53-10-903 is renumbered
- 385 and amended to read:
- 386 **[53-10-903] 53-10-904.1 . All sexual assault kits to be submitted.**
- 387 (1) Except as provided in [~~Subsection 53-10-904(5)~~] Section 53-10-904, beginning July 1,
- 388 2018, all sexual assault kits received by law enforcement agencies shall be submitted to
- 389 the [~~Utah Bureau of Forensic Services~~] bureau in accordance with the provisions of this
- 390 part.
- 391 (2) [~~The Utah Bureau of Forensic Services~~] Subject to Section 53-10-904, the bureau shall
- 392 test all sexual assault kits that the bureau receives with the goal of developing autosomal
- 393 DNA profiles that are eligible for entry into the Combined DNA Index System.
- 394 (3)(a) The testing of all sexual assault kits shall be completed within a specified amount
- 395 of time, as determined by administrative rule consistent with the provisions of this
- 396 part.
- 397 (b) The ability of the [~~Utah Bureau of Forensic Services~~] bureau to meet the established
- 398 time frames may be dependent upon the following factors:
- 399 (i) the number of sexual assault kits that the [~~Utah Bureau of Forensic Services~~]
- 400 bureau receives;
- 401 (ii) the technology available and improved testing methods;
- 402 (iii) fully trained and dedicated staff to meet the full workload needs of the [~~Utah~~]

~~Bureau of Forensic Services]~~ bureau; and

(iv) the number of lab requests received relating to other crime categories.

Section 7. Section **53-10-905.1**, which is renumbered from Section 53-10-907 is renumbered and amended to read:

[53-10-907] 53-10-905.1 . Statewide sexual assault kit tracking system.

(1) The department shall develop and implement a statewide tracking system that contains the following information[-] :

(a) subject to Section 53-10-904, for all sexual assault kits collected by law enforcement:

~~[(a)]~~ (i) the submission status of sexual assault kits by law enforcement to the ~~[Utah Bureau of Forensic Services]~~ bureau;

~~[(b)]~~ (ii) notification by the ~~[Utah Bureau of Forensic Services]~~ bureau to law enforcement of DNA analysis findings; and

~~[(c)]~~ (iii) the storage location of sexual assault kits[-] ; and

(b) for a restricted kit that has been submitted for testing under Section 53-10-904, a method for the victim to track the processing status of the victim's restricted kit.

(2) The tracking system shall include a secure electronic access that allows the submitting agency, collecting facility, department, and a victim, or ~~[his or her]~~ the victim's designee, to access or receive information, provided that the disclosure does not impede or compromise an active investigation, about the:

(a) lab submission status;

(b) DNA analysis findings provided to law enforcement; ~~[and]~~ or

(c) storage location of a sexual assault kit that was gathered from that victim.

Section 8. Section **53-10-906.1** is enacted to read:

53-10-906.1 . Contact option after a limited report of a sexual offense to law enforcement.

(1) As used in this section, "criminal justice system victim advocate" means the same as that term is defined in Section 77-38-403.

(2) A law enforcement agency may proceed with the procedure described in Subsection (3) if the law enforcement agency determines there is a reasonable likelihood that:

(a) there may be an individual who is committing a number of sexual offenses in a particular area; and

(b) evidence from a non-victim individual that was collected in a restricted kit may provide relevant evidence in the investigation described in Subsection (2)(a).

(3) After making a determination described in Subsection (2), a supervisory-level officer of

the law enforcement agency shall direct a criminal justice system victim advocate to initiate contact with the victim as described in Subsection (4).

(4) Upon notification from a law enforcement agency under Subsection (3), a criminal justice system victim advocate shall:

(a) contact the collecting facility that collected the victim's restricted kit;

(b) obtain the victim's contact information; and

(c) contact the victim as described in Subsection (5).

(5) A criminal justice system victim advocate who contacts a victim under Subsection (4) shall provide the victim with:

(a) a disclosure that information shared with the criminal justice system victim advocate is not confidential;

(b) information, including contact information, for accessing confidential victim advocates at a local rape crisis and services center;

(c) information regarding the law enforcement agency's request described in Subsection (2); and

(d) options for the victim, including:

(i) declining to participate; and

(ii) agreeing to participate and changing the victim's restricted kit to an unrestricted kit, which would provide the victim's consent to:

(A) have the law enforcement agency receive the victim's name and contact information and to contact the victim; and

(B) have any eligible DNA profiles developed from the victim's restricted kit compared to DNA profiles in DNA databases, released to law enforcement, and potentially used in a criminal investigation.

Section 9. Section **53-10-909** is amended to read:

53-10-909 . Rulemaking authority.

After consultation with the [~~Utah Bureau of Forensic Services~~] bureau and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules, consistent with this part, regarding:

(1) the procedures for the submission and testing of all sexual assault kits collected by law enforcement and prosecutorial agencies in the state;

(2) the information and evidence that is required to be submitted as part of each sexual assault kit submission; and

(3) goals for the completion of analysis and classification of all sexual assault kit

submissions.

Section 10. Section **53-10-910** is amended to read:

53-10-910 . Reporting requirement.

The [~~Department of Public Safety and the Utah Bureau of Forensic Services~~] department and bureau shall report by July 31 of each year to the Law Enforcement and Criminal Justice Interim Committee and the Criminal Justice Appropriations Subcommittee regarding:

- (1) the timelines set for testing all sexual assault kits submitted to the [~~Utah Bureau of Forensic Services~~] bureau as provided in Subsection [~~53-10-903(2)~~] 53-10-904.1(2);
- (2) the goals established in Section 53-10-909;
- (3) the status of meeting those goals;
- (4) the number of sexual assault kits that are sent to the [~~Utah Bureau of Forensic Services for testing;~~] bureau;
- (5) the number of restricted kits held by law enforcement;
- (6) the number of sexual assault kits that are not processed in accordance with the timelines established in this part; and
- (7) future appropriations requests that will ensure that all DNA cases can be processed according to the timelines established by this part.

Section 11. Section **53-10-911**, which is renumbered from Section 53-10-905 is renumbered and amended to read:

[~~53-10-905~~] 53-10-911 . Sexual assault kit retention and disposal -- Notification.

- (1) As used in this section:
 - (a) "Agency" means the same as that term is defined in Section 77-11a-101.
 - (b) "Agency" includes an evidence collecting or retaining entity as defined in Section 77-11c-101.
- (2) An agency with custody of a sexual assault kit, including a restricted kit, shall preserve the sexual assault kit in accordance with Title 77, Chapter 11c, Retention of Evidence.
- (3) An agency shall send a notice to a victim that the agency intends to dispose of a sexual assault kit if:
 - (a) the agency intends to dispose of the sexual assault kit before the applicable time period described in Section 77-11c-201, 77-11c-301, or 77-11c-401 expires; and
 - (b) the victim provided a written request to the agency investigating the sexual offense that the victim receive notice of when the agency intends to dispose of the sexual assault kit.
- (4) An agency shall send a notice of intent to dispose of a sexual assault kit to the victim:

(a) at least 180 days before the day on which the agency intends to dispose of the sexual assault kit; and

(b) by certified mail, return receipt requested, or a delivery service that provides proof of delivery.

(5) If a victim receives a notice of intent to dispose of a sexual assault kit, the victim may submit a written request, within the 180-day period described in Subsection (4)(a), that the agency retain the sexual assault kit.

(6) A notice of intent to dispose of a sexual assault kit shall provide the victim with information on how to submit a written request described in Subsection (5).

(7) If an agency receives a written request to retain the sexual assault kit from the victim within the 180-day period described in Subsection (4)(a), the agency shall retain the sexual assault kit for the applicable time period described in Section 77-11c-201, 77-11c-301, or 77-11c-401.

Section 12. Section **63M-7-502** is amended to read:

63M-7-502 . Definitions.

As used in this part:

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

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

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

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

(a) a victim;

(b) a dependent of a deceased victim; or

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

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

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

(a) the offender;

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

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

- (d) social security, Medicare, and Medicaid;
- (e) state-required temporary nonoccupational income replacement insurance or disability income insurance;
- (f) workers' compensation;
- (g) wage continuation programs of any employer;
- (h) proceeds of a contract of insurance payable to the claimant for the loss the claimant sustained because of the criminally injurious conduct;
- (i) a contract providing prepaid hospital and other health care services or benefits for disability; or
- (j) [veteran's] veteran benefits, including [veteran's] veteran hospitalization benefits.

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

(b) "Confidential record" includes:

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

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

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

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

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

(10)(a) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support.

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

(11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

(12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

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

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

(a) convicted of a crime;

(b) found delinquent; or

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

(15)(a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss.

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

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

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

(17) "Fraudulent claim" means a filed reparations based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.

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

(19)(a) "Interpersonal violence" means an act involving violence, physical harm, or a

threat of violence or physical harm, that is committed by an individual who is or has been in a domestic, dating, sexual, or intimate relationship with the victim.

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

(20) "Law enforcement agency" means a public or private agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision of this state.

(21) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(22)(a) "Medical examination" means a physical examination necessary to document criminally injurious conduct.

(b) "Medical examination" includes medical treatment, testing, and medications provided to a victim by a health care provider as part of a medical examination.

~~[(b)]~~ (c) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.

(23) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(24) "Misconduct" means conduct by the victim that was attributable to the injury or death of the victim as provided by rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(25) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.

(26) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.

(27) "Nonpublic restitution record" means a restitution record that contains a claimant's medical or mental health information.

(28) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.

(29) "Offender" means an individual who has violated Title 76, Utah Criminal Code, through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted.

(30) "Offense" means a violation of Title 76, Utah Criminal Code.

(31) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.

- (32) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.
- (33) "Public restitution record" means a restitution record that does not contain a claimant's medical or mental health information.
- (34)(a) "Rape crisis and services center" means a nonprofit entity that assists victims of sexual assault and victims' families by offering sexual assault crisis intervention and counseling through a sexual assault counselor.
- (b) "Rape crisis and services center" does not include a qualified institutional victim services provider as defined in Section 53H-14-401.
- (35) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.
- (36) "Reparations claim" means a claimant's request or application made to the office for a reparations award.
- (37)(a) "Reparations officer" means an individual employed by the office to investigate a claimant's request for reparations and award reparations under this part.
- (b) "Reparations officer" includes the director when the director is acting as a reparations officer.
- (38) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.
- (39)(a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual.
- (b) "Representative" does not include a service provider or collateral source.
- (40) "Restitution" means the same as that term is defined in Section 77-38b-102.
- (41)(a) "Restitution record" means a record documenting payments made to, or on behalf of, a claimant by the office that the office relies on to support a restitution request made in accordance with Section 77-38b-205.
- (b) "Restitution record" includes:
- (i) a notice of restitution;
 - (ii) an itemized list of payments;
 - (iii) an invoice, receipt, or bill submitted to the office for reimbursement; and
 - (iv) any documentation that the office relies on to establish a nexus between an

- offender's criminally injurious conduct and a reparations award made by the office.
- (42) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (43) "Service provider" means an individual or agency who provides a service to a claimant for a monetary fee, except attorneys as provided in Section 63M-7-524.
- (44) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.
- (45)(a) "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- (b) "Sexual assault" does not include criminal conduct described in:
- (i) Section 76-5-417, enticing a minor;
 - (ii) Section 76-5-418, sexual battery;
 - (iii) Section 76-5-419, lewdness; or
 - (iv) Section 76-5-420, lewdness involving a child.
- (46) "Sexual assault counselor" means an individual who:
- (a) is employed by or volunteers at a rape crisis and services center;
 - (b) has a minimum of 40 hours of training in counseling and assisting victims of sexual assault; and
 - (c) is under the supervision of the director of a rape crisis and services center or the director's designee.
- (47) "Strangulation" means any act involving the use of unlawful force or violence that:
- (a) impedes breathing or the circulation of blood; and
 - (b) is likely to produce a loss of consciousness by:
 - (i) applying pressure to the neck or throat of an individual; or
 - (ii) obstructing the nose, mouth, or airway of an individual.
- (48) "Substantial bodily injury" means the same as that term is defined in Section 76-1-101.5.
- (49)(a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:
- (i) criminally injurious conduct; or
 - (ii) the production of pornography in violation of Section 76-5b-201 or 76-5b-201.1 if the individual is a minor.
- (b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in

accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (50) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Section 13. Section **77-11c-101** is amended to read:

77-11c-101 . Definitions.

As used in this chapter:

- (1) "Acquitted" means the same as that term is defined in Section 77-11b-101.
- (2) "Adjudicated" means that:
- (a)(i) a judgment of conviction by plea or verdict of an offense has been entered by a court; and
- (ii) a sentence has been imposed by the court; or
- (b) a judgment has been entered for an adjudication of an offense by a juvenile court under Section 80-6-701.
- (3) "Adjudication" means:
- (a) a judgment of conviction by plea or verdict of an offense; or
- (b) an adjudication for an offense by a juvenile court under Section 80-6-701.
- (4) "Agency" means the same as that term is defined in Section 77-11a-101.
- (5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the United States Supreme Court.
- (6)(a) "Biological evidence" means an item that contains blood, semen, hair, saliva, epithelial cells, latent fingerprint evidence that may contain biological material suitable for DNA testing, or other identifiable human biological material that:
- (i) is collected as part of an investigation or prosecution of a violent felony offense; and
- (ii) may reasonably be used to incriminate or exculpate a person for the violent felony offense.
- (b) "Biological evidence" includes:
- (i) material that is catalogued separately, including:
- (A) on a slide or swab; or
- (B) inside a test tube, if the evidentiary sample that previously was inside the test tube has been consumed by testing;

- (ii) material that is present on other evidence, including clothing, a ligature, bedding, a drinking cup, a cigarette, or a weapon, from which a DNA profile may be obtained;
- (iii) the contents of a sexual assault kit; and
- (iv) for a violent felony offense, material described in this Subsection (6) that is in the custody of an evidence collecting or retaining entity on May 4, 2022.
- (7) "Claimant" means the same as that term is defined in Section 77-11a-101.
- (8) "Computer" means the same as that term is defined in Section 77-11a-101.
- (9) "Continuous chain of custody" means:
- (a) for a law enforcement agency or a court, that legal standards regarding a continuous chain of custody are maintained; and
- (b) for an entity that is not a law enforcement agency or a court, that the entity maintains a record in accordance with legal standards required of the entity.
- (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
- (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- (12) "Court" means a municipal, county, or state court.
- (13) "DNA" means deoxyribonucleic acid.
- (14) "DNA profile" means a unique identifier of an individual derived from DNA.
- (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- (16) "Evidence" means property, contraband, or an item or substance that:
- (a) is seized or collected as part of an investigation or prosecution of an offense; and
- (b) may reasonably be used to incriminate or exculpate an individual for an offense.
- (17)(a) "Evidence collecting or retaining entity" means an entity within the state that collects, stores, or retrieves biological evidence.
- (b) "Evidence collecting or retaining entity" includes:
- (i) a medical or forensic entity;
- (ii) a law enforcement agency;
- (iii) a court; and
- (iv) an official, employee, or agent of an entity or agency described in this Subsection (17).
- [~~(v)~~] (c) "Evidence collecting or retaining entity" does not include a collecting facility defined in Section [~~53-10-902~~] 53-10-901.1.
- (18) "Exhibit" means property, contraband, or an item or substance that is admitted into evidence for a court proceeding.

(19) "In custody" means an individual who:

(a) is incarcerated, civilly committed, on parole, or on probation; or

(b) is required to register under Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry.

(20) "Law enforcement agency" means the same as that term is defined in Section 77-11a-101.

(21) "Medical or forensic entity" means a private or public hospital, medical facility, or other entity that secures biological evidence or conducts forensic examinations related to criminal investigations.

(22) "Physical evidence" includes evidence that:

(a) is related to:

(i) an investigation;

(ii) an arrest; or

(iii) a prosecution that resulted in a judgment of conviction; and

(b) is in the actual or constructive possession of a law enforcement agency or a court or an agent of a law enforcement agency or a court.

(23) "Property" means the same as that term is defined in Section 77-11a-101.

(24) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.

(25) "Sexual assault kit" means the same as that term is defined in Section ~~[53-10-902]~~ 53-10-901.1.

(26) "Victim" means the same as that term is defined in Section ~~[53-10-902]~~ 53-10-901.1.

(27) "Violent felony offense" means the same as the term "violent felony" is defined in Section 76-3-203.5.

(28) "Wildlife" means the same as that term is defined in Section 23A-1-101.

Section 14. Section **77-11c-202** is amended to read:

**77-11c-202 . Requirements for not retaining evidence of a misdemeanor offense --
Preservation of sufficient evidence.**

(1) An agency is not required to retain evidence of a misdemeanor offense under Section 77-11c-201 if:

(a)(i) the agency determines that:

(A) the size, bulk, or physical character of the evidence renders retention impracticable; or

(B) the evidence poses a security or safety problem for the agency;

(ii) the agency preserves sufficient evidence of the property, contraband, item, or

- 811 substance for use as evidence in a prosecution of the offense;
- 812 (iii) the agency sends a written request under Subsection 77-11c-203(1) to the
- 813 prosecuting attorney for permission to return or dispose of the evidence; and
- 814 (iv) the prosecuting attorney grants the agency's written request in accordance with
- 815 Section 77-11c-203;
- 816 (b) a court orders the agency to return evidence that is property to a claimant under
- 817 Section 77-11a-305; or
- 818 (c) the evidence is wildlife or parts of wildlife.
- 819 (2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a
- 820 misdemeanor offense that is a sexual assault kit before the day on which the time period
- 821 described in Section 77-11c-201 expires if:
- 822 (a) the agency sends a notice to the victim as described in Section [53-10-905] 53-10-911;
- 823 and
- 824 (b) the victim submits a written request for retention of the evidence within the 180-day
- 825 period described in Section [53-10-905] 53-10-911.
- 826 (3)(a) Subsection (1) does not require an agency to return or dispose of evidence of a
- 827 misdemeanor offense.
- 828 (b) Subsection (1)(a) does not apply when the return or disposal of evidence of a
- 829 misdemeanor offense is in compliance with a memorandum of understanding
- 830 between the agency and the prosecuting attorney.
- 831 (4) If the evidence described in Subsection (1) is a controlled substance, an agency shall
- 832 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 833 (a) collecting and preserving a sample of the controlled substance for independent
- 834 testing and use as evidence;
- 835 (b) taking a photographic or video record of the controlled substance with identifying
- 836 case numbers;
- 837 (c) maintaining a written report of a chemical analysis of the controlled substance if a
- 838 chemical analysis was performed by the agency; and
- 839 (d) if the controlled substance exceeds 10 pounds, retain at least one pound of the
- 840 controlled substance that is randomly selected from the controlled substance.
- 841 (5) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
- 842 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 843 (a) collecting and preserving a sample of the controlled substance from the drug
- 844 paraphernalia for independent testing and use as evidence;

- (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a chemical analysis was performed by the agency; and
- (c) taking a photographic or video record of the drug paraphernalia with identifying case numbers.

(6) If the evidence described in Subsection (1) is a computer, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:

- (a) extracting all data from the computer that would be evidence in a prosecution of an individual for the offense; and
- (b) taking a photographic or video record of the computer with identifying case numbers.

(7) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the property, contraband, item, or substance by taking a photographic or video record of the property, contraband, item, or substance with identifying case numbers.

Section 15. Section **77-11c-302** is amended to read:

**77-11c-302 . Requirements for not retaining evidence of felony offense --
Preservation of sufficient evidence.**

(1) An agency is not required to retain evidence of a felony offense under Section 77-11c-301 if:

(a)(i) the agency determines that:

(A) the size, bulk, or physical character of the evidence renders retention impracticable or the evidence poses a security or safety problem for the agency; and

(B) the evidence no longer has any significant evidentiary value;

(ii) the agency preserves sufficient evidence from the property, contraband, item, or substance for use as evidence in a prosecution of the offense; and

(iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the evidence as described in ~~[Subsection]~~ Section 77-11c-303;

(b) a court orders the agency to return evidence that is property to a claimant under Section 77-11a-305; or

(c) the evidence is wildlife or parts of wildlife.

(2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a felony offense that is a sexual assault kit before the day on which the time period described in Section 77-11c-301 expires if:

(a) the agency sends a notice to the victim in accordance with Section ~~[53-10-905]~~

- 879 53-10-911; and
- 880 (b) the victim submits a written request for retention of the evidence within the 180-day
- 881 period described in Section [~~53-10-905~~] 53-10-911.
- 882 (3) Subsection (1) does not require an agency to return or dispose of evidence of a felony
- 883 offense.
- 884 (4) Subsection (1) does not apply to biological evidence of a violent felony offense because
- 885 an agency is required to retain biological evidence of a violent felony offense as
- 886 described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.
- 887 (5) If the evidence described in Subsection (1) is a controlled substance, an agency shall
- 888 preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:
- 889 (a) collecting and preserving a sample of the controlled substance for independent
- 890 testing and use as evidence;
- 891 (b) taking a photographic or video record of the controlled substance with identifying
- 892 case numbers;
- 893 (c) maintaining a written report of a chemical analysis of the controlled substance if a
- 894 chemical analysis was performed by the agency;
- 895 (d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the
- 896 controlled substance that is randomly selected from the controlled substance; and
- 897 (e) for a violent felony offense, collecting and preserving biological evidence from the
- 898 controlled substance as described in Section 77-11c-401.
- 899 (6) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall
- 900 preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:
- 901 (a) collecting and preserving a sample of the controlled substance from the drug
- 902 paraphernalia for independent testing and use as evidence;
- 903 (b) maintaining a written report of a chemical analysis of the drug paraphernalia if a
- 904 chemical analysis was performed by the agency;
- 905 (c) taking a photographic or video record of the drug paraphernalia with identifying case
- 906 numbers; and
- 907 (d) for a violent felony offense, collecting and preserving biological evidence from the
- 908 drug paraphernalia as described in Section 77-11c-401.
- 909 (7) If the evidence described in Subsection (1) is a computer, the agency shall preserve
- 910 sufficient evidence under Subsection (1)(a)(ii) of the computer by:
- 911 (a) extracting all data from the computer that would be evidence in a prosecution of an
- 912 individual for the offense;

(b) taking a photographic or video record of the computer with identifying case numbers; and

(c) for a violent felony offense, collecting and preserving biological evidence from the computer as described in Section 77-11c-401.

(8) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the property, contraband, item, or substance by:

(a) taking a photographic or video record of the property, contraband, item, or substance with identifying case numbers; and

(b) for a violent felony offense, collecting and preserving biological evidence as described in Section 77-11c-401.

Section 16. Section **77-11c-401** is amended to read:

77-11c-401 . Preservation of biological evidence -- Procedures -- Inventory request.

(1) Except as provided in Section 77-11c-402, an evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense in accordance with this part.

(2) An evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense:

(a) for the longer of:

(i) the length of the statute of limitations for the violent felony offense if:

(A) no charges are filed for the violent felony offense; or

(B) the violent felony offense remains unsolved;

(ii) the length of time that any individual convicted of the violent felony offense, or a lesser included offense, remains in custody;

(iii) one year after the day on which all direct appeals of the judgment for any individual convicted of the violent felony offense, or a lesser included offense, are exhausted;

(iv) the length of time that a petition for postconviction relief, and any appeal of the petition, is pending if an individual convicted of the violent felony offense files the petition within the one-year time period described in Subsection (2)(a)(iii); or

(v) 20 years from the day on which the biological evidence is collected if the biological evidence is the contents of a sexual assault kit; or

(b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the violent felony offense resulted in an acquittal or dismissal.

- 947 (3) An evidence collecting or retaining entity shall ensure that biological evidence under
948 Subsection (2) is:
- 949 (a) preserved in an amount and manner sufficient to:
- 950 (i) develop a DNA profile; and
- 951 (ii) if practicable, allow for independent testing of the biological evidence by a
952 defendant; and
- 953 (b) subject to a continuous chain of custody.
- 954 (4)(a) Upon request by a defendant under Title 63G, Chapter 2, Government Records
955 Access and Management Act, the evidence collecting or retaining entity shall prepare
956 an inventory of the biological evidence preserved in connection with the defendant's
957 criminal case.
- 958 (b) If the evidence collecting or retaining entity cannot locate biological evidence
959 requested under Subsection (4)(a), the custodian for the entity shall provide a sworn
960 affidavit to the defendant that:
- 961 (i) describes the efforts taken to locate the biological evidence; and
- 962 (ii) affirms that the biological evidence could not be located.
- 963 (5)(a) If the evidence collecting or retaining entity intends to dispose of biological
964 evidence of a violent felony offense before the day on which the period described in
965 Subsection (2) expires, the evidence collecting or retaining entity shall send a notice
966 of intent to dispose of the biological evidence that:
- 967 (i) is sent by certified mail, return receipt requested, or a delivery service that
968 provides proof of delivery, to:
- 969 (A) an individual who remains in custody based on a criminal conviction related
970 to the biological evidence;
- 971 (B) the private attorney or public defender of record for each individual described
972 in Subsection (5)(a)(i)(A);
- 973 (C) the entity that employed the private attorney or public defender at the time of
974 the criminal conviction;
- 975 (D) if applicable, the prosecuting agency responsible for the prosecution of each
976 individual described in Subsection (5)(a)(i)(A); and
- 977 (E) the Utah attorney general; and
- 978 (ii) explains that the party receiving the notice may:
- 979 (A) file a motion for testing of biological evidence under Section 78B-9-301 if the
980 party is the individual convicted of the violent felony offense; or

- 981 (B) submit a written request that the evidence collecting or retaining entity retain
982 the biological evidence.
- 983 (b) An individual must file a motion, or submit a written request, described in
984 Subsection (5)(a)(ii) within 180 days after the day on which the evidence collecting
985 or retaining entity receives proof of delivery under Subsection (5)(a).
- 986 (c) An evidence collecting or retaining entity shall send a notice of intent to dispose of
987 biological evidence that is the contents of a sexual assault kit to a victim in
988 accordance with Section ~~[53-10-905]~~ 53-10-911.
- 989 (6) The evidence collecting or retaining entity may not dispose of biological evidence of a
990 violent felony offense before the day on which the time period described in Subsection
991 (2) expires if:
- 992 (a) the evidence collecting or retaining entity is required by federal or state law to
993 preserve the biological evidence; or
- 994 (b)(i) the evidence collecting or retaining entity sends notice in accordance with:
- 995 (A) Subsection (5); and
- 996 (B) Section ~~[53-10-905]~~ 53-10-911 if the biological evidence is the contents of a
997 sexual assault kit; and
- 998 (ii) an individual notified under Subsection (5)(a) or Section ~~[53-10-905]~~ 53-10-911:
- 999 (A) files a motion for testing of the biological evidence under Section 78B-9-301
1000 within the 180-day period described in Subsection (5)(b); or
- 1001 (B) submits a written request for retention of the biological evidence within the
1002 180-day period described in Subsection (5)(b) or Section ~~[53-10-905]~~ 53-10-911.
- 1003 (7)(a) Subject to Subsections (7)(b) and (c), if the evidence collecting or retaining entity
1004 receives a written request to retain the biological evidence, the evidence collecting or
1005 retaining entity shall retain the biological evidence for the time period described in
1006 Subsection (2).
- 1007 (b) Subject to Subsection (7)(c), the evidence collecting or retaining entity may only
1008 return or dispose of physical evidence as described in Part 3, Retention of Evidence
1009 for Felony Offenses.
- 1010 (c) If the evidence collecting or retaining entity is not required to retain physical
1011 evidence of the violent felony offense under Part 3, Retention of Evidence for Felony
1012 Offenses, before returning or disposing of the physical evidence, the evidence
1013 collecting or retaining entity shall:
- 1014 (i) remove the portions of the physical evidence likely to contain biological evidence

related to the violent felony offense; and

- (ii) preserve the removed biological evidence in a quantity sufficient to permit future DNA testing.

(8) To comply with the preservation requirements described in this section, a law enforcement agency or a court may:

- (a) retain the biological evidence; or
- (b) if a continuous chain of custody can be maintained, return the biological evidence to the custody of the other law enforcement agency that originally provided the biological evidence to the law enforcement agency.

Section 17. Section **77-37-2** is amended to read:

77-37-2 . Definitions.

As used in this chapter:

- (1) "Alleged sexual offender" means the same as that term is defined in Section 53-10-801.
- (2) "Child" means a person who is younger than 18 years old, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.
- (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.
- (4) "HIV infection" means the same as that term is defined in Section 53-10-801.
- (5) "Sexual assault kit" means the same as that term is defined in Section [53-10-902] 53-10-901.1.
- (6)(a) "Sexual offense" means any conduct described in:
 - (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (ii) ~~[Title 76, Chapter 5b, Sexual Exploitation Act; or]~~ Section 76-5b-201, sexual exploitation of a minor;
 - (iii) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
 - (iv) Section 76-5b-202, sexual exploitation of a vulnerable adult;
 - (v) Section 76-5b-204, sexual extortion; or
 - ~~[(iii)]~~ (vi) Section 76-7-102, incest.
- (b) "Sexual offense" does not include conduct described in:
 - ~~[(i) Section 76-5-417, enticing a minor;]~~
 - ~~[(ii) Section 76-5-420, lewdness involving a child; or]~~
 - (i) Section 76-5-421, indecent exposure of another individual;
 - (ii) Section 76-5-423, unlawful sexual activity with a child using virtual reality; or
 - (iii) Section 76-5-424, unlawful sexual activity with a minor using virtual reality.

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

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

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

Section 18. Section ~~77-37-3~~ is amended to read:

~~77-37-3~~ . Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a)(i) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding tampering with a witness, and Section 76-8-509, regarding extortion or bribery to dismiss a criminal proceeding.

(ii) Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b)(i) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process.

(ii) All criminal justice agencies have the duty to provide this information and assistance.

(c)(i) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses.

(ii) All criminal justice agencies have the duty to provide these explanations.

(d)(i) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants.

(ii) Agencies controlling facilities shall, whenever possible, provide this area.

(e)(i) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, [~~Title 77, Chapter 38b~~] Chapter 38b, Crime Victims Restitution Act, and Section 80-6-710.

- 1083 (ii) State and local government agencies that serve victims have the duty to have a
1084 functional knowledge of the procedures established by the Utah Office for
1085 Victims of Crime and to inform victims of these procedures.
- 1086 (f)(i) Victims and witnesses have a right to have any personal property returned as
1087 provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d,
1088 Lost or Mislaid Property.
- 1089 (ii) Criminal justice agencies shall expeditiously return the property when it is no
1090 longer needed for court law enforcement or prosecution purposes.
- 1091 (g)(i) Victims and witnesses have the right to reasonable employer intercession
1092 services, including pursuing employer cooperation in minimizing employees' loss
1093 of pay and other benefits resulting from their participation in the criminal justice
1094 process.
- 1095 (ii) Officers of the court shall provide these services and shall consider victims' and
1096 witnesses' schedules so that activities which conflict can be avoided.
- 1097 (iii) Where conflicts cannot be avoided, the victim may request that the responsible
1098 agency intercede with employers or other parties.
- 1099 (h)(i) Victims and witnesses, particularly children, should have a speedy disposition
1100 of the entire criminal justice process.
- 1101 (ii) All involved public agencies shall establish policies and procedures to encourage
1102 speedy disposition of criminal cases.
- 1103 (i)(i) Victims and witnesses have the right to timely notice of judicial proceedings
1104 they are to attend and timely notice of cancellation of any proceedings.
- 1105 (ii) Criminal justice agencies have the duty to provide these notifications.
- 1106 (iii) Defense counsel and others have the duty to provide timely notice to prosecution
1107 of any continuances or other changes that may be required.
- 1108 (2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual
1109 offense has the right to:
- 1110 (a) request voluntary testing for themselves for HIV infection as described in Section
1111 53-10-803;
- 1112 (b) request mandatory testing of the alleged sexual offender for HIV infection as
1113 described in Section 53-10-802;
- 1114 (c) not to be prevented from, or charged for, a medical forensic examination, including
1115 when collected evidence is designated by the victim as a restricted kit;
- 1116 (d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit,

- 1117 preserved for the time periods described in Chapter 11c, Retention of Evidence,
1118 without any charge to the victim;
- 1119 (e) be informed whether a DNA profile was obtained from the testing of the evidence in
1120 a sexual assault kit or from other crime scene evidence;
- 1121 (f) be informed whether a DNA profile developed from the evidence in a sexual assault
1122 kit, or from other crime scene evidence, has been entered into the Utah Combined
1123 DNA Index System;
- 1124 (g) be informed of any result from a sexual assault kit or from other crime scene
1125 evidence if that disclosure would not impede or compromise an ongoing
1126 investigation, including:
- 1127 (i) whether there is a match between a DNA profile developed from the evidence in a
1128 sexual assault kit, or from other crime scene evidence, and a DNA profile
1129 contained in the Utah Combined DNA Index System; and
- 1130 (ii) a toxicology result or other information that is collected from a sexual assault kit
1131 as part of a medical forensic examination of the victim;
- 1132 (h) be informed in writing of policies governing the collection and preservation of a
1133 sexual assault kit;
- 1134 (i) be informed of the status and location of a sexual assault kit;
- 1135 (j) upon written request by the victim, receive a notice of intent from an agency, as
1136 defined in Section ~~[53-10-905]~~ 53-10-911, if the agency intends to destroy or dispose
1137 of evidence from a sexual assault kit;
- 1138 (k) be granted further preservation of the sexual assault kit if the agency, as defined in
1139 Section ~~[53-10-905]~~ 53-10-911, intends to destroy or dispose of evidence from a
1140 sexual assault kit and the victim submits a written request as described in Section [
1141 ~~53-10-905]~~ 53-10-911;
- 1142 (l) designate a person of the victim's choosing to act as a recipient of the information
1143 provided under this Subsection (2) or Subsections (3) and (4); and
- 1144 (m) be informed of all the enumerated rights in this Subsection (2).
- 1145 (3) Subsections (2)(e) through (g) do not require that the law enforcement agency
1146 communicate with the victim or the victim's designee regarding the status of DNA
1147 testing, absent a specific request received from the victim or the victim's designee.
- 1148 (4) A law enforcement agency investigating a sexual offense may:
- 1149 (a) release the information indicated in Subsections (2)(e) through (g) upon the request
1150 of the victim of the sexual offense, or the victim's designee and is the designated

- 1151 agency to provide that information to the victim or the victim's designee;
1152 (b) require that the victim's request be in writing; and
1153 (c) respond to the victim's request with verbal communication, written communication,
1154 or by email if an email address is available.
- 1155 (5) A law enforcement agency investigating a sexual offense shall:
1156 (a) notify the victim of the sexual offense, or the victim's designee, if the law
1157 enforcement agency determines that DNA evidence will not be analyzed in a case
1158 where the identity of the perpetrator has not be confirmed;
1159 (b) provide the information described in this section in a timely manner; and
1160 (c) upon request of the victim or the victim's designee, advise the victim or the victim's
1161 designee of any significant changes in the information of which the law enforcement
1162 agency is aware.
- 1163 (6) The law enforcement agency investigating the sexual offense is responsible for
1164 informing the victim of the sexual offense, or the victim's designee, of the rights
1165 established under this section.
- 1166 (7) Informational rights of the victim under this chapter are based upon the victim
1167 providing the current name, address, telephone number, and email address, if an email
1168 address is available, of the person to whom the information should be provided to the
1169 criminal justice agencies involved in the case.

1170 Section 19. Section **78A-6-104** is amended to read:

1171 **78A-6-104 . Concurrent jurisdiction of the juvenile court -- Transfer of a**
1172 **protective order.**

- 1173 (1)(a) The juvenile court has jurisdiction, concurrent with the district court:
1174 (i) to establish parentage, or to order testing for purposes of establishing parentage,
1175 for a child in accordance with Title 81, Chapter 5, Uniform Parentage Act, when a
1176 proceeding is initiated under Title 80, Chapter 3, Abuse, Neglect, and Dependency
1177 Proceedings, or Title 80, Chapter 4, Termination and Restoration of Parental
1178 Rights, that involves the child;
1179 (ii) over a petition to modify a minor's birth certificate if the juvenile court has
1180 jurisdiction over the minor's case under Section 78A-6-103; and
1181 (iii) over questions of custody, support, and parent-time of a minor if the juvenile
1182 court has jurisdiction over the minor's case under Section 78A-6-103.
- 1183 (b) If the juvenile court obtains jurisdiction over a parentage action under Subsection
1184 (1)(a)(i), the juvenile court may:

- 1185 (i) retain jurisdiction over the parentage action until parentage of the child is
1186 adjudicated; or
- 1187 (ii) transfer jurisdiction over the parentage action to the district court.
- 1188 (2)(a) The juvenile court has jurisdiction, concurrent with the district court or the justice
1189 court otherwise having jurisdiction, over a criminal information filed under Part 4a,
1190 Adult Criminal Proceedings, for an adult alleged to have committed:
- 1191 (i) an offense under Section 32B-4-403, unlawful sale, offer for sale, or furnishing to
1192 a minor;
- 1193 (ii) an offense under Section 53G-6-202, failure to comply with compulsory
1194 education requirements;
- 1195 (iii) an offense under Section 80-2-609, failure to report;
- 1196 (iv) a misdemeanor offense under Section 76-5-303, custodial interference;
- 1197 (v) an offense under Section 76-4-206, contributing to the delinquency of a minor; or
- 1198 (vi) an offense under Section 80-5-601, harboring a runaway.
- 1199 (b) It is not necessary for a minor to be adjudicated for an offense or violation of the law
1200 under Section 80-6-701 for the juvenile court to exercise jurisdiction under
1201 Subsection (2)(a).
- 1202 (3)(a) When a support, custody, or parent-time award has been made by a district court
1203 in a divorce action or other proceeding, and the jurisdiction of the district court in the
1204 case is continuing, the juvenile court may acquire jurisdiction in a case involving the
1205 same child if the child comes within the jurisdiction of the juvenile court under
1206 Section 78A-6-103.
- 1207 (b)(i) The juvenile court may, by order, change the custody subject to Subsection [
1208 ~~81-9-204(4)~~] 81-9-204(5), support, parent-time, and visitation rights previously
1209 ordered in the district court as necessary to implement the order of the juvenile
1210 court for the safety and welfare of the child.
- 1211 (ii) An order by the juvenile court under Subsection (3)(b)(i) remains in effect so
1212 long as the juvenile court continues to exercise jurisdiction.
- 1213 (c) If a copy of the findings and order of the juvenile court under this Subsection (3) are
1214 filed with the district court, the findings and order of the juvenile court are binding on
1215 the parties to the divorce action as though entered in the district court.
- 1216 (4) This section does not deprive the district court of jurisdiction to:
- 1217 (a) appoint a guardian for a child;
- 1218 (b) determine the support, custody, and parent-time of a child upon writ of habeas

corpus; or

(c) determine a question of support, custody, and parent-time that is incidental to the determination of an action in the district court.

(5) A juvenile court may transfer a petition for a protective order for a child to the district court if the juvenile court has entered an ex parte protective order and finds that:

(a) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(b) the district court has a petition pending or an order related to custody or parent-time entered under Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, Title 81, Chapter 4, Part 4, Divorce, or Title 81, Chapter 5, Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(c) the best interests of the child will be better served in the district court.

Section 20. Section **80-4-301** is amended to read:

80-4-301 . Grounds for termination of parental rights -- Findings regarding reasonable efforts by division.

(1) As used in this section:

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

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

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

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

(b) "Sexual offense" does not include conduct described in:

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

(ii) Section 76-5-420, lewdness involving a child; or

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

(2) Subject to the protections and requirements of Section 80-4-104, and if, based on the totality of the circumstances, the juvenile court finds termination of parental rights, from the child's point of view, is strictly necessary to promote the child's best interest, the juvenile court may terminate all parental rights with respect to the parent if the juvenile court finds:

(a) the parent has abandoned the child;

(b) the parent has neglected or abused the child;

(c) the parent is unfit or incompetent;

(d)(i) the parent was convicted of a sexual offense[~~, as defined in Section 77-37-2,~~] or

- 1253 a comparable offense under the laws of the state where the offense occurred,
1254 against the other parent of the child;
- 1255 (ii) the offense resulted in the conception of the child; and
1256 (iii) termination is in the best interest of the child;
- 1257 (e)(i) the child is being cared for in an out-of-home placement under the supervision
1258 of the juvenile court or the division;
- 1259 (ii) the parent has substantially neglected, willfully refused, or has been unable or
1260 unwilling to remedy the circumstances that cause the child to be in an
1261 out-of-home placement; and
- 1262 (iii) there is a substantial likelihood that the parent will not be capable of exercising
1263 proper and effective parental care in the near future;
- 1264 (f) failure of parental adjustment, as defined in this chapter;
- 1265 (g) only token efforts have been made by the parent:
- 1266 (i) to support or communicate with the child;
1267 (ii) to prevent neglect of the child;
1268 (iii) to eliminate the risk of serious harm to the child; or
1269 (iv) to avoid being an unfit parent;
- 1270 (h)(i) the parent has voluntarily relinquished the parent's parental rights to the child;
1271 and
1272 (ii) termination is in the child's best interest;
- 1273 (i) after a period of trial during which the child was returned to live in the child's own
1274 home, the parent substantially and continuously or repeatedly refused or failed to
1275 give the child proper parental care and protection; or
- 1276 (j) the terms and conditions of safe relinquishment of a newborn child have been
1277 complied with as described in Part 5, Safe Relinquishment of a Newborn Child.
- 1278 ~~[(2)]~~ (3) When determining whether termination of parental rights is strictly necessary to
1279 promote the child's best interest, the court shall:
- 1280 (a) undertake the analysis from the child's point of view;
1281 (b) focus on finding the outcome that best secures the child's well-being;
1282 (c) include, as applicable, the considerations described in Sections 80-4-303 and
1283 80-4-304; and
- 1284 (d) explore whether other feasible options exist that could address the specific problems
1285 or issues facing the family, short of imposing the ultimate remedy of terminating the
1286 parent's rights.

~~[(3)]~~ (4) The juvenile court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

~~[(4)]~~ (5)(a) Except as provided in Subsection ~~[(4)(b)]~~ (5)(b), in any case in which the juvenile court has directed the division to provide reunification services to a parent, the juvenile court must find that the division made reasonable efforts to provide those services before the juvenile court may terminate the parent's rights under Subsection [~~(1)(b), (c), (e), (f), (g), or (i);~~] (2)(b), (c), (e), (f), (g), or (i).

(b) Notwithstanding Subsection ~~[(4)(a)]~~ (5)(a), the juvenile court is not required to make the finding under Subsection ~~[(4)(a)]~~ (5)(a) before terminating a parent's rights:

- (i) under Subsection ~~[(1)(b)]~~ (2)(b), if the juvenile court finds that the abuse or neglect occurred subsequent to adjudication; or
- (ii) if reasonable efforts to provide the services described in Subsection ~~[(4)(a)]~~ (5)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Section 21. Section **81-9-204** is amended to read:

81-9-204 . Custody and parent-time of a minor child -- Custody factors --

Preferences.

(1) As used in this section:

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

- (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
- (ii) Title 76, Chapter 5b, Sexual Exploitation Act; or
- (iii) Section 76-7-102, incest.

(b) "Sexual offense" does not include conduct described in:

- (i) Section 76-5-417, enticing a minor;
- (ii) Section 76-5-420, lewdness involving a child; or
- (iii) Section 76-5b-206, failure to report child sexual abuse material by a computer technician.

(2) In a proceeding between parents in which the custody and parent-time of a minor child is at issue, the court shall consider the best interests of the minor child in determining any form of custody and parent-time.

~~[(2)]~~ (3) The court shall determine whether an order for custody or parent-time is in the best interests of the minor child by a preponderance of the evidence.

~~[(3)]~~ (4) In determining any form of custody and parent-time under Subsection ~~[(1)]~~ (2), the court shall consider:

- (a) for each parent, and in accordance with Section 81-9-104, evidence of domestic violence, physical abuse, or sexual abuse involving the minor child, the parent, or a household member of the parent;
- (b) whether the parent has intentionally exposed the minor child to:
 - (i) pornography; or
 - (ii) material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-5c-101; and
- (c) whether custody and parent-time would endanger the minor child's health or physical or psychological safety.

[~~(4)~~] (5) In determining the form of custody and parent-time that is in the best interests of the minor child, the court may consider, among other factors the court finds relevant, the following for each parent:

- (a) evidence of psychological maltreatment;
- (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the minor child, including the minor child's:
 - (i) physical needs;
 - (ii) emotional needs;
 - (iii) educational needs;
 - (iv) medical needs; and
 - (v) any special needs;
- (c) the parent's capacity and willingness to function as a parent, including:
 - (i) parenting skills;
 - (ii) co-parenting skills, including:
 - (A) ability to appropriately communicate with the other parent;
 - (B) ability to encourage the sharing of love and affection; and
 - (C) willingness to allow frequent and continuous contact between the minor child and the other parent, except that, if the court determines that the parent is acting to protect the minor child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and
 - (iii) ability to provide personal care rather than surrogate care;
- (d) the past conduct and demonstrated moral character of the parent as described in Subsection [~~(9)~~] (10);
- (e) the emotional stability of the parent;
- (f) the parent's inability to function as a parent because of drug abuse, excessive

drinking, or other causes;

- (g) the parent's reason for having relinquished custody or parent-time in the past;
- (h) duration and depth of desire for custody or parent-time;
- (i) the parent's religious compatibility with the minor child;
- (j) the parent's financial responsibility;
- (k) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the minor child's best interests;
- (l) who has been the primary caretaker of the minor child;
- (m) previous parenting arrangements in which the minor child has been happy and well-adjusted in the home, school, and community;
- (n) the relative benefit of keeping siblings together;
- (o) the stated wishes and concerns of the minor child, taking into consideration the minor child's cognitive ability and emotional maturity;
- (p) the relative strength of the minor child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the minor child; and
- (q) any other factor the court finds relevant.

~~[(5)]~~ (6)(a) A minor child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the minor child be heard and there is no other reasonable method to present the minor child's testimony.

(b)(i) The court may inquire and take into consideration the minor child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the minor child's custody or parent-time otherwise.

(ii) The desires of a minor child who is 14 years old or older shall be given added weight, but is not the single controlling factor.

(c)(i) If an interview with a minor child is conducted by the court in accordance with Subsection ~~[(5)(b)]~~ (6)(b), the interview shall be conducted by the court in camera.

(ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a minor child is the only method to ascertain the minor child's desires regarding custody.

~~[(6)]~~ (7)(a) Except as provided in Subsection ~~[(6)(b)]~~ (7)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of

1389 modifying an award of custody.

1390 (b) The court may not consider the disability of a parent as a factor in awarding custody
1391 or modifying an award of custody based on a determination of a substantial change in
1392 circumstances, unless the court makes specific findings that:

1393 (i) the disability significantly or substantially inhibits the parent's ability to provide
1394 for the physical and emotional needs of the minor child at issue; and

1395 (ii) the parent with a disability lacks sufficient human, monetary, or other resources
1396 available to supplement the parent's ability to provide for the physical and
1397 emotional needs of the minor child at issue.

1398 (c) Nothing in this section may be construed to apply to adoption proceedings under
1399 Chapter 13, Adoption.

1400 ~~[(7)]~~ (8) This section does not establish:

1401 (a) a preference for either parent solely because of the gender of the parent; or

1402 (b) a preference for or against joint physical custody or sole physical custody, but allows
1403 the court and the family the widest discretion to choose a parenting plan that is in the
1404 best interest of the minor child.

1405 ~~[(8)]~~ (9) When an issue before the court involves custodial responsibility in the event of a
1406 deployment of a parent who is a service member and the service member has not yet
1407 been notified of deployment, the court shall resolve the issue based on the standards in
1408 Sections 81-10-306 through 81-10-309.

1409 ~~[(9)]~~ (10) In considering the past conduct and demonstrated moral standards of each party
1410 under Subsection ~~[(4)(d)]~~ (5)(d) or any other factor a court finds relevant, the court may
1411 not:

1412 (a)(i) consider or treat a parent's lawful possession or use of cannabis in a medicinal
1413 dosage form, a cannabis product in a medicinal dosage form, or a medical
1414 cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production
1415 Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid
1416 Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently
1417 than the court would consider or treat the lawful possession or use of any
1418 prescribed controlled substance; or

1419 (ii) discriminate against a parent because of the parent's status as a:

1420 (A) cannabis production establishment agent, as that term is defined in Section
1421 4-41a-102;

1422 (B) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;

(C) medical cannabis courier agent, as that term is defined in Section 26B-4-201;
or

(D) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(b) discriminate against a parent based upon the parent's agreement or disagreement with a minor child of the couple's:

(i) assertion that the minor child's gender identity is different from the minor child's biological sex;

(ii) practice of having or expressing a different gender identity than the minor child's biological sex; or

(iii) sexual orientation.

[(10)] (11)(a) The court shall consider evidence of domestic violence if evidence of domestic violence is presented.

(b) The court shall consider as primary, the safety and well-being of the minor child and the parent who experiences domestic violence.

(c) A court shall consider an order issued by a court in accordance with Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, as evidence of real harm or substantiated potential harm to the minor child.

(d) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 81-9-209.

[(11)] (12) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the minor child:

(a) it is in the best interest of the minor child to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each parent is entitled to and responsible for frequent, meaningful, and continuing access with the parent's minor child consistent with the minor child's best interests; and

(c) it is in the best interest of the minor child to have both parents actively involved in parenting the minor child.

[(12)] (13) Notwithstanding any other provision of this chapter, the court may not grant custody or parent-time of a minor child to a parent convicted of a sexual offense[, as defined in Section 77-37-2,] that resulted in the conception of the minor child unless:

(a) the nonconvicted biological parent, or the legal guardian of the minor child, consents

to custody or parent-time and the court determines it is in the best interest of the minor child to award custody or parent-time to the convicted parent; or

(b) after the date of the conviction, the convicted parent and the nonconvicted parent cohabit and establish a mutual custodial environment for the minor child.

~~[(13)]~~ (14) A denial of custody or parent-time under Subsection ~~[(12)]~~ (13) does not:

- (a) terminate the parental rights of the parent denied parent-time or custody; or
- (b) affect the obligation of the convicted parent to financially support the minor child.

Section 22. Section **81-9-305** is amended to read:

81-9-305 . Equal parent-time schedule.

(1)(a) A court may order the equal parent-time schedule described in this section if the court determines that:

- (i) the equal parent-time schedule is in the minor child's best interest;
 - (ii) each parent has been actively involved in the minor child's life; and
 - (iii) each parent can effectively facilitate the equal parent-time schedule.
- (b) To determine whether each parent has been actively involved in the minor child's life, the court shall consider:
- (i) each parent's demonstrated responsibility in caring for the minor child;
 - (ii) each parent's involvement in child care;
 - (iii) each parent's presence or volunteer efforts in the minor child's school and at extracurricular activities;
 - (iv) each parent's assistance with the minor child's homework;
 - (v) each parent's involvement in preparation of meals, bath time, and bedtime for the minor child;
 - (vi) each parent's bond with the minor child; and
 - (vii) any other factor the court considers relevant.
- (c) To determine whether each parent can effectively facilitate the equal parent-time schedule, the court shall consider:
- (i) the geographic distance between the residence of each parent and the distance between each residence and the minor child's school;
 - (ii) each parent's ability to assist with the minor child's after school care;
 - (iii) the health of the minor child and each parent, consistent with Subsection [~~81-9-204(4)~~] 81-9-204(5);
 - (iv) the flexibility of each parent's employment or other schedule;
 - (v) each parent's ability to provide appropriate playtime with the minor child;

- 1491 (vi) each parent's history and ability to implement a flexible schedule for the minor
1492 child;
- 1493 (vii) physical facilities of each parent's residence; and
1494 (viii) any other factor the court considers relevant.
- 1495 (2)(a) If the parties agree to or the court orders the equal parent-time schedule described
1496 in this section, a parenting plan in accordance with Section 81-9-203 shall be filed
1497 with an order incorporating the equal parent-time schedule.
- 1498 (b) An order under this section shall result in 182 overnights per year for one parent, and
1499 183 overnights per year for the other parent.
- 1500 (c) Under the equal parent-time schedule, a parent is not considered to have the minor
1501 child the majority of the time for the purposes of Subsection 81-9-203(11)(e)(ii) or
1502 81-9-205(10).
- 1503 (d) Child support for the equal parent-time schedule shall be consistent with Section
1504 81-6-206.
- 1505 (e) A court shall determine which parent receives 182 overnights and which parent
1506 receives 183 overnights for parent-time.
- 1507 (3)(a) Unless the parents agree otherwise and subject to a holiday, the equal parent-time
1508 schedule is as follows:
- 1509 (i) one parent shall exercise parent-time starting Monday morning and ending
1510 Wednesday morning;
- 1511 (ii) the other parent shall exercise parent-time starting Wednesday morning and
1512 ending Friday morning; and
- 1513 (iii) each parent shall alternate weeks exercising parent-time starting Friday morning
1514 and ending Monday morning.
- 1515 (b) The child exchange shall take place:
- 1516 (i) at the time the minor child's school begins; or
1517 (ii) if school is not in session, at 9 a.m.
- 1518 (4)(a) The parents may create a holiday schedule.
- 1519 (b) If the parents are unable to create a holiday schedule under Subsection (4)(a), the
1520 court shall:
- 1521 (i) order the holiday schedule described in Section 81-9-302 or 81-9-304; and
1522 (ii) designate which parent shall exercise parent-time for each holiday described in
1523 Section 81-9-302 or 81-9-304.
- 1524 (5)(a) Each year, a parent may designate two consecutive weeks to exercise

1525 uninterrupted parent-time during the summer when school is not in session.
1526 (b)(i) One parent may make a designation at any time and the other parent may make
1527 a designation after May 1.
1528 (ii) A parent shall make a designation at least 30 days before the day on which the
1529 designated two-week period begins.
1530 (c) The court shall designate which parent may make the earlier designation described in
1531 Subsection (5)(b)(i) for an even numbered year with the other parent allowed to make
1532 the earlier designation in an odd numbered year.
1533 (d) The two consecutive weeks described in Subsection (5)(a) take precedence over all
1534 holidays except for Mother's Day and Father's Day.
1535 Section 23. **Repealer.**
1536 This bill repeals:
1537 Section **53-10-901, Title.**
1538 Section 24. **Effective Date.**
1539 This bill takes effect on May 6, 2026.