

Calvin R. Musselman proposes the following substitute bill:

Human Trafficking, Exploitation, and Smuggling Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill concerns human labor trafficking, human trafficking for sexual exploitation, and human smuggling.

Highlighted Provisions:

This bill:

- defines terms;
- removes the applicability of statutory defenses to offenses concerning human trafficking or human smuggling;
- repeals a freestanding definition section and incorporates the repealed section's definitions into the human smuggling offenses in which the terms are referenced;
- amends the following offenses concerning human trafficking, including revising the name and elements of the offense, and, for some offenses, requiring specific conduct for a violation:
 - human trafficking for labor;
 - human trafficking for sexual exploitation;
 - human trafficking of a child (for labor and for sexual exploitation); and
 - human trafficking of a vulnerable adult (for labor and for sexual exploitation);
- divides the offense of aggravated human trafficking for labor or sexual exploitation into two separate offenses;
- revises the offense of benefiting from human trafficking or human smuggling:
 - to no longer be a separate criminal offense by removing penalty provisions; and
 - to add human trafficking offenses concerning vulnerable adults to the list of offenses included in the statute;
- creates the following new offenses:
 - patronizing a victim of human labor trafficking;

- patronizing a child victim of human labor trafficking; and
- patronizing a vulnerable adult victim of human labor trafficking;
- amends the offenses of human smuggling and aggravated human smuggling to incorporate definitions from the repealed freestanding definitions section;
- changes cross references in other statutes referencing human trafficking offenses to include citations to additional trafficking and patronizing offenses; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26B-2-120, as last amended by Laws of Utah 2025, Chapter 63
53-10-403, as last amended by Laws of Utah 2025, Chapters 173, 208 and 291
53-29-202, as enacted by Laws of Utah 2025, Chapter 291
53-29-203, as enacted by Laws of Utah 2025, Chapter 291
53-29-205, as enacted by Laws of Utah 2025, Chapter 291
53G-6-603, as last amended by Laws of Utah 2024, Chapters 113, 381
76-1-301, as last amended by Laws of Utah 2025, Chapters 173, 174
76-2-304.5, as last amended by Laws of Utah 2025, Chapters 173, 174
76-3-203.19, as enacted by Laws of Utah 2025, Chapter 185
76-3-203.20, as enacted by Laws of Utah 2025, Chapter 519
76-5-305, as last amended by Laws of Utah 2022, Chapter 181
76-5-308, as last amended by Laws of Utah 2022, Chapter 181
76-5-308.1, as last amended by Laws of Utah 2025, Chapter 262
76-5-308.5, as last amended by Laws of Utah 2025, Chapter 262
76-5-309, as last amended by Laws of Utah 2025, Chapter 262
76-5-310, as last amended by Laws of Utah 2025, Chapter 262
76-5-311, as last amended by Laws of Utah 2025, Chapter 262
76-5-417, as renumbered and amended by Laws of Utah 2025, Chapter 173
76-5d-106, as renumbered and amended by Laws of Utah 2025, Chapters 173, 174
76-5d-208, as renumbered and amended by Laws of Utah 2025, Chapters 173, 174
76-5d-211, as enacted by Laws of Utah 2025, Chapter 174

76-14-202, as renumbered and amended by Laws of Utah 2025, Chapter 173
76-17-401, as renumbered and amended by Laws of Utah 2025, Chapter 173
77-22-2.5, as last amended by Laws of Utah 2025, Chapter 173
77-23a-8, as last amended by Laws of Utah 2025, Chapters 173, 174
77-38-3, as last amended by Laws of Utah 2025, Chapters 173, 174 and 214
77-38-601, as last amended by Laws of Utah 2025, Chapter 173
78B-3-113, as renumbered and amended by Laws of Utah 2024, Chapter 331
78B-7-201, as last amended by Laws of Utah 2021, Chapter 262
78B-7-502, as last amended by Laws of Utah 2025, Chapter 173
80-1-102, as last amended by Laws of Utah 2025, Chapter 426
80-2-301, as last amended by Laws of Utah 2025, Chapters 173, 174
80-3-406, as last amended by Laws of Utah 2025, Chapters 48, 291 and 447
81-9-402, as last amended by Laws of Utah 2025, Chapter 426
81-13-203, as renumbered and amended by Laws of Utah 2025, Chapter 426

ENACTS:

76-5-308.6, Utah Code Annotated 1953
76-5-310.2, Utah Code Annotated 1953
76-5-312, Utah Code Annotated 1953
76-5-313, Utah Code Annotated 1953
76-5-314, Utah Code Annotated 1953
76-5-315, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

76-5-316, (Renumbered from 76-5-308.3, as enacted by Laws of Utah 2022,
 Chapter 181)
76-5-317, (Renumbered from 76-5-310.1, as enacted by Laws of Utah 2022,
 Chapter 181)

REPEALS:

76-5-307, as last amended by Laws of Utah 2022, Chapter 181

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

Section 1. Section **26B-2-120** is amended to read:

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

(1) As used in this section:

(a)(i) "Applicant" means an individual who is associated with a certification,

contract, or licensee with the department under this part and has direct access,
including:

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

- 131 People with Disabilities, if the parent provides direct care to and resides with
132 the person, including if the parent provides direct care to and resides with the
133 person pursuant to a court order; or
- 134 (D) an individual or a department contractor who provides services in an adults
135 only substance use disorder program, as defined by rule adopted by the
136 Department of Health and Human Services in accordance with Title 63G,
137 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program
138 director or a member, as defined by Section 26B-2-105, of the program.
- 139 (b) "Application" means a background check application to the office.
- 140 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
141 Public Safety, created in Section 53-10-201.
- 142 (d) "Criminal finding" means a record of:
- 143 (i) an arrest for a criminal offense;
- 144 (ii) a warrant for a criminal arrest;
- 145 (iii) charges for a criminal offense; or
- 146 (iv) a criminal conviction.
- 147 (e) "Direct access" means that an individual has, or likely will have:
- 148 (i) contact with or access to a child or vulnerable adult by which the individual will
149 have the opportunity for personal communication or touch with the child or
150 vulnerable adult; or
- 151 (ii) an opportunity to view medical, financial, or other confidential personal
152 identifying information of the child, the child's parent or legal guardian, or the
153 vulnerable adult.
- 154 (f)(i) "Direct access qualified" means that the applicant has an eligible determination
155 by the office within the license and renewal time period; and
- 156 (ii) no more than 180 days have passed since the date on which the applicant's
157 association with a certification, contract, or licensee with the department expires.
- 158 (g) "Incidental care" means occasional care, not in excess of five hours per week and
159 never overnight, for a foster child.
- 160 (h) "Licensee" means an individual or a human services program licensed by the
161 division.
- 162 (i) "Non-criminal finding" means a record maintained in:
- 163 (i) the Division of Child and Family Services' Management Information System
164 described in Section 80-2-1001;

- 165 (ii) the Division of Child and Family Services' Licensing Information System
166 described in Section 80-2-1002;
- 167 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
168 exploitation database described in Section 26B-6-210;
- 169 (iv) juvenile court arrest, adjudication, and disposition records;
- 170 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53,
171 Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
172 offender registry; or
- 173 (vi) a state child abuse or neglect registry.
- 174 (j) "Office" means the Office of Background Processing within the department.
- 175 (k) "Personal identifying information" means:
- 176 (i) current name, former names, nicknames, and aliases;
- 177 (ii) date of birth;
- 178 (iii) physical address and email address;
- 179 (iv) telephone number;
- 180 (v) driver license or other government-issued identification;
- 181 (vi) social security number;
- 182 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
183 specified by the office; and
- 184 (viii) other information specified by the office by rule made in accordance with Title
185 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 186 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
187 following to the office:
- 188 (a) personal identifying information;
- 189 (b) a fee established by the office under Section 63J-1-504;
- 190 (c) a disclosure form, specified by the office, for consent for:
- 191 (i) an initial background check upon association with a certification, contract, or
192 licensee with the department;
- 193 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
194 certification, contract, or licensee with the department for 180 days;
- 195 (iii) a background check when the office determines that reasonable cause exists; and
- 196 (iv) retention of personal identifying information, including fingerprints, for
197 monitoring and notification as described in Subsections (3)(c) and (4);
- 198 (d) if an applicant resided outside of the United States and its territories during the five

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

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

(3) The office:

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

- (i) check state and regional criminal background databases for the applicant's criminal history by:
 - (A) submitting personal identifying information to the bureau for a search; or
 - (B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;
- (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;
- (iii) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry for an applicant 18 years old or older;
- (v) search the Division of Child and Family Services' Management Information System in Section 80-2-1001, if the applicant is:
 - (A) a prospective foster or adoptive parent;
 - (B) an employee of a congregate care program; or
 - (C) an adult who lives in a foster home.
- (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404 or 80-3-504; and

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

Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.

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

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

(A) an offense identified as domestic violence, lewdness, voyeurism, battery,

- 301 cruelty to animals, or bestiality;
- 302 (B) a violation of any pornography law, including sexual exploitation of a minor
- 303 or aggravated sexual exploitation of a minor;
- 304 (C) sexual solicitation or prostitution;
- 305 (D) a violent offense committed in the presence of a child, as described in Section
- 306 76-3-203.10;
- 307 (E) an offense included in Title 76, Chapter 5, Part 1, 2, 3, 4, or 7;
- 308 (F) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act, other
- 309 than Section 76-5b-206;
- 310 (G) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 311 (H) an offense included in Title 76, Chapter 12, Part 3, Privacy Offenses;
- 312 (I) an offense included in Title 76, Chapter 15, Part 3, Weapons of Mass
- 313 Destruction;
- 314 (J) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
- 315 Injunctions;
- 316 (K) aggravated arson, as described in Section 76-6-103;
- 317 (L) aggravated burglary, as described in Section 76-6-203;
- 318 (M) aggravated exploitation of prostitution, as described in Section 76-5d-208;
- 319 (N) aggravated robbery, as described in Section 76-6-302;
- 320 (O) endangering persons in a human services program, as described in Section
- 321 26B-2-113;
- 322 (P) failure to report, as described in Section 80-2-609;
- 323 (Q) identity fraud crime, as described in Section 76-6-1102;
- 324 (R) riot, as described in Section 76-9-101; or
- 325 (S) threatening with or using a dangerous weapon in a fight or quarrel, as
- 326 described in Section 76-11-207; or
- 327 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
- 328 in the state, would constitute a violation of an offense described in Subsection
- 329 (5)(a)(i).
- 330 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
- 331 peer support provider or a mental health professional, if the applicant provides
- 332 services in a program that serves only adults with a primary mental health
- 333 diagnosis, with or without a co-occurring substance use disorder.
- 334 (ii) The office shall conduct a comprehensive review of an applicant described in

- 335 Subsection (5)(b)(i) in accordance with Subsection (7).
- 336 (c) Subject to Subsection (5)(d), the office shall deny direct access qualified status to an
337 applicant who:
- 338 (i) a court order prohibits from having direct access to a child or vulnerable adult; or
339 (ii) is an applicant for a congregate care program and:
- 340 (A) is subject to an open investigation for a non-criminal finding; or
341 (B) has a supported non-criminal finding, excluding a supported finding for
342 dependency, as defined in Section 80-1-102, within three years from the date
343 on which the office conducts the background check.
- 344 (d)(i) Subsection (5)(c) does not apply retrospectively for congregate care program
345 employees who have an approved background screening on or before July 1,
346 2025; or
- 347 (ii) notwithstanding Subsection (5)(c)(ii)(A), the division may grant temporary direct
348 access qualified status to an applicant subject to a condition that the applicant is
349 directly supervised at all times.
- 350 (6) The office shall conduct a comprehensive review of an applicant's background check if
351 the applicant:
- 352 (a) has a felony or class A misdemeanor conviction that is more than three years from
353 the date on which the office conducts the background check, for an offense described
354 in Subsection (5)(a);
- 355 (b) has a felony charge or conviction that is no more than 10 years from the date on
356 which the office conducts the background check for an offense not described in
357 Subsection (5)(a);
- 358 (c) has a felony charge or conviction that is more than 10 years from the date on which
359 the office conducts the background check, for an offense not described in Subsection
360 (5)(a), with criminal or non-criminal findings after the date of the felony charge or
361 conviction;
- 362 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than
363 three years and no more than 10 years from the date on which the office conducts the
364 background check for an offense described in Subsection (5)(a);
- 365 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10
366 years from the date on which the office conducts the background check, for an
367 offense described in Subsection (5)(a), with criminal or non-criminal findings after
368 the date of conviction;

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

- 403 (p) has a substantiated finding that occurred no more than 15 years from the date on
404 which the office conducts the background check of severe child abuse or neglect
405 under Section 80-3-404 or 80-3-504; or
- 406 (q) has a substantiated finding that occurred more than 15 years from the date on which
407 the office conducts the background check of severe child abuse or neglect under
408 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of
409 the listing.

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

- 411 (i) the date of the offense or incident;
- 412 (ii) the nature and seriousness of the offense or incident;
- 413 (iii) the circumstances under which the offense or incident occurred;
- 414 (iv) the age of the perpetrator when the offense or incident occurred;
- 415 (v) whether the offense or incident was an isolated or repeated incident;
- 416 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
417 adult, including:
- 418 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 419 (B) sexual abuse;
- 420 (C) sexual exploitation; or
- 421 (D) negligent treatment;
- 422 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
423 treatment received, or additional academic or vocational schooling completed;
- 424 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
425 which the applicant is applying; and
- 426 (ix) if the background check of an applicant is being conducted for the purpose of
427 giving direct access qualified status to an applicant seeking a position in a
428 congregate care program or to become a prospective foster or adoptive parent, any
429 listing in the Division of Child and Family Services' Management Information
430 System described in Section 80-2-1001.

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

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

436 (9)(a) The office may conditionally grant direct access qualified status to an applicant,

437 for a maximum of 60 days after the day on which the office sends written notice,
438 without requiring that the applicant be directly supervised, if the office:

- 439 (i) is awaiting the results of the criminal history search of national criminal
440 background databases; and
- 441 (ii) would otherwise grant direct access qualified status to the applicant under this
442 section.

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

- 446 (i) is awaiting the results of an out-of-state registry for providers other than foster and
447 adoptive parents; and
- 448 (ii) would otherwise grant direct access qualified status to the applicant under this
449 section.

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

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

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

- 458 (i) the individual is the parent or guardian of the child, or the guardian of the
459 vulnerable adult;
- 460 (ii) the individual is approved by the parent or guardian of the child, or the guardian
461 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 462 (iii) the individual is only permitted to have direct access to a vulnerable adult who
463 voluntarily invites the individual to visit; or
- 464 (iv) the individual only provides incidental care for a foster child on behalf of a foster
465 parent who has used reasonable and prudent judgment to select the individual to
466 provide the incidental care for the foster child.

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

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

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

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

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

(i) the applicant is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

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

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

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

(b) As federally required, the office shall:

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

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

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(R) human trafficking of a child for commercial sexual exploitation, as described in Section 76-5-308.6;

(S) patronizing a child victim of human labor trafficking, as described in Section 76-5-314;

[(R)] (T) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, other

- 539 than Section 76-5-417, 76-5-418, or 76-5-419;
- 540 [~~(S)~~] (U) sexual exploitation of a minor, as described in Title 76, Chapter 5b,
- 541 Sexual Exploitation Act;
- 542 [~~(T)~~] (V) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 543 [~~(U)~~] (W) aggravated arson, as described in Section 76-6-103;
- 544 [~~(V)~~] (X) aggravated burglary, as described in Section 76-6-203;
- 545 [~~(W)~~] (Y) aggravated robbery, as described in Section 76-6-302;
- 546 [~~(X)~~] (Z) incest, as described in Section 76-7-102; or
- 547 [~~(Y)~~] (AA) domestic violence, as described in Section 77-36-1; or
- 548 (ii) an offense committed outside the state that, if committed in the state, would
- 549 constitute a violation of an offense described in Subsection (13)(d)(i).
- 550 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 551 qualified status to an applicant if, within the five years from the date on which the
- 552 office conducts the background check, the applicant was convicted of a felony
- 553 involving conduct that constitutes a violation of any of the following:
- 554 (i) aggravated assault, as described in Section 76-5-103;
- 555 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 556 (iii) mayhem, as described in Section 76-5-105;
- 557 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 558 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 559 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 560 Act;
- 561 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 562 Precursor Act; or
- 563 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 564 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
- 565 a comprehensive review of an applicant's background check under this section if the
- 566 applicant:
- 567 (i) has an offense described in Subsection (5)(a);
- 568 (ii) has an infraction conviction entered on a date that is no more than three years
- 569 before the date on which the office conducts the background check;
- 570 (iii) has a listing in the Division of Child and Family Services' Licensing Information
- 571 System described in Section 80-2-1002;
- 572 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,

- neglect, or exploitation database described in Section 26B-2-210;
- (v) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or
- (vi) has a listing on the registry check described in Subsection (13)(b) as having a substantiated or supported finding of a severe type of child abuse or neglect, as defined in Section 80-1-102.
- (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:
- (a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6), (7), and (13); and
- (b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth Services for purposes of granting or denying direct access qualified status to an applicant.
- Section 2. Section **53-10-403** is amended to read:
- 53-10-403 . DNA specimen analysis -- Application to offenders, including minors.**
- (1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to:
- (a) a person who has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;
- (b) a person who has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;
- (c) a person who has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);
- (d) a person who has been booked:
- (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or
- (ii) on or after January 1, 2015, for any felony offense; or
- (e) a minor:
- (i)(A) who is adjudicated by the juvenile court for an offense described in Subsection (2) that is within the jurisdiction of the juvenile court on or after July 1, 2002; or

- 607 (B) who is adjudicated by the juvenile court for an offense described in
608 Subsection (2) and is in the legal custody of the Division of Juvenile Justice
609 and Youth Services for the offense on or after July 1, 2002; and
610 (ii) who is 14 years old or older at the time of the commission of the offense
611 described in Subsection (2).
- 612 (2) Offenses referred to in Subsection (1) are:
- 613 (a) any felony or class A misdemeanor under the Utah Code;
- 614 (b) any offense under Subsection (2)(a):
- 615 (i) for which the court enters a judgment for conviction to a lower degree of offense
616 under Section 76-3-402; or
- 617 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
618 defined in Section 77-2a-1; or
- 619 (c)(i) any violent felony as defined in Section 53-10-403.5;
- 620 (ii) sale or use of body parts, Section 26B-8-315;
- 621 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;
- 622 (iv) operating a motor vehicle with any amount of a controlled substance in an
623 individual's body and causing serious bodily injury or death, as codified before
624 May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection
625 58-37-8(2)(g);
- 626 (v) a felony violation of enticing a minor, Section 76-5-417;
- 627 (vi) negligently operating a vehicle resulting in injury, Subsection 76-5-102.1(2)(b);
- 628 (vii) a felony violation of propelling a substance or object at a correctional officer, a
629 peace officer, or an employee or a volunteer, including health care providers,
630 Section 76-5-102.6;
- 631 (viii) automobile homicide, Subsection 76-5-207(2)(b);
- 632 (ix) aggravated human trafficking, Section 76-5-310 or 76-5-310.2, and aggravated
633 human smuggling, Section ~~[76-5-310.1]~~ 76-5-317;
- 634 (x) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 635 (xi) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 636 (xii) unlawful sexual contact with a 16 or 17[-] year old, Section 76-5-401.2;
- 637 (xiii) sale of a child, Section 76-7-203;
- 638 (xiv) aggravated escape, Section 76-8-309.3;
- 639 (xv) a felony violation of threatened or attempted assault on an elected official,
640 Section 76-8-313;

- (xvi) threat with intent to impede, intimidate, interfere, or retaliate against a judge or a member of the Board of Pardons and Parole or acting against a family member of a judge or a member of the Board of Pardons and Parole, Section 76-8-316;
- (xvii) assault with intent to impede, intimidate, interfere, or retaliate against a judge or a member of the Board of Pardons and Parole or acting against a family member of a judge or a member of the Board of Pardons and Parole, Section 76-8-316.2;
- (xviii) aggravated assault with intent to impede, intimidate, interfere, or retaliate against a judge or a member of the Board of Pardons and Parole or acting against a family member of a judge or a member of the Board of Pardons and Parole, Section 76-8-316.4;
- (xix) attempted murder with intent to impede, intimidate, interfere, or retaliate against a judge or a member of the Board of Pardons and Parole or acting against a family member of a judge or a member of the Board of Pardons and Parole, Section 76-8-316.6;
- (xx) advocating criminal syndicalism or sabotage, Section 76-8-902;
- (xxi) assembling for advocating criminal syndicalism or sabotage, Section 76-8-903;
- (xxii) a felony violation of sexual battery, Section 76-5-418;
- (xxiii) a felony violation of lewdness involving a child, Section 76-5-420;
- (xxiv) a felony violation of abuse or desecration of a dead human body, Section 76-5-802;
- (xxv) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-15-302;
- (xxvi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-15-303;
- (xxvii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-11-202(3)(c);
- (xxviii) assault with the intent to commit bus hijacking with a dangerous weapon as described in Subsection 76-9-1503(3)(b);
- (xxix) aggravated commercial obstruction, Section 76-9-114;
- (xxx) a felony violation of failure to register as a sex or kidnap offender, Section 53-29-305;
- (xxxi) repeat violation of a protective order, Subsection 77-36-1.1(4); or
- (xxxii) violation of condition for release after arrest under Section 78B-7-802.

Section 3. Section **53-29-202** is amended to read:

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

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

(a) has been convicted in this state of:

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

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

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

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

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

(vi) human trafficking of a child for commercial sexual exploitation under [Subsection 76-5-308.5(4)(b)] Section 76-5-308.6;

(vii) aggravated human trafficking for commercial sexual exploitation under Section [76-5-310] 76-5-310.2;

(viii) human trafficking of a vulnerable adult for commercial sexual exploitation under Section [76-5-311] 76-5-312;

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

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

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

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

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

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

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

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

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

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

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

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

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

- (xxii) custodial sexual relations under Section 76-5-412, if the victim in custody is younger than 18 years old and the offense is committed on or after May 10, 2011;
- (xxiii) sexual exploitation of a minor under Section 76-5b-201;
- (xxiv) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- (xxv) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- (xxvi) incest under Section 76-7-102;
- (xxvii) lewdness under Section 76-5-419, if the individual has been convicted of the offense four or more times;
- (xxviii) sexual battery under Section 76-5-418, if the individual has been convicted of the offense four or more times;
- (xxix) any combination of convictions of lewdness under Section 76-5-419, and of sexual battery under Section 76-5-418, that total four or more convictions;
- (xxx) lewdness involving a child under Section 76-5-420;
- (xxxi) a felony or class A misdemeanor violation of:
 - (A) voyeurism under Section 76-12-306;
 - (B) recorded or photographed voyeurism under Section 76-12-307; or
 - (C) distribution of images obtained through voyeurism under Section 76-12-308;
- (xxxii) aggravated exploitation of prostitution under Section 76-5d-208;
- (xxxiii) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;
- (xxxiv) child kidnapping under Section 76-5-301.1, if the offender was not the natural parent of the child victim;
- (xxxv) aggravated kidnapping under Section 76-5-302, if the offender was not the natural parent of the child victim;
- (xxxvi) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;
- ~~[(xxxvii) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;]~~
- ~~[(xxxviii)]~~ (xxxvii) human trafficking of a child for labor under ~~[Subsection 76-5-308.5(4)(a)]~~ Section 76-5-308.5, if the offender was not the natural parent of the child victim;
- ~~[(xxxix)]~~ (xxxviii) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;
- ~~[(xl) aggravated human smuggling under Section 76-5-310.1, if the offender was not~~

743 ~~the natural parent of the child victim;~~
744 ~~[(xlii)]~~ ~~(xxxix)~~ human trafficking of a vulnerable adult for labor under Section
745 76-5-311, if the offender was not the natural parent of the child victim;
746 ~~(xl)~~ human smuggling under Section 76-5-316, if the offender was not the natural
747 parent of the child victim;
748 ~~(xli)~~ aggravated human smuggling under Section 76-5-317, if the offender was not
749 the natural parent of the child victim; or
750 (xlii) attempting, soliciting, or conspiring to commit a felony violation of an offense
751 listed in Subsections (1)(a)(i) through ~~[(x1)]~~ (xli);
752 (b)(i) has been convicted of a criminal offense, or an attempt, solicitation, or
753 conspiracy to commit a criminal offense in an external jurisdiction that is
754 substantially equivalent to the offense listed in Subsection (1)(a); and
755 (ii)(A) is a Utah resident; or
756 (B) is not a Utah resident and is in this state for a total of 10 days in a 12-month
757 period, regardless of whether the individual intends to permanently reside in
758 this state;
759 (c)(i)(A) is required to register on a registry in an external jurisdiction for
760 individuals who have committed an offense listed in Subsection (1)(a) or a
761 substantially equivalent offense;
762 (B) is ordered by a court to register on a registry for individuals who have
763 committed an offense listed in Subsection (1)(a) or a substantially equivalent
764 offense; or
765 (C) would be required to register on a registry in an external jurisdiction for
766 individuals who have committed an offense listed in Subsection (1)(a), or a
767 substantially equivalent offense, if residing in the external jurisdiction of the
768 conviction regardless of the date of the conviction or a previous registration
769 requirement; and
770 (ii) is in this state for a total of 10 days in a 12-month period, regardless of whether
771 the individual intends to permanently reside in this state;
772 (d)(i)(A) is a nonresident regularly employed or working in this state; or
773 (B) who is a student in this state; and
774 (ii)(A) is convicted of an offense listed in Subsection (1)(a) or a substantially
775 equivalent offense in an external jurisdiction; or
776 (B) is required to register on a sex, kidnap, and child abuse registry, or an

- 777 equivalent registry, in the individual's state of residence based on a conviction
778 for an offense that is not substantially equivalent to an offense listed in
779 Subsection (1)(a);
- 780 (e) is found not guilty by reason of insanity in this state or in an external jurisdiction of
781 an offense listed in Subsection (1)(a) or a substantially equivalent offense; or
- 782 (f)(i) is adjudicated under Section 80-6-701 for one or more offenses listed in
783 Subsection (1)(a); and
- 784 (ii) has been committed to the division for secure care, as defined in Section 80-1-102,
785 for that offense if:
- 786 (A) the individual remains in the division's custody until 30 days before the
787 individual's 21st birthday;
- 788 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
789 under Section 80-6-605 and the individual remains in the division's custody
790 until 30 days before the individual's 25th birthday; or
- 791 (C) the individual is moved from the division's custody to the custody of the
792 department before expiration of the division's jurisdiction over the individual.
- 793 (2) Subject to Subsection (3), an individual is:
- 794 (a) a child abuse offender if the individual:
- 795 (i) has committed, attempted, solicited, or conspired to commit an offense described
796 in Subsection (1)(a)(i) through (ii); or
- 797 (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense
798 described in Subsection (1)(a)(i) through (ii) or a substantially equivalent offense;
- 799 (b) a sex offender if the individual:
- 800 (i) has committed, attempted, solicited, or conspired to commit an offense described
801 in Subsections (1)(a)(iii) through (xxxii); or
- 802 (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense
803 described in Subsections (1)(a)(iii) through (xxxii) or a substantially equivalent
804 offense; or
- 805 (c) a kidnap offender if the individual:
- 806 (i) has committed, attempted, solicited, or conspired to commit an offense described
807 in Subsections (1)(a)(xxxiii) through (xli); or
- 808 (ii) meets a requirement described in Subsections (1)(b) through (e) for an offense
809 described in Subsections (1)(a)(xxxiii) through (xli) or a substantially equivalent
810 offense.

- (3) An individual who has committed a registrable offense described in Subsection (1)(d)(ii)(B) in an external jurisdiction that is not substantially equivalent to an offense described in Subsection (1)(a) and is required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, in the individual's state of residence is a child abuse offender, sex offender, or kidnap offender based on the individual's status on the registry in the individual's state of residence.
- (4) Notwithstanding Subsection 53-29-101(4)(a), a plea of guilty or nolo contendere to a charge of sexual battery or lewdness that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction even if the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 4. Section **53-29-203** is amended to read:

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

- (1) Except as provided in Subsection (2), (3), or (4), an individual who commits a registrable offense is required to register on the registry for:
- (a) 10 years after the day on which the offender's sentence for the offense has been terminated if the registrable offense is for:
- (i) a felony or class A misdemeanor violation of enticing a minor under Section 76-5-417, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(a)(ii) through (xxiv);
 - (ii) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);
 - (iii) child torture under Section 76-5-109.4;
 - (iv) kidnapping under Subsection 76-5-301(2)(c) or (d), if the offender was not the natural parent of the child victim;
 - (v) human trafficking for labor under Section 76-5-308, if the offender was not the natural parent of the child victim;
 - ~~[(vi) human smuggling under Section 76-5-308.3, if the offender was not the natural parent of the child victim;]~~
 - ~~[(vii)]~~ (vi) human trafficking of a child for labor under ~~[Subsection 76-5-308.5(4)(a)]~~ Section 76-5-308.5, if the offender was not the natural parent of the child victim;
 - ~~[(viii)]~~ (vii) aggravated human trafficking for labor under Section 76-5-310, if the offender was not the natural parent of the child victim;
 - ~~[(ix) aggravated human smuggling under Section 76-5-310.1;]~~
 - ~~[(x)]~~ (viii) human trafficking of a vulnerable adult for labor under Section 76-5-311;
 - (ix) human smuggling under Section 76-5-316, if the offender was not the natural

- 845 parent of the child victim;
- 846 (x) aggravated human smuggling under Section 76-5-317;
- 847 (xi) a felony violation of unlawful sexual activity with a minor under Section
- 848 76-5-401;
- 849 (xii) sexual abuse of a minor under Section 76-5-401.1;
- 850 (xiii) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- 851 (xiv) forcible sexual abuse under Section 76-5-404;
- 852 (xv) custodial sexual relations under Section 76-5-412;
- 853 (xvi) sexual exploitation of a vulnerable adult under Section 76-5b-202;
- 854 (xvii) sexual extortion under Subsection 76-5b-204(2)(a);
- 855 (xviii) incest under Section 76-7-102;
- 856 (xix) four to seven convictions of lewdness under Section 76-5-419;
- 857 (xx) four to seven convictions of sexual battery under Section 76-5-418;
- 858 (xxi) any combination of convictions of lewdness under Section 76-5-419, and of
- 859 sexual battery under Section 76-5-418, that total four to seven convictions;
- 860 (xxii) lewdness involving a child under Section 76-5-420;
- 861 (xxiii) a felony or class A misdemeanor violation of:
- 862 (A) voyeurism under Section 76-12-306;
- 863 (B) recorded or photographed voyeurism under Section 76-12-307; or
- 864 (C) distribution of images obtained through voyeurism under Section 76-12-308;
- 865 (xxiv) aggravated exploitation of prostitution under Section 76-5d-208, committed on
- 866 or before May 9, 2011;
- 867 (xxv) attempting, soliciting, or conspiring to commit an offense listed in
- 868 Subsections(1)(a)(i) through (xxiv) if the attempt, solicitation, or conspiracy is a
- 869 registrable offense; or
- 870 (xxvi) attempting, soliciting, or conspiring to commit:
- 871 (A) aggravated kidnapping under Section 76-5-302, if the offender was not the
- 872 natural parent of the child victim;
- 873 (B) human trafficking for commercial sexual exploitation under Section
- 874 76-5-308.1, if the offender was not the natural parent of the child victim;
- 875 (C) human trafficking of a child for commercial sexual exploitation under [
- 876 ~~Subsection 76-5-308.5(4)(b)] Section 76-5-308.6, if the offender was not the~~
- 877 natural parent of the child victim;
- 878 (D) aggravated human trafficking for commercial sexual exploitation under

- 879 Section ~~[76-5-310]~~ 76-5-310.2, if the offender was not the natural parent of the
880 child victim;
- 881 (E) human trafficking of a vulnerable adult for commercial sexual exploitation
882 under Section ~~[76-5-311]~~ 76-5-312, if the offender was not the natural parent of
883 the child victim;
- 884 (F) forcible sodomy under Section 76-5-403;
- 885 (G) sexual abuse of a child under Section 76-5-404.1;
- 886 (H) sexual exploitation of a minor under Section 76-5b-201;
- 887 (I) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 888 (J) aggravated sexual extortion under Subsection 76-5b-204(2)(b); or
- 889 (K) aggravated exploitation of prostitution under Section 76-5d-208, on or after
890 May 10, 2011; or
- 891 (b) the offender's lifetime if the registrable offense is:
- 892 (i) a conviction for an offense described in Subsection (1)(a), if the offender has, at
893 the time of conviction for the offense:
- 894 (A) previously been convicted of an offense described in Subsection (1)(a), or a
895 substantially equivalent offense in an external jurisdiction; or
- 896 (B) previously been required to register as an offender for an offense described in
897 Subsection (1)(a) committed as a juvenile;
- 898 (ii) a following offense, including attempting, soliciting, or conspiring to commit a
899 felony violation of:
- 900 (A) child kidnapping under Section 76-5-301.1, if the offender was not the natural
901 parent of the child victim;
- 902 (B) rape under Section 76-5-402;
- 903 (C) rape of a child under Section 76-5-402.1;
- 904 (D) object rape under Section 76-5-402.2;
- 905 (E) object rape of a child under Section 76-5-402.3;
- 906 (F) sodomy on a child under Section 76-5-403.1;
- 907 (G) aggravated sexual abuse of a child under Section 76-5-404.3; or
- 908 (H) aggravated sexual assault under Section 76-5-405;
- 909 (iii) aggravated kidnapping under Section 76-5-302, if the offender was not the
910 natural parent of the child victim;
- 911 (iv) human trafficking for commercial sexual exploitation under Section 76-5-308.1,
912 if the offender was not the natural parent of the child victim;

- (v) human trafficking of a child for commercial sexual exploitation under [Subsection 76-5-308.5(4)(b)] Section 76-5-308.6, if the offender was not the natural parent of the child victim;
- (vi) aggravated human trafficking for commercial sexual exploitation under Section [76-5-310] 76-5-310.2, if the offender was not the natural parent of the child victim;
- (vii) human trafficking of a vulnerable adult for commercial sexual exploitation under Section [76-5-311] 76-5-312, if the offender was not the natural parent of the child victim;
- (viii) forcible sodomy under Section 76-5-403;
- (ix) sexual abuse of a child under Section 76-5-404.1;
- (x) sexual exploitation of a minor under Section 76-5b-201;
- (xi) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- (xii) aggravated sexual extortion under Subsection 76-5b-204(2)(b);
- (xiii) aggravated exploitation of prostitution under Section 76-5d-208, on or after May 10, 2011; or
- (xiv) a felony violation of enticing a minor under Section 76-5-417, if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (1)(b)(ii) through (xiii).
- (2) An individual who qualifies as an offender based on a conviction in an external jurisdiction for a registrable offense, or a substantially equivalent offense, and is on an external jurisdiction's sex, kidnap, and child abuse registry, or an equivalent registry, is required to register on the registry for the time period required by the external jurisdiction.
- (3)(a) If the sentencing court at any time after an offender is convicted of an offense requiring lifetime registration described in Subsection (1)(b), and after considering the factors described in Subsection (3)(b), determines that the offender was under 21 years old at the time the offense was committed and the offense did not involve force or coercion, the requirement that the offender register for the offender's lifetime does not apply and the offender shall register for 10 years after the day on which the offender's sentence for the offense has been terminated.
- (b) In determining whether an offense committed by an offender involves force or coercion under Subsection (3)(a), the sentencing court shall consider:
- (i) the age of the victim;
- (ii) the vulnerability of the victim;

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

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

(v) if any child sexual abuse material, as that term is defined in Section 76-5b-103, was:

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

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

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

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

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

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

(c) is convicted of a registrable offense.

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

Section 5. Section **53-29-205** is amended to read:

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

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

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

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

(c) the offender has paid all restitution ordered by the court or the Board of Pardons and

981 Parole relating to the offense.

982 (2) An offender who qualifies under Subsection (1) may petition the court under Section
983 53-29-207 for an order of removal from the registry if 10 years have passed after the
984 later of the following events in which the offender entered into the community:

- 985 (a) the day on which the offender was placed on probation;
986 (b) the day on which the offender was released from incarceration to parole;
987 (c) the day on which the offender's sentence was terminated without parole;
988 (d) the day on which the offender entered a community-based residential program; or
989 (e) for a minor, as defined in Section 80-1-102, the day on which the division's custody
990 of the offender was terminated.

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

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

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

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

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

999 [~~(e) human smuggling under Section 76-5-308.3;~~]

1000 [~~(f)] (e) human trafficking of a child for labor under [Subsection 76-5-308.5(4)(a)]~~

1001 Section 76-5-308.5;

1002 [~~(g)] (f) aggravated human trafficking for labor under Section 76-5-310;~~

1003 (g) human trafficking of a vulnerable adult for labor under Section 76-5-311;

1004 (h) human smuggling under Section 76-5-316;

1005 [~~(h)] (i) aggravated human smuggling under Section [76-5-310.1] 76-5-317;~~

1006 [~~(i) human trafficking of a vulnerable adult for labor under Section 76-5-311;~~]

1007 (j) a felony violation of unlawful sexual activity with a minor under Section 76-5-401, if,
1008 at the time of the offense, the offender is more than 10 years older than the victim;

1009 (k) sexual abuse of a minor under Section 76-5-401.1, if, at the time of the offense, the
1010 offender is more than 10 years older than the victim;

1011 (l) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2, if, at the
1012 time of the offense, the offender is more than 15 years older than the victim;

1013 (m) forcible sexual abuse under Section 76-5-404;

1014 (n) custodial sexual relations under Section 76-5-412, if the victim in custody is younger

- than 18 years old and the offense is committed on or after May 10, 2011;
- (o) sexual exploitation of a vulnerable adult under Section 76-5b-202;
 - (p) sexual extortion under Subsection 76-5b-204(2)(a);
 - (q) incest under Section 76-7-102;
 - (r) four or more convictions of lewdness under Section 76-5-419;
 - (s) four or more convictions of sexual battery under Section 76-5-418;
 - (t) any combination of convictions of lewdness under Section 76-5-419, and of sexual battery under Section 76-5-418, that total four or more convictions;
 - (u) lewdness involving a child under Section 76-5-420;
 - (v) a felony violation of:
 - (i) recorded or photographed voyeurism under Section 76-12-307; or
 - (ii) distribution of images obtained through voyeurism under Section 76-12-308;
 - (w) aggravated exploitation of prostitution under Section 76-5d-208, committed on or before May 9, 2011;
 - (x) attempting, soliciting, or conspiring to commit an offense listed in Subsections (3)(a) through (v) if the attempt, solicitation, or conspiracy is a registrable offense;
 - (y) attempting, soliciting, or conspiring to commit:
 - (i) human trafficking for commercial sexual exploitation under Section 76-5-308.1;
 - (ii) human trafficking of a child for commercial sexual exploitation under [~~Subsection 76-5-308.5(4)(b)] Section 76-5-308.6;~~
 - (iii) aggravated human trafficking for commercial sexual exploitation under Section [~~76-5-310~~] 76-5-310.2;
 - (iv) human trafficking of a vulnerable adult for commercial sexual exploitation under Section [~~76-5-311~~] 76-5-312;
 - (v) aggravated kidnapping under Section 76-5-302, except if the offender is a natural parent of the victim;
 - (vi) forcible sodomy under Section 76-5-403;
 - (vii) sexual abuse of a child under Section 76-5-404.1;
 - (viii) sexual exploitation of a minor under Section 76-5b-201;
 - (ix) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
 - (x) aggravated sexual extortion under Subsection 76-5b-204(2)(b); or
 - (xi) aggravated exploitation of prostitution under Section 76-5d-208, on or after May 10, 2011; or
 - (z) an offense described in Subsection 53-29-203(1)(b) that would otherwise be subject

to a 20-year petition for removal as described in Section 53-29-206, if:

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

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

- (4) An individual who is as an offender under Section 53-29-202 based on a conviction in an external jurisdiction for a registrable offense, or a substantially equivalent offense, and is required to register on the external jurisdiction's sex, kidnap, or child abuse offender registry, or an equivalent registry, may petition for removal from the registry in accordance with the requirements of this section if the individual:
- (a) does not have a lifetime registration requirement on the external jurisdiction's sex, kidnap, or child abuse offender registry, or an equivalent registry;
 - (b) meets the requirements described in Subsections (1)(a) through (c);
 - (c) has resided in this state for at least 183 days in a year for two consecutive years;
 - (d) intends to primarily reside in this state; and
 - (e) has received an order from a court in the external jurisdiction where the offender was initially required to register on a sex, kidnap, and child abuse registry, or an equivalent registry, that authorizes the offender to be removed from the Sex, Kidnap, and Child Abuse Offender Registry.

Section 6. Section **53G-6-603** is amended to read:

53G-6-603 . Requirement of birth certificate for enrollment of students --

Procedures.

- (1) As used in this section:

(a) "Child trafficking" means:

(i) [-]human trafficking of a child for labor in violation of Section 76-5-308.5; or

(ii) human trafficking of a child for commercial sexual exploitation in violation of

Section 76-5-308.6.

(b) "Enroller" means an individual who enrolls a student in a public school.

(c) "Review team" means a team described in Subsection (4), assigned to determine a student's biological age as described in this section.

(d) "Social service provider" means the same as that term is defined in Section 53E-3-524.

- (2) Except as provided in Subsection (3), upon enrollment of a student for the first time in a particular school, that school shall notify the enroller in writing that within 30 days the

enroller shall provide to the school either:

(a) a certified copy of the student's birth certificate; or

(b)(i) other reliable proof of the student's:

(A) identity;

(B) biological age; and

(C) relationship to the student's legally responsible individual; and

(ii) an affidavit explaining the enroller's inability to produce a copy of the student's birth certificate.

(3)(a) If the documentation described in Subsection (2)(a) or (2)(b)(i) inaccurately reflects the student's biological age, the enroller shall provide to the school:

(i) an affidavit explaining the reasons for the inaccuracy described in Subsection (3)(a); and

(ii) except as provided in Subsection (4), supporting documentation that establishes the student's biological age.

(b) The supporting documentation described in Subsection (3)(a)(ii) may include:

(i) a religious, hospital, physician, or physician assistant certificate showing the student's date of birth;

(ii) an entry in a family religious text;

(iii) an adoption record;

(iv) previously verified school records;

(v) previously verified immunization records;

(vi) documentation from a social service provider; or

(vii) other legal documentation, including from a consulate, that reflects the student's biological age.

(4)(a) If the supporting documentation described in Subsection (3)(b) is not available, the school shall assign a review team to work with the enroller to determine the student's biological age for an LEA to use for a student's enrollment and appropriate placement in a public school.

(b) The review team described in Subsection (4)(a):

(i) may include:

(A) an appropriate district administrator;

(B) the student's teacher or teachers;

(C) the school principal;

(D) a school counselor;

- (E) a school social worker;
- (F) a school psychologist;
- (G) a culturally competent and trauma-informed community representative;
- (H) a school nurse or other school health specialist;
- (I) an interpreter, if necessary; or
- (J) a relevant educational equity administrator; and

(ii) shall include at least three members, at least one of which has completed the instruction described in Subsection 53G-9-207(3)(a), no more than two years prior to the member's appointment to the review team.

- (c) In addition to any duty to comply with the mandatory reporting requirements described in Section 53E-6-701, a school shall report to local law enforcement and to the division any sign of child trafficking that the review team identifies in carrying out the review team's duties described in Subsection (4)(a).

Section 7. Section **76-1-301** is amended to read:

76-1-301 . Offenses for which prosecution may be commenced at any time.

- (1) As used in this section:

- (a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202(2)(a)(iv) or (v) or Subsection 76-5-202(2)(b).
- (b) "Predicate offense" means an offense described in Subsection 76-5-203(1)(a) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.

- (2) Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:

- (a) an offense classified as a capital felony under Section 76-3-103;
- (b) aggravated murder under Section 76-5-202;
- (c) murder under Section 76-5-203;
- (d) manslaughter under Section 76-5-205;
- (e) child abuse homicide under Section 76-5-208;
- (f) aggravated kidnapping under Section 76-5-302;
- (g) child kidnapping under Section 76-5-301.1;
- (h) rape under Section 76-5-402;
- (i) rape of a child under Section 76-5-402.1;

- (j) object rape under Section 76-5-402.2;
- (k) object rape of a child under Section 76-5-402.3;
- (l) forcible sodomy under Section 76-5-403;
- (m) sodomy on a child under Section 76-5-403.1;
- (n) sexual abuse of a child under Section 76-5-404.1;
- (o) aggravated sexual abuse of a child under Section 76-5-404.3;
- (p) aggravated sexual assault under Section 76-5-405;
- (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
- (r) aggravated human trafficking under Section 76-5-310 or 76-5-310.2;
- ~~[(s) aggravated human smuggling under Section 76-5-310.1;]~~
- ~~[(t)]~~ (s) human trafficking of a child for labor under Section 76-5-308.5;
- (t) human trafficking of a child for commercial sexual exploitation under Section
76-5-308.6;
- (u) ~~[-]~~ aggravated human smuggling under Section 76-5-317; or
- ~~[(u)]~~ (v) aggravated exploitation of prostitution involving a child under Section 76-5d-208.

Section 8. Section **76-2-304.5** is amended to read:

76-2-304.5 . Mistake as to victim's age not a defense.

- (1) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 14 years old or older at the time of the alleged offense or was unaware of the victim's true age:
 - (a) child kidnapping, Section 76-5-301.1;
 - (b) rape of a child, Section 76-5-402.1;
 - (c) object rape of a child, Section 76-5-402.3;
 - (d) sodomy on a child, Section 76-5-403.1;
 - (e) sexual abuse of a child, Section 76-5-404.1;
 - (f) aggravated sexual abuse of a child, Section 76-5-404.3;
 - (g) unlawful kissing of a child, Section 76-5-416.2; or
 - (h) an attempt to commit an offense listed in Subsections (1)(a) through (1)(g).
- (2) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 16 years old or older at the time of the alleged offense or was unaware of the victim's true age:
 - (a) unlawful sexual activity with a minor, Section 76-5-401;
 - (b) sexual abuse of a minor, Section 76-5-401.1; or
 - (c) an attempt to commit an offense listed in Subsection (2)(a) or (2)(b).

(3) It is not a defense to the following offenses that the actor mistakenly believed the victim to be 18 years old or older at the time of the alleged offense or was unaware of the victim's true age:

- (a) human trafficking of a child for labor, Section 76-5-308.5;
- (b) human trafficking of a child for commercial sexual exploitation, Section 76-5-308.6;
- ~~[(b)]~~ (c) aggravated human trafficking, Section 76-5-310;
- ~~[(c)]~~ (d) aggravated human smuggling, Section ~~[76-5-310.1]~~ 76-5-317;
- ~~[(d)]~~ (e) unlawful sexual conduct with a minor, Subsection 76-5-401.2(2)(a)(ii);
- ~~[(e)]~~ (f) patronizing a prostituted individual who is a child, Section 76-5d-204;
- ~~[(f)]~~ (g) aggravated exploitation of prostitution, Section 76-5d-208; or
- ~~[(g)]~~ (h) sexual solicitation by an actor offering compensation to a child in exchange for sexual activity, Section 76-5d-211.

Section 9. Section **76-3-203.19** is amended to read:

76-3-203.19 . Aggravating factor for an offense committed against a child or minor as part of a ritual.

(1) As used in this section:

- (a) "Offense against a child or minor" means an offense that is:
 - (i) child abuse as described in Section 76-5-109;
 - (ii) child torture, as described in Section 76-5-109.4;
 - (iii) aggravated child abuse as described in Section 76-5-109.2;
 - (iv) abuse or neglect of a child with a disability as described in Section 76-5-110;
 - (v) child abuse homicide as described in Section 76-5-208;
 - (vi) kidnapping as described in Section 76-5-301, if committed against an individual under 18 years old;
 - (vii) child kidnapping as described in Section 76-5-301.1;
 - (viii) aggravated kidnapping as described in Section 76-5-302, if committed against an individual under 18 years old;
 - (ix) human trafficking of a child for labor as described in Section 76-5-308.5;
 - (x) human trafficking of a child for commercial sexual exploitation as described in Section 76-5-308.6;
 - ~~[(x)]~~ (xi) unlawful sexual activity with a minor as described in Section 76-5-401;
 - ~~[(xi)]~~ (xii) sexual abuse of a minor as described in Section 76-5-401.1;
 - ~~[(xii)]~~ (xiii) rape as described in Section 76-5-402, if committed against an individual under 18 years old;

- 1219 [~~(xiii)~~] (xiv) rape of a child as described in Section 76-5-402.1;
- 1220 [~~(xiv)~~] (xv) object rape as described in Section 76-5-404.2, if committed against an
- 1221 individual under 18 years old;
- 1222 [~~(xv)~~] (xvi) object rape of a child as described in Section 76-5-402.3;
- 1223 [~~(xvi)~~] (xvii) forcible sodomy as described in Section 76-5-403, if committed against
- 1224 an individual under 18 years old;
- 1225 [~~(xvii)~~] (xviii) sodomy on a child as described in Section 76-5-403.1;
- 1226 [~~(xviii)~~] (xix) forcible sexual abuse as described in Section 76-5-404, if committed
- 1227 against an individual under 18 years old;
- 1228 [~~(xix)~~] (xx) sexual abuse of a child as described in Section 76-5-404.1;
- 1229 [~~(xx)~~] (xxi) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- 1230 [~~(xxi)~~] (xxii) aggravated sexual assault as described in Section 76-5-405, if committed
- 1231 against an individual under 18 years old;
- 1232 [~~(xxii)~~] (xxiii) unlawful kissing of a child as described in Section 76-5-416.2; or
- 1233 [~~(xxiii)~~] (xxiv) unlawful kissing of a minor as described in Section 76-5-416.4.
- 1234 (b) "Ritual" means an event or act, or a series of events or acts:
- 1235 (i) marked by specific actions, specific gestures, ceremonial objects, ceremonial
- 1236 clothing, religious texts, or specific words; and
- 1237 (ii) designed to commemorate, celebrate, or solemnize a particular occasion or
- 1238 significance in a religious, cultural, social, institutional, or other context.
- 1239 (2) For a defendant convicted of an offense against a child or minor, it is an aggravating
- 1240 factor if the sentencing court finds that the defendant committed the offense as part of,
- 1241 or to facilitate, a ritual or a training or practice to perform a ritual.
- 1242 (3) When sentencing a defendant convicted of an offense against a child or minor subject to
- 1243 the aggravating factor described in Subsection (2), the sentencing court shall consider
- 1244 the aggravating factor and include the aggravating factor in the judgment of commitment.
- 1245 (4) In determining the length of imprisonment for a defendant imprisoned for a conviction
- 1246 of an offense against a child or minor subject to the aggravating factor described in
- 1247 Subsection (2), the Board of Pardons and Parole shall consider the aggravating factor.
- 1248 Section 10. Section **76-3-203.20** is amended to read:
- 1249 **76-3-203.20 . Aggravating factor if actor traveled to commit a child sexual**
- 1250 **offense.**
- 1251 (1) As used in this section:
- 1252 (a) "Child sexual offense" means one of the following offenses:

- 1253 (i) human trafficking of a child for commercial sexual exploitation as described in
1254 Section [76-5-308.5] 76-5-308.6;
- 1255 (ii) unlawful sexual activity with a minor as described in Section 76-5-401;
1256 (iii) sexual abuse of a minor as described in Section 76-5-401.1;
1257 (iv) unlawful sexual conduct with a 16- or 17-year-old as described in Section
1258 76-5-401.2;
- 1259 (v) rape of a child as described in Section 76-5-402.1;
1260 (vi) object rape of a child as described in Section 76-5-402.3;
1261 (vii) sodomy on a child as described in Section 76-5-403.1;
1262 (viii) sexual abuse of a child as described in Section 76-5-404.1;
1263 (ix) aggravated sexual abuse of a child as described in Section 76-5-404.3;
1264 (x) unlawful kissing of a child as described in Section 76-5-416.2; or
1265 (xi) unlawful kissing of a minor as described in Section 76-5-416.4.
- 1266 (b) "Principal place of residence" means the single location where an individual's
1267 habitation is fixed and to which, whenever the individual is absent, the individual has
1268 the intention of returning, as evidenced by:
1269 (i) the intent expressed by the individual; and
1270 (ii) acts of the individual that are consistent or inconsistent with the intent expressed
1271 by the individual.
- 1272 (2) For a defendant convicted of a child sexual offense, it is an aggravating factor if the
1273 sentencing court finds that the defendant:
1274 (a) traveled more than 45 miles from the defendant's principal place of residence for the
1275 purpose of the defendant committing, or attempting to commit, the child sexual
1276 offense; or
1277 (b) paid for, or otherwise facilitated, the victim to travel more than 45 miles from the
1278 victim's principal place of residence, for the purpose of the defendant committing, or
1279 attempting to commit, the child sexual offense.
- 1280 (3) When sentencing a defendant convicted of a child sexual offense subject to the
1281 aggravating factor described in Subsection (2), the sentencing court shall consider the
1282 aggravating factor and include the aggravating factor in the judgment of commitment.
- 1283 (4) In determining the length of imprisonment for a defendant imprisoned for a conviction
1284 of an offense against a child or minor subject to the aggravating factor described in
1285 Subsection (2), the Board of Pardons and Parole shall consider the aggravating factor.
1286 Section 11. Section **76-5-305** is amended to read:

Part 3. Kidnapping, Trafficking, and Smuggling

76-5-305 . Defenses to certain offenses concerning kidnapping, custodial interference, and unlawful detention.

(1) It is a defense ~~[under this part that]~~ to an offense listed in Subsection (2) that:

(a) the actor was acting under a reasonable belief that:

(i) the conduct was necessary to protect any individual from imminent bodily injury or death; or

(ii) the detention or restraint was authorized by law; or

(b) the alleged victim is younger than 18 years old or is a dependent adult, as defined in Section 76-5-111, and the actor was acting under a reasonable belief that the custodian, guardian, caretaker, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor's conduct.

~~[(2) Subsection (1)(b) may not be used as a defense to conduct described in Section 76-5-308.5.]~~

(2) The offenses referred to in Subsection (1) are:

(a) kidnapping, in violation of Section 76-5-301;

(b) child kidnapping, in violation of Section 76-5-301.1;

(c) parental kidnapping, in violation of Section 76-5-301.2;

(d) aggravated kidnapping, in violation of Section 76-5-302;

(e) custodial interference, in violation of Section 76-5-303; or

(f) unlawful detention and unlawful detention of a minor, in violation of Section 76-5-304.

Section 12. Section **76-5-308** is amended to read:

76-5-308 . Human trafficking for labor.

(1)(a) As used in this section:

(i) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(ii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

(iii) "Extortion" means an offense of:

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

(B) theft by extortion under Section 76-6-406.

(iv) "Fraud" means a knowingly false or misleading material representation of fact that is:

(A) made to obtain money, property, a benefit, or a service to which a person is not entitled;

(B) intended to cause another person to rely upon the representation; and

(C) relied upon by another person.

(b) Terms defined in [Sections] Section 76-1-101.5[and 76-5-307] apply to this section.

(2) An actor commits human trafficking for labor if:

(a) [the actor [recruits,] enlists, harbors, transports, obtains, [patronizes, or solicits] or uses an individual [for labor] for the purpose of procuring or using the individual's labor through the use of force, fraud, or coercion[, which may include] ;

(b) the labor described in Subsection (2)(a) is not a commercial sexual act or a commercial sexually explicit performance; and

(c) the actor's use of force, fraud, or coercion described in Subsection (2)(a) involves:

[(a)] (i) causing, or threatening to cause, serious harm to[, or physical restraint against, that] the individual or another individual;

(ii) physically restraining, or threatening to physically restrain, the individual or another individual;

[(b)] (iii) destroying, concealing, removing, confiscating, or unlawfully possessing [any] a passport, immigration document, or other government-issued identification document;

[(c)] (iv) [abusing or threatening abuse of the law or legal process] using, or threatening to use, the legal process in an unlawful manner against the individual or another individual;

(v) kidnapping, or threatening to kidnap, the individual or another individual;

(vi) extortion of the individual or another individual;

(vii) facilitating or controlling the individual's access to a controlled substance; or

(viii) creating or exploiting a circumstance under which:

(A) the individual is unable to terminate the employment relationship; or

(B) the individual is unlawfully forced to remain in a condition of servitude.

[(d)] using a condition of an individual being a debtor due to a pledge of the individual's personal services or the personal services of an individual under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;]

[(e)] using a condition of servitude by means of any scheme, plan, or pattern intended to

cause an individual to believe that if the individual did not enter into or continue in a condition of servitude, the individual or another individual would suffer serious harm or physical restraint, or would be threatened with abuse of legal process; or]

[~~(f) creating or exploiting a relationship where the individual is dependent upon the actor.~~]

(3)(a) A violation of Subsection (2) is a second degree felony if the violation is done knowingly.

(b) A violation of Subsection (2) is a third degree felony if the violation is done recklessly.

[~~(4) Human trafficking for labor includes any labor obtained through force, fraud, or coercion as described in Subsection (2).~~]

[~~(5)~~] (4) [This offense] An offense committed under this section is a separate offense from any other [erime] offense committed in relationship to the commission of [this offense] an offense under this section.

Section 13. Section **76-5-308.1** is amended to read:

76-5-308.1 . Human trafficking for commercial sexual exploitation.

(1)(a) As used in this section:

(i) "Commercial sexual act" means participating in an act of sexual activity with another individual for which anything of value is offered, given to, or received by any individual.

(ii)(A) "Commercial sexually explicit performance" means a sexually explicit performance or activity for which anything of value is offered, given to, or received by any individual.

(B) "Commercial sexually explicit performance" does not include a commercial sexual act.

(iii) "Extortion" means the same as that term is defined in Section 76-5-308.

(iv) "Fraud" means the same as that term is defined in Section 76-5-308.

(v) "Sexual activity" means:

(A) sexual intercourse or any other sexual act involving the genitals of one individual and the mouth or anus of another individual; or

(B) the touching of the genitals, female breast, or anus of one individual with any other body part of another individual with the intent to sexually arouse or gratify either individual.

(b) Terms defined in [Sections] Section 76-1-101.5 [~~and 76-5-307~~] apply to this section.

(2) An actor commits human trafficking for commercial sexual exploitation if:

- 1389 (a) ~~[-]the actor [recruits,-]~~ enlists, harbors, transports, obtains, patronizes, or solicits an
 1390 individual [for sexual exploitation] for the purpose of procuring the individual's labor
 1391 in the form of a commercial sexually explicit performance or commercial sexual act
 1392 through the use of force, fraud, or coercion[,- which may include:] ; and
- 1393 (b) the actor's use of force, fraud, or coercion described in Subsection (2)(a) involves:
 1394 [(a)] (i) causing, or threatening to cause, serious harm to[,- or physical restraint
 1395 against, that] the individual or another individual;
 1396 (ii) physically restraining, or threatening to physically restrain, the individual or
 1397 another individual;
 1398 [(b)] (iii) destroying, concealing, removing, confiscating, or unlawfully possessing [
 1399 any] a passport, immigration document, or other government-issued identification
 1400 document;
 1401 [(c)] (iv) [abusing or threatening abuse of the law or legal process] using, or
 1402 threatening to use, the legal process in an unlawful manner against the individual
 1403 or another individual;
 1404 (v) kidnapping, or threatening to kidnap, the individual or another individual;
 1405 (vi) extortion of the individual or another individual;
 1406 (vii) facilitating or controlling the individual's access to a controlled substance; or
 1407 (viii) creating or exploiting a circumstance under which:
 1408 (A) the individual is unable to terminate the employment relationship; or
 1409 (B) the individual is unlawfully forced to remain in a condition of servitude.
 1410 [(d) using a condition of an individual being a debtor due to a pledge of the individual's
 1411 personal services or the personal services of an individual under the control of the
 1412 debtor as a security for debt where the reasonable value of the services is not applied
 1413 toward the liquidation of the debt or the length and nature of those services are not
 1414 respectively limited and defined;]
 1415 [(e) using a condition of servitude by means of any scheme, plan, or pattern intended to
 1416 cause an individual to believe that if the individual did not enter into or continue in a
 1417 condition of servitude, the individual or another individual would suffer serious harm
 1418 or physical restraint, or would be threatened with abuse of legal process; or]
 1419 [(f) creating or exploiting a relationship where the individual is dependent upon the actor.]
- 1420 (3)(a) A violation of Subsection (2) is a first degree felony if the violation:
 1421 (i) involves a commercial sexual act; and
 1422 (ii) is done knowingly.

(b) A violation of Subsection (2) is a second degree felony if the violation:

(i)(A) involves a commercial sexually explicit performance; and

(B) is done knowingly; or

(ii)(A) involves a commercial sexual act; and

(B) is done recklessly.

(c) A violation of Subsection (2) is a third degree felony if the violation:

(i) involves a commercial sexually explicit performance; and

(ii) is done recklessly.

~~[(4) Human trafficking for sexual exploitation includes all forms of commercial sexual activity, which may include the following conduct when the person acts under force, fraud, or coercion as described in Subsection (1):]~~

~~[(a) sexually explicit performance;]~~

~~[(b) prostitution;]~~

~~[(c) participation in the production of pornography;]~~

~~[(d) performance in strip clubs; and]~~

~~[(e) exotic dancing or display.]~~

~~[(5)] (4) [This offense] An offense committed under this section is a separate offense from any other [crime] offense committed in relationship to the commission of [this offense] an offense under this section.~~

Section 14. Section **76-5-308.5** is amended to read:

76-5-308.5 . Human trafficking of a child for labor.

(1)(a) As used in this section[, "commercial sexual activity with a child" means any sexual act with a child, for which anything of value is given to or received by any person.] :

(i) "Child" means an individual who is younger than 18 years old.

(ii) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(iii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

(iv) "Extortion" means the same as that term is defined in Section 76-5-308.

(v) "Fraud" means the same as that term is defined in Section 76-5-308.

(b) Terms defined in [Sections] Section 76-1-101.5~~[and 76-5-307]~~ apply to this section.

(2) An actor commits human trafficking of a child for labor if~~[the actor recruits,]~~ :

(a) [-] the actor enlists, harbors, transports, obtains, [patronizes, or solicits a child for

- 1457 ~~sexual exploitation or forced labor.] or uses a child for the purpose of procuring or~~
1458 ~~using the child's labor through the use of force, fraud, or coercion of either the child~~
1459 ~~or an individual who has the ability to control the actions of the child;~~
1460 (b) ~~the labor described in Subsection (2)(a) is not a commercial sexual act or a~~
1461 ~~commercial sexually explicit performance; and~~
1462 (c) ~~the actor's use of force, fraud, or coercion described in Subsection (2)(a) involves:~~
1463 ~~(i) causing, or threatening to cause, serious harm to the child or another individual;~~
1464 ~~(ii) physically restraining, or threatening to physically restrain, the child or another~~
1465 ~~individual;~~
1466 ~~(iii) destroying, concealing, removing, confiscating, or unlawfully possessing a~~
1467 ~~passport, immigration document, or other government-issued identification~~
1468 ~~document;~~
1469 ~~(iv) using, or threatening to use, the legal process in an unlawful manner against the~~
1470 ~~child or another individual;~~
1471 ~~(v) kidnapping, or threatening to kidnap, the child or another individual;~~
1472 ~~(vi) extortion of the child or another individual;~~
1473 ~~(vii) facilitating or controlling the child's access to a controlled substance; or~~
1474 ~~(viii) creating or exploiting a circumstance under which:~~
1475 ~~(A) the child, or an individual who has the ability to control the actions of the~~
1476 ~~child, is unable to terminate the employment relationship; or~~
1477 ~~(B) the child is unlawfully forced to remain in a condition of servitude.~~
1478 (3)(a) A violation of Subsection (2) that is done knowingly is a first degree felony
1479 punishable by a term of imprisonment of not less than:
1480 [(a)] (i) 10 years and which may be for life if the child described in Subsection (2) is
1481 14 years old or older but younger than 18 years old; or
1482 [(b)] (ii) 15 years and which may be for life if the child described in Subsection (2) is
1483 under 14 years old.
1484 (b) A violation of Subsection (2) that is done recklessly is a second degree felony.
1485 [(4)(a) Human trafficking of a child for labor includes any labor obtained through force,
1486 ~~fraud, or coercion as described in Section 76-5-308.]~~
1487 [(b) Human trafficking of a child for sexual exploitation includes all forms of
1488 ~~commercial sexual activity with a child, including sexually explicit performance,~~
1489 ~~prostitution, participation in the production of pornography, performance in a strip~~
1490 ~~club, and exotic dancing or display as described in Section 76-5-308.1.]~~

[~~(5)~~] (4) [~~This offense~~] An offense committed under this section is a separate offense from any other [~~crime~~] offense committed in relationship to the commission of [~~this offense~~] an offense under this section.

(5) In accordance with Section 76-2-304.5, it is not a defense to a prosecution under this section that the actor mistakenly believed the child described in Subsection (2) was 18 years old or older at the time of the violation of Subsection (2) or was unaware of the child's true age.

Section 15. Section **76-5-308.6** is enacted to read:

76-5-308.6 . Human trafficking of a child for commercial sexual exploitation.

(1)(a) As used in this section:

(i) "Child" means an individual who is younger than 18 years old.

(ii) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(iii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

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

(2) An actor commits human trafficking of a child for commercial sexual exploitation if the actor enlists, harbors, transports, obtains, patronizes, or solicits a child for the purpose of procuring the child's labor in the form of a commercial sexual act or a commercial sexually explicit performance.

(3)(a) A violation of Subsection (2) that is done knowingly is a first degree felony punishable by a term of imprisonment of not less than:

(i) 10 years and which may be for life if the child described in Subsection (2) is 14 years old or older but younger than 18 years old; or

(ii) 15 years and which may be for life if the child described in Subsection (2) is under 14 years old.

(b) A violation of Subsection (2) that is done recklessly is a second degree felony.

(4) An offense committed under this section is a separate offense from any other offense committed in relationship to the commission of an offense under this section.

(5) In accordance with Section 76-2-304.5, it is not a defense to a prosecution under this section that the actor mistakenly believed the child described in Subsection (2) was 18 years old or older at the time of the violation of Subsection (2) or was unaware of the child's true age.

Section 16. Section **76-5-309** is amended to read:

76-5-309 . Criminal liability based on benefiting from human trafficking or human smuggling.

- (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.
- (2) An actor is a party to the offense if the actor benefits, receives, or exchanges anything of value from knowing participation in:
- (a) human trafficking for labor in violation of Section 76-5-308;
 - ~~[(b) human smuggling in violation of Section 76-5-308.3;]~~
 - ~~[(c) human trafficking of a child in violation of Section 76-5-308.5; and]~~
 - ~~[(d)] (b) human trafficking for commercial sexual exploitation in violation of Section 76-5-308.1[-] ;~~
 - (c) human trafficking of a child for labor in violation of Section 76-5-308.5;
 - (d) human trafficking of a child for commercial sexual exploitation in violation of Section 76-5-308.6;
 - (e) human trafficking of a vulnerable adult for labor in violation of Section 76-5-311;
 - (f) human trafficking of a vulnerable adult for commercial sexual exploitation in violation of Section 76-5-312; or
 - (g) human smuggling in violation of Section 76-5-316.
- ~~[(3)(a) A violation of Subsection (2)(a) is a second degree felony.]~~
- ~~[(b) A violation of Subsection (2)(b) is a third degree felony.]~~
- ~~[(c) A violation of Subsection (2)(c) is a first degree felony punishable by a term of imprisonment of not less than 10 years and which may be for life.]~~
- ~~[(d) A violation of Subsection (2)(d) is a first degree felony.]~~
- ~~[(4) An actor commits a separate offense of human trafficking, human trafficking of a child, or human smuggling for each individual who is smuggled or trafficked under Section 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-310, or 76-5-310.1.]~~

Section 17. Section **76-5-310** is amended to read:

76-5-310 . Aggravated human trafficking for labor.

- (1) Terms defined in [Sections] Section 76-1-101.5[~~and 76-5-307~~] apply to this section.
- (2) An actor commits aggravated human trafficking for labor [~~or sexual exploitation~~]-if, in the course of committing an offense of human trafficking for labor under Section 76-5-308[~~or 76-5-308.1~~], the offense:
- (a) results in the death of [~~a trafficked individual~~] an individual who is a victim of the offense described in Section 76-5-308;
 - (b) results in serious bodily injury of [~~a trafficked individual~~] an individual who is a

victim of the offense described in Section 76-5-308;

(c) involves:

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

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

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

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

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

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

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

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

(d) involves the trafficking of 10 or more individuals; or

(e) involves an individual trafficked for longer than 30 consecutive days.

(3) A violation of Subsection (2) is a first degree felony punishable by a term of imprisonment of not less than 10 years and which may be for life.

(4) ~~[Aggravated human trafficking]~~ An offense under this section is a separate offense from any other ~~[crime]~~ offense committed in relationship to the commission of ~~[the offense]~~ an offense under this section.

Section 18. Section **76-5-310.2** is enacted to read:

76-5-310.2 . Aggravated human trafficking for commercial sexual exploitation.

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

(2) An actor commits aggravated human trafficking for commercial sexual exploitation if, in the course of committing an offense of human trafficking for commercial sexual exploitation under Section 76-5-308.1, the offense:

(a) results in the death of an individual who is a victim of the offense described in Section 76-5-308.1;

(b) results in serious bodily injury of an individual who is a victim of the offense described in Section 76-5-308.1;

(c) involves:

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

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

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

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

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

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

- 1593 (vii) aggravated sexual abuse of a child under Section 76-5-404.3; or
 1594 (viii) aggravated sexual assault under Section 76-5-405;
 1595 (d) involves the trafficking of 10 or more individuals; or
 1596 (e) involves an individual trafficked for longer than 30 consecutive days.
 1597 (3) A violation of Subsection (2) is a first degree felony punishable by a term of
 1598 imprisonment of not less than 10 years and which may be for life.
 1599 (4) An offense committed under this section is a separate offense from any other offense
 1600 committed in relationship to the commission of an offense under this section.
 1601 Section 19. Section **76-5-311** is amended to read:
 1602 **76-5-311 . Human trafficking of a vulnerable adult for labor.**
 1603 (1)(a) As used in this section:
 1604 (i) "Commercial sexual [activity with a vulnerable adult] act" means [any sexual act
 1605 with a vulnerable adult for which anything of value is given to or received by any
 1606 individual] the same as that term is defined in Section 76-5-308.1.
 1607 (ii) "Commercial sexually explicit performance" means the same as that term is
 1608 defined in Section 76-5-308.1.
 1609 (iii) "Extortion" means the same as that term is defined in Section 76-5-308.
 1610 (iv) "Fraud" means the same as that term is defined in Section 76-5-308.
 1611 ~~[(ii)]~~ (v) "Vulnerable adult" means the same as that term is defined in [Subsection
 1612 76-5-111(1)] Section 76-5-111.
 1613 (b) Terms defined in Section 76-1-101.5 apply to this section.
 1614 (2) An actor commits human trafficking of a vulnerable adult for labor if ~~[the actor]~~:
 1615 (a) ~~[recruits,]~~ the actor enlists, harbors, transports, [or] obtains, or uses a vulnerable adult
 1616 for [sexual exploitation or forced labor; or] the purpose of procuring or using the
 1617 vulnerable adult's labor through the use of force, fraud, or coercion of either the
 1618 vulnerable adult or an individual who has the ability to control the actions of the
 1619 vulnerable adult;
 1620 (b) the labor described in Subsection (2)(a) is not a commercial sexual act or a
 1621 commercial sexually explicit performance;
 1622 (c) the actor's use of force, fraud, or coercion described in Subsection (2)(a) involves:
 1623 (i) causing, or threatening to cause, serious harm to the vulnerable adult or another
 1624 individual;
 1625 (ii) physically restraining, or threatening to physically restrain, the vulnerable adult or
 1626 another individual;

(iii) destroying, concealing, removing, confiscating, or unlawfully possessing a passport, immigration document, or other government-issued identification document;

(iv) using, or threatening to use, the legal process in an unlawful manner against the vulnerable adult or another individual;

(v) kidnapping, or threatening to kidnap, the vulnerable adult or another individual;

(vi) extortion of the vulnerable adult or another individual;

(vii) facilitating or controlling the vulnerable adult's access to a controlled substance;
or

(viii) creating or exploiting a circumstance under which:

(A) the vulnerable adult, or an individual who has the ability to control the actions of the vulnerable adult, is unable to terminate the employment relationship; or

(B) the vulnerable adult is unlawfully forced to remain in a condition of servitude;
and

(d) the actor knows, is reckless, or is criminally negligent as to whether, the vulnerable adult described in Subsection (2)(a) is a vulnerable adult.

~~[(b) patronizes or solicits a vulnerable adult for sexual exploitation or forced labor when the actor knew or should have known of the victim's vulnerability.]~~

(3)(a) A violation of Subsection (2) in which the violation of Subsections (2)(a) and (c) is done knowingly is a first degree felony punishable by a term of imprisonment of not less than 10 years and which may be for life.

(b) A violation of Subsection (2) in which the violation of Subsections (2)(a) and (c) is done recklessly is a second degree felony.

(4) An offense committed under this section is a separate offense from any other offense committed in relationship to the commission of an offense under this section.

~~[(4)(a) Human trafficking of a vulnerable adult for labor includes any labor obtained through force, fraud, or coercion as described in Section 76-5-308.]~~

~~[(b) Human trafficking of a vulnerable adult for sexual exploitation includes all forms of commercial sexual activity with a vulnerable adult involving:]~~

~~[(i) sexually explicit performances;]~~

~~[(ii) prostitution;]~~

~~[(iii) participation in the production of pornography;]~~

~~[(iv) performance in a strip club; or]~~

~~[(v) exotic dancing or display.]~~

Section 20. Section **76-5-312** is enacted to read:

76-5-312 . Human trafficking of a vulnerable adult for commercial sexual exploitation.

(1)(a) As used in this section:

(i) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(ii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

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

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

(2) An actor commits human trafficking of a vulnerable adult for commercial sexual exploitation if the actor enlists, harbors, transports, obtains, patronizes, or solicits a vulnerable adult for the purpose of procuring the vulnerable adult's labor in the form of a commercial sexual act or a commercial sexually explicit performance.

(3)(a) A violation of Subsection (2) that is done knowingly is a first degree felony punishable by a term of imprisonment of not less than 10 years and which may be for life.

(b) A violation of Subsection (2) that is done recklessly is a second degree felony.

(4) An offense committed under this section is a separate offense from any other offense committed in relationship to the commission of an offense under this section.

Section 21. Section **76-5-313** is enacted to read:

76-5-313 . Patronizing a victim of human labor trafficking.

(1)(a) As used in this section:

(i) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(ii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

(iii) "Fraud" means the same as that term is defined in Section 76-5-308.

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

(2) An actor commits patronizing a victim of labor trafficking if:

(a) the actor knowingly requests or accepts labor or services from an individual;

(b) the labor or services described in Subsection (2)(a) is not a commercial sexual act or a commercial sexually explicit performance; and

(c) the actor:

- (i) knows the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual; or
- (ii) is reckless as to whether the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual.

(3)(a) A violation of Subsection (2)(c)(i) is a third degree felony.

(b)(i) Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2)(c)(ii) is a class A misdemeanor.

(ii) A violation of Subsection (2)(c)(ii) is a third degree felony on a second or any subsequent conviction for a violation of Subsection (2)(c)(ii).

Section 22. Section **76-5-314** is enacted to read:

76-5-314 . Patronizing a child victim of human labor trafficking.

(1)(a) As used in this section:

(i) "Child" means an individual who is younger than 18 years old.

(ii) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(iii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

(iv) "Fraud" means the same as that term is defined in Section 76-5-308.

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

(2) An actor commits patronizing a child victim of labor exploitation if:

(a) the actor knowingly requests or accepts services or labor from an individual;

(b) the services or labor described in Subsection (2)(a) is not a commercial sexual act or a commercial sexually explicit performance;

(c) the actor knows, is reckless, or is criminally negligent as to whether, the individual described in Subsection (2)(a) is a child;

(d) the individual described in Subsection (2)(a) is a child; and

(e) the actor:

(i) knows the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual;

(ii) is reckless as to whether the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual;
or

(iii) is criminally negligent as to whether the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over

the individual.

(3)(a) A violation of Subsection (2)(e)(i) is a second degree felony.

(b)(i) Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2)(e)(ii) is a third degree felony.

(ii) A violation of Subsection (2)(e)(ii) is a second degree felony on a second or any subsequent conviction for a violation of Subsection (2)(e)(ii).

(c)(i) Except as provided in Subsection (3)(c)(ii), a violation of Subsection (2)(e)(iii) is a class A misdemeanor.

(ii) A violation of Subsection (2)(e)(iii) is a third degree felony on a second or any subsequent conviction for a violation of Subsection (2)(e)(iii).

Section 23. Section **76-5-315** is enacted to read:

76-5-315 . Patronizing a vulnerable adult victim of human labor trafficking.

(1)(a) As used in this section:

(i) "Commercial sexual act" means the same as that term is defined in Section 76-5-308.1.

(ii) "Commercial sexually explicit performance" means the same as that term is defined in Section 76-5-308.1.

(iii) "Fraud" means the same as that term is defined in Section 76-5-308.

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

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

(2) An actor commits patronizing a vulnerable adult victim of human labor trafficking if:

(a) the actor knowingly requests or accepts services or labor from an individual;

(b) the services or labor described in Subsection (2)(a) is not a commercial sexual act or a commercial sexually explicit performance;

(c) the actor knows, is reckless, or is criminally negligent as to whether, the individual described in Subsection (2)(a) is a vulnerable adult;

(d) the individual described in Subsection (2)(a) is a vulnerable adult; and

(e) the actor:

(i) knows the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual;

(ii) is reckless as to whether the individual's services or labor is being provided as a result of another person's exercise of force, fraud, or coercion over the individual; or

(iii) is criminally negligent as to whether the individual's services or labor is being

provided as a result of another person's exercise of force, fraud, or coercion over the individual.

(3)(a) A violation of Subsection (2)(e)(i) is a second degree felony.

(b)(i) Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2)(e)(ii) is a third degree felony.

(ii) A violation of Subsection (2)(e)(ii) is second degree felony on a second or any subsequent conviction for a violation of Subsection (2)(e)(ii).

(c)(i) Except as provided in Subsection (3)(c)(ii), a violation of Subsection (2)(e)(iii) is a class A misdemeanor.

(ii) A violation of Subsection (2)(e)(iii) is a third degree felony on a second or any subsequent conviction for a violation of Subsection (2)(e)(iii).

Section 24. Section **76-5-316**, which is renumbered from Section 76-5-308.3 is renumbered and amended to read:

[76-5-308.3] 76-5-316 . Human smuggling.

(1)(a) As used in this section:

(i) "Commercial purpose" includes direct or indirect participation in, or facilitation of, the transportation of one or more individuals for the purpose of:

(A) charging or obtaining a fee, or attempting to charge or obtain a fee, for the transportation; or

(B) obtaining, exchanging, or receiving, or attempting to obtain, exchange, or receive, any thing or item of value.

(ii) "Facilitation of the transportation" includes providing:

(A) travel arrangement services;

(B) payment for the costs of travel; or

(C) property that would advance an act of transportation, including:

(I) a vehicle or other means of transportation;

(II) a weapon;

(III) false identification; or

(IV) making lodging available, including by rent, lease, or sale.

(b) Terms defined in [Sections] Section 76-1-101.5 [and 76-5-307] apply to this section.

(2) An actor commits human smuggling if the actor transports or procures the transportation for one or more individuals for a commercial purpose, knowing or having reason to know that the individual or individuals transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

(3) A violation of Subsection (2) is a second degree felony.

(4) ~~[This offense is a separate offense from any other crime committed in relationship to the commission of this offense]~~ An offense committed under this section is a separate offense from any other offense committed in relationship to the commission of an offense under this section.

Section 25. Section **76-5-317**, which is renumbered from Section 76-5-310.1 is renumbered and amended to read:

[76-5-310.1] 76-5-317 . Aggravated human smuggling.

(1)(a) As used in this section, "family member" means an individual's parent, grandparent, sibling, or other individual related to the individual by consanguinity or affinity to the second degree.

(b) Terms defined in [Sections] Section 76-1-101.5[and 76-5-307] apply to this section.

(2) An actor commits aggravated human smuggling if, in the course of committing ~~[an offense under Section 76-5-308.3]~~ human smuggling in violation of Section 76-5-316, the offense:

(a) results in the death of ~~[a smuggled individual]~~ an individual who is a victim of the offense described in Section 76-5-316;

(b) results in serious bodily injury ~~[to a smuggled individual]~~ of an individual who is a victim of the offense described in Section 76-5-316;

(c) involves the smuggling of a child and the child is not accompanied by a family member who is 18 years old or older;

(d) involves:

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

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

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

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

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

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

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

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

(e) involves the smuggling of 10 or more individuals.

(3) A violation of Subsection (2) is a first degree felony.

- (4) ~~[Aggravated human smuggling is a separate offense from any other crime committed in relationship to the offense]~~ An offense committed under this section is a separate offense from any other offense committed in relationship to the commission of an offense under this section.

Section 26. Section **76-5-417** is amended to read:

76-5-417 . Enticing a minor to engage in sexual activity.

- (1)(a) As used in this section:

- (i) "Minor" means an individual who is under 18 years old.
- (ii) "Electronic communication" means the same as that term is defined in Section 76-12-201.
- (iii) "Electronic communication device" means the same as that term is defined in Section 76-12-201.

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

- (2) An actor commits enticing a minor to engage in sexual activity if the actor knowingly:

- (a) uses an electronic communication or an electronic communication device to:

- (i) solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person who the actor believes to be a minor, to engage in sexual activity that is a violation of state criminal law;

- (ii) communicate with any individual with the intent to solicit, seduce, lure, or entice a minor, or attempt to solicit, seduce, lure, or entice a minor, to engage in sexual activity that is a violation of state criminal law; or

- (iii)(A) initiate contact with a minor or a person the actor believes to be a minor; and

- (B) subsequent to the action described in Subsection (2)(a)(iii)(A), by any electronic or written means, solicits, seduces, lures, or entices the minor, or attempts to solicit, seduce, lure, or entice the minor, or a person the actor believes to be the minor, to engage in sexual activity that is a violation of state criminal law; or

- (b) develops a relationship of trust with a minor or the minor's parent or guardian with the intent to solicit, seduce, lure, or entice the minor, or attempt to solicit, seduce, lure, or entice the minor, to engage in sexual activity that is a violation of state criminal law.

- (3) A violation of Subsection (2) is punishable as follows:

- (a) enticement to engage in sexual activity that would be a first degree felony for the

actor is a:

(i) second degree felony upon the first conviction for violation of this Subsection

(3)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not

fewer than three years and which may be for life, upon a second or any subsequent

conviction for a violation of this Subsection (3)(a);

(b) enticement to engage in sexual activity that would be a second degree felony for the

actor is a third degree felony;

(c) enticement to engage in sexual activity that would be a third degree felony for the

actor is a class A misdemeanor;

(d) enticement to engage in sexual activity that would be a class A misdemeanor for the

actor is a class B misdemeanor; and

(e) enticement to engage in sexual activity that would be a class B misdemeanor for the

actor is a class C misdemeanor.

(4) It is not a defense to a violation, or attempted violation, of Subsection (2) that a law

enforcement officer or an undercover operative who is employed by a law enforcement

agency was involved in the detection or investigation of the offense.

(5)(a) When an actor who commits a felony violation of this section has previously been

convicted of an offense described in Subsection (5)(b), the court may not in any way

shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The ~~[sections]~~ offenses referred to in Subsection (5)(a) are:

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

(ii) human trafficking of a child for labor as described in Section 76-5-308.5;

(iii) human trafficking of a child for commercial sexual exploitation as described in

Section 76-5-308.6;

~~[(iii)]~~ (iv) rape as described in Section 76-5-402;

~~[(iv)]~~ (v) rape of a child as described in Section 76-5-402.1;

~~[(v)]~~ (vi) object rape as described in Section 76-5-402.2;

~~[(vi)]~~ (vii) object rape of a child as described in Section 76-5-402.3;

~~[(vii)]~~ (viii) forcible sodomy as described in Section 76-5-403;

1899 ~~[(viii)]~~ (ix) sodomy on a child as described in Section 76-5-403.1;
 1900 ~~[(ix)]~~ (x) forcible sexual abuse as described in Section 76-5-404;
 1901 ~~[(x)]~~ (xi) sexual abuse of a child as described in Section 76-5-404.1;
 1902 ~~[(xi)]~~ (xii) aggravated sexual abuse of a child as described in Section 76-5-404.3;
 1903 ~~[(xii)]~~ (xiii) aggravated sexual assault as described in Section 76-5-405;
 1904 ~~[(xiii)]~~ (xiv) enticing a minor to engage in sexual activity as described in Section
 1905 76-5-417;
 1906 ~~[(xiv)]~~ (xv) any offense in any other state or federal jurisdiction that constitutes or
 1907 would constitute a crime in Subsections (5)(b)(i) through ~~[(xiii)]~~ (xiv); or
 1908 ~~[(xv)]~~ (xvi) the attempt, solicitation, or conspiracy to commit any of the offenses in
 1909 Subsections (5)(b)(i) through ~~[(xiv)]~~ (xv).

1910 Section 27. Section **76-5d-106** is amended to read:

1911 **76-5d-106 . Safe harbor for children as victims in commercial sex or sexual**
 1912 **solicitation.**

1913 (1) As used in this section:

- 1914 (a) "Child engaged in commercial sex or sexual solicitation" means a child who:
- 1915 (i) engages, offers, or agrees to engage in any sexual activity with another individual
 1916 in exchange for receiving a fee, or the functional equivalent of a fee;
- 1917 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to
 1918 meet, and meeting at an arranged place for the purpose of sexual activity in
 1919 exchange for receiving a fee or the functional equivalent of a fee;
- 1920 (iii) loiters in or within view of any public place for the purpose of being hired to
 1921 engage in sexual activity; or
- 1922 (iv) engages in sexual solicitation.
- 1923 (b) "Division" means the Division of Child and Family Services created in Section
 1924 80-2-201.
- 1925 (c) "Juvenile receiving center" means the same as that term is defined in Section
 1926 80-1-102.

1927 (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
 1928 enforcement officer shall:

- 1929 (a) conduct an investigation regarding possible human trafficking of the child pursuant
 1930 to Sections 76-5-308, 76-5-308.1, ~~[and]~~ 76-5-308.5, and 76-5-308.6;
- 1931 (b) refer the child to the division;
- 1932 (c) bring the child to a juvenile receiving center, if available; and

(d) contact the child's parent or guardian, if practicable.

- (3) When law enforcement refers a child to the division under Subsection (2)(b), the division shall provide services to the child under Title 80, Chapter 2, Child Welfare Services, and Title 80, Chapter 2a, Removal and Protective Custody of a Child.

Section 28. Section **76-5d-208** is amended to read:

76-5d-208 . Aggravated exploitation of prostitution.

- (1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.
- (2) An actor commits aggravated exploitation of prostitution if:
- (a) in committing an act of exploitation of prostitution as described in Section 76-5d-207, the actor uses any force, threat, or fear against any individual;
 - (b) the individual whom the actor procured, transported, or persuaded or with whom the actor shares the proceeds of prostitution, is a child or is the spouse of the actor; or
 - (c) in the course of committing an act of exploitation of prostitution as described in Section 76-5d-207, the actor commits human trafficking or human smuggling in violation of Section 76-5-308, 76-5-308.1, ~~76-5-308.3, or~~ 76-5-308.5, 76-5-308.6, 76-5-310, 76-5-310.2, 76-5-311, 76-5-312, 76-5-316, or 76-5-317.
- (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a second degree felony.
- (b) A violation of Subsection (2) is a first degree felony if the violation involves a child.
- (4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 29. Section **76-5d-211** is amended to read:

76-5d-211 . Sexual solicitation by an actor offering compensation to a child in exchange for sexual activity.

- (1) Terms defined in Sections 76-1-101.5, 76-5d-101, and 76-5d-201 apply to this section.
- (2) Under circumstances not amounting to an offense described in Subsection (4), an actor commits the offense of sexual solicitation by an actor offering compensation to a child in exchange for sexual activity if the actor:
- (a) is 12 years old or older; and
 - (b)(i) pays, offers to pay, or agrees to pay a fee, or the functional equivalent of a fee, to a child to hire the child to commit any sexual activity; or
 - (ii) with intent to pay a child to be hired to commit any sexual activity for a fee, or the functional equivalent of a fee, requests or directs the child to engage in any of the following acts:

- 1967 (A) exposure or touching of the child's genitals, the buttocks, the anus, the pubic
1968 area, or the female breast below the top of the areola;
1969 (B) masturbation; or
1970 (C) any act of lewdness.
- 1971 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a second
1972 degree felony.
- 1973 (b) If the actor is under 18 years old at the time of the offense, a violation of Subsection
1974 (2) is:
- 1975 (i) a third degree felony if:
- 1976 (A) the actor is 17 years old and the child is 13 years old or younger; or
1977 (B) the actor is 16 years old and the child is 12 years old or younger;
- 1978 (ii) a class A misdemeanor if:
- 1979 (A) the actor is 17 years old and the child is 14 years old;
1980 (B) the actor is 16 years old and the child is 13 years old;
1981 (C) the actor is 15 years old and the child is 12 years old or younger; or
1982 (D) the actor is 14 years old and the child is 11 years old or younger;
- 1983 (iii) a class B misdemeanor if:
- 1984 (A) the actor is 17 years old and the child is 15 years old;
1985 (B) the actor is 16 years old and the child is 14 years old;
1986 (C) the actor is 15 years old and the child is 13 years old;
1987 (D) the actor is 14 years old and the child is 12 years old;
1988 (E) the actor is 13 years old and the child is 11 years old or younger; or
1989 (F) the actor is 12 years old and the child is 10 years old or younger; or
- 1990 (iv) a class C misdemeanor if:
- 1991 (A) the actor is 17 years old and the child is 16 or 17 years old;
1992 (B) the actor is 16 years old and the child is 15 years old or older;
1993 (C) the actor is 15 years old and the child is 14 years old or older;
1994 (D) the actor is 14 years old and the child is 13 years old or older;
1995 (E) the actor is 13 years old and the child is 12 years old or older; or
1996 (F) the actor is 12 years old and the child is 11 years old or older.
- 1997 (4) The offenses referred to in Subsection (2) are:
- 1998 (a) human trafficking for labor as described in Section 76-5-308;
1999 (b) human trafficking for commercial sexual exploitation as described in Section
2000 76-5-308.1;

2001 [~~(e) human smuggling as described in Section 76-5-308.3;~~]

2002 [~~(d) human trafficking of a child as described in Section 76-5-308.5;~~]

2003 (c) human trafficking of a child for commercial sexual exploitation under Section
 2004 76-5-308.6;

2005 [~~(e) aggravated human trafficking as described in Section 76-5-310; and~~]

2006 (d) aggravated human trafficking for commercial sexual exploitation as described in
 2007 Section 76-5-310.2;

2008 (e) human smuggling as described in Section 76-5-316; and

2009 (f) aggravated human smuggling as described in Section [~~76-5-310.1~~] 76-5-317.

2010 (5) The actor's intent to hire a child to engage in sexual activity for a fee may be inferred
 2011 from an actor engaging in, offering or agreeing to engage in, or requesting or directing
 2012 another to engage in any of the acts described in Subsection (2)(b) under the totality of
 2013 the existing circumstances.

2014 (6) A prosecutor may not prosecute an actor for a violation of Subsection (2) if the actor
 2015 engages in a violation of Subsection (2) at or near the time the actor witnesses or is a
 2016 victim of any of the offenses, or an attempt to commit any of the offenses, described in
 2017 Subsection 76-5d-202(4), and the actor reports the offense or attempt to law
 2018 enforcement in good faith.

2019 (7)(a) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
 2020 enforcement officer shall follow the procedure described in Subsection 76-5d-106(2).

2021 (b) A child engaged in commercial sex or sexual solicitation shall be referred to the
 2022 Division of Child and Family Services for services and may not be subjected to
 2023 delinquency proceedings.

2024 Section 30. Section **76-14-202** is amended to read:

2025 **76-14-202 . Detention or arrest -- Determination of immigration status.**

2026 (1)(a) Except as provided in Subsection (1)(b), (c), or (d), a law enforcement officer
 2027 who, acting in the enforcement of a state law or local ordinance, conducts a lawful
 2028 stop, detention, or arrest of an individual as specified in Subsection (1)(a)(i) or (ii),
 2029 and the individual is unable to provide to the law enforcement officer a document
 2030 listed in Subsection 76-14-203(1) and the law enforcement officer is otherwise
 2031 unable to verify the identity of the individual, the law enforcement officer:

2032 (i) shall request verification of the citizenship or the immigration status of the
 2033 individual under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b),
 2034 (c), or (d), if the individual is arrested for an alleged offense that is a class A

- 2035 misdemeanor or a felony; and
- 2036 (ii) may attempt to verify the immigration status of the individual, except as
- 2037 exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or
- 2038 C misdemeanor, except that if the individual is arrested and booked for a class B
- 2039 or C misdemeanor, the arresting law enforcement officer or the law enforcement
- 2040 agency booking the individual shall attempt to verify the immigration status of the
- 2041 individual.
- 2042 (b) In individual cases, the law enforcement officer may forego the verification of
- 2043 immigration status under Subsection (1)(a) if the determination could hinder or
- 2044 obstruct a criminal investigation.
- 2045 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a
- 2046 school resource officer for an elementary or secondary school.
- 2047 (d) Subsection (1)(a) does not apply to a county or municipality when it has only one
- 2048 law enforcement officer on duty and response support from another law enforcement
- 2049 agency is not available.
- 2050 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
- 2051 Subsection (1) of the operator of a vehicle, and while investigating or processing the
- 2052 primary offense, the law enforcement officer makes observations that give the law
- 2053 enforcement officer reasonable suspicion that the operator or any of the passengers in
- 2054 the vehicle are violating Section 76-5-308, 76-5-308.1, ~~76-5-308.3,~~ 76-5-308.5,
- 2055 76-5-308.6, 76-5-310, ~~76-5-310.1~~ 76-5-310.2, 76-5-311, 76-5-312, 76-5-316, 76-5-317,
- 2056 or 76-14-209, which concern smuggling, human trafficking, or transporting illegal
- 2057 aliens, the law enforcement officer shall, to the extent possible within a reasonable
- 2058 period of time:
- 2059 (a) detain the occupants of the vehicle to investigate the suspected violations; and
- 2060 (b) inquire regarding the immigration status of the occupants of the vehicle.
- 2061 (3) When an individual under Subsection (1) is arrested or booked into a jail, juvenile
- 2062 detention facility, or correctional facility, the arresting officer or the booking officer
- 2063 shall ensure that a request for verification of immigration status of the arrested or
- 2064 booked individual is submitted as promptly as is reasonably possible.
- 2065 (4) The law enforcement agency that has custody of an individual verified to be an illegal
- 2066 alien shall request that the United States Department of Homeland Security issue a
- 2067 detainer requesting transfer of the illegal alien into federal custody.
- 2068 (5) A law enforcement officer may not consider race, color, or national origin in

implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Section 31. Section **76-17-401** is amended to read:

76-17-401 . Definitions.

As used in this part:

- (1)(a) "Enterprise" means an individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and a union or group of individuals associated in fact although not a legal entity.
- (b) "Enterprise" includes illicit as well as licit entities.
- (2) "Pattern of unlawful activity" means engaging in conduct that constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.
- (3) "Person" includes an individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.
- (4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct that would constitute an offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act that would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by an authority or is classified as a misdemeanor or a felony:
 - (a) an act prohibited by the criminal provisions under Title 13, Chapter 10, Unauthorized Recording Practices Act;
 - (b) an act prohibited by the criminal provisions under Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;
 - (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain under Title 23A, Wildlife Resources Act, or Section 23A-5-311;

- 2103 (d) false claims for medical benefits, kickbacks, or other acts prohibited under Title 26B,
- 2104 Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;
- 2105 (e) an act prohibited by the criminal provisions under Title 32B, Chapter 4, Criminal
- 2106 Offenses and Procedure Act;
- 2107 (f) unlawful marking of pistol or revolver under Section 53-5a-105;
- 2108 (g) alteration of number or mark on pistol or revolver under Section 53-5a-106;
- 2109 (h) an act prohibited by the criminal provisions under Title 57, Chapter 11, Utah
- 2110 Uniform Land Sales Practices Act;
- 2111 (i) an act prohibited by the criminal provisions under Title 58, Chapter 37, Utah
- 2112 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances
- 2113 Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58,
- 2114 Chapter 37d, Clandestine Drug Lab Act;
- 2115 (j) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform
- 2116 Securities Act;
- 2117 (k) an act prohibited by the criminal provisions under Title 63G, Chapter 6a, Utah
- 2118 Procurement Code;
- 2119 (l) assault under Section 76-5-102;
- 2120 (m) aggravated assault under Section 76-5-103;
- 2121 (n) a threat of terrorism under Section 76-5-107.3;
- 2122 (o) a criminal homicide offense under Section 76-5-201;
- 2123 (p) kidnapping under Section 76-5-301;
- 2124 (q) aggravated kidnapping under Section 76-5-302;
- 2125 (r) human trafficking for labor under Section 76-5-308;
- 2126 (s) human trafficking for commercial sexual exploitation under Section 76-5-308.1;
- 2127 [~~(t)~~ ~~human smuggling under Section 76-5-308.3;~~]
- 2128 [~~(t)~~] (t) human trafficking of a child for labor under Section 76-5-308.5;
- 2129 (u) human trafficking of a child for commercial sexual exploitation under Section
- 2130 76-5-308.6;
- 2131 [~~(v)~~ ~~benefiting from trafficking and human smuggling under Section 76-5-309;~~]
- 2132 [~~(w)~~] (v) aggravated human trafficking for labor under Section 76-5-310;
- 2133 (w) aggravated human trafficking for commercial sexual exploitation under Section
- 2134 76-5-310.2;
- 2135 (x) human trafficking of a vulnerable adult for labor under Section 76-5-311;
- 2136 (y) human trafficking of a vulnerable adult for commercial sexual exploitation under

2137 Section 76-5-312;
2138 (z) human smuggling under Section 76-5-316;
2139 (aa) aggravated human smuggling under Section 76-5-317;
2140 ~~(x)~~ (bb) sexual exploitation of a minor under Section 76-5b-201;
2141 ~~(y)~~ (cc) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
2142 ~~(z)~~ (dd) sexual extortion under Section 76-5b-204;
2143 ~~(aa)~~ (ee) arson under Section 76-6-102;
2144 ~~(bb)~~ (ff) aggravated arson under Section 76-6-103;
2145 ~~(ee)~~ (gg) causing a catastrophe under Section 76-6-105;
2146 ~~(dd)~~ (hh) burglary under Section 76-6-202;
2147 ~~(ee)~~ (ii) aggravated burglary under Section 76-6-203;
2148 ~~(ff)~~ (jj) burglary of a vehicle under Section 76-6-204;
2149 ~~(gg)~~ (kk) manufacture or possession of an instrument for burglary or theft under
2150 Section 76-6-205;
2151 ~~(hh)~~ (ll) robbery under Section 76-6-301;
2152 ~~(ii)~~ (mm) aggravated robbery under Section 76-6-302;
2153 ~~(jj)~~ (nn) theft under Section 76-6-404;
2154 ~~(kk)~~ (oo) theft by deception under Section 76-6-405;
2155 ~~(ll)~~ (pp) theft by extortion under Section 76-6-406;
2156 ~~(mm)~~ (qq) receiving stolen property under Section 76-6-408;
2157 ~~(nn)~~ (rr) theft of services under Section 76-6-409;
2158 ~~(oo)~~ (ss) forgery under Section 76-6-501;
2159 ~~(pp)~~ (tt) unlawful use of financial transaction card under Section 76-6-506.2;
2160 ~~(qq)~~ (uu) unlawful acquisition, possession, or transfer of financial transaction card
2161 under Section 76-6-506.3;
2162 ~~(rr)~~ (vv) financial transaction card offenses under Section 76-6-506.6;
2163 ~~(ss)~~ (ww) deceptive business practices under Section 76-6-507;
2164 ~~(tt)~~ (xx) bribery or receiving bribe by person in the business of selection, appraisal, or
2165 criticism of goods under Section 76-6-508;
2166 ~~(uu)~~ (yy) bribery of a labor official under Section 76-6-509;
2167 ~~(vv)~~ (zz) defrauding creditors under Section 76-6-511;
2168 ~~(ww)~~ (aaa) acceptance of deposit by insolvent financial institution under Section
2169 76-6-512;
2170 ~~(xx)~~ (bbb) unlawful dealing with property by fiduciary under Section 76-6-513;

2171 [~~(yy)~~] (ccc) unlawful influence of a contest under Section 76-6-514;
 2172 [~~(zz)~~] (ddd) making a false credit report under Section 76-6-517;
 2173 [~~(aaa)~~] (eee) criminal simulation under Section 76-6-518;
 2174 [~~(bbb)~~] (fff) criminal usury under Section 76-6-520;
 2175 [~~(eee)~~] (ggg) insurance fraud under Section 76-6-521;
 2176 [~~(ddd)~~] (hhh) retail theft under Section 76-6-602;
 2177 [~~(eee)~~] (iii) computer crimes under Section 76-6-703;
 2178 [~~(fff)~~] (jjj) identity fraud under Section 76-6-1102;
 2179 [~~(ggg)~~] (kkk) mortgage fraud under Section 76-6-1203;
 2180 [~~(hhh)~~] (lll) sale of a child under Section 76-7-203;
 2181 [~~(iii)~~] (mmm) bribery or offering a bribe under Section 76-8-103;
 2182 [~~(jjj)~~] (nnn) threat to influence official or political action under Section 76-8-104;
 2183 [~~(kkk)~~] (ooo) receiving bribe or bribery by public servant under Section 76-8-105;
 2184 [~~(lll)~~] (ppp) receiving bribe for endorsement of person as a public servant under Section
 2185 76-8-106;
 2186 [~~(mmm)~~] (qqq) bribery for endorsement of person as public servant under Section
 2187 76-8-106.1;
 2188 [~~(nnn)~~] (rrr) official misconduct based on unauthorized act or failure of duty under
 2189 Section 76-8-201;
 2190 [~~(ooo)~~] (sss) official misconduct concerning inside information under Section 76-8-202;
 2191 [~~(ppp)~~] (ttt) obstruction of justice in a criminal investigation or proceeding under Section
 2192 76-8-306;
 2193 [~~(qqq)~~] (uuu) acceptance of bribe or bribery to prevent criminal prosecution under
 2194 Section 76-8-308;
 2195 [~~(rrr)~~] (vvv) harboring or concealing offender who has escaped from official custody
 2196 under Section 76-8-309.2;
 2197 [~~(sss)~~] (www) making a false or inconsistent material statement under Section 76-8-502;
 2198 [~~(ttt)~~] (xxx) making a false or inconsistent statement under Section 76-8-503;
 2199 [~~(uuu)~~] (yyy) making a written false statement under Section 76-8-504;
 2200 [~~(vvv)~~] (zzz) tampering with a witness under Section 76-8-508;
 2201 [~~(www)~~] (aaaa) retaliation against a witness, victim, or informant under Section
 2202 76-8-508.3;
 2203 [~~(xxx)~~] (bbbb) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
 2204 [~~(yyy)~~] (cccc) extortion or bribery to dismiss a criminal proceeding under Section

2205 76-8-509;
 2206 [~~(zzzz)~~] (dddd) tampering with evidence under Section 76-8-510.5;
 2207 [~~(aaaa)~~] (eeee) falsification or alteration of a government record under Section 76-8-511,
 2208 if the record is a record described in Title 20A, Election Code, or Title 36, Chapter 11,
 2209 Lobbyist Disclosure and Regulation Act;
 2210 [~~(bbbb)~~] (ffff) public assistance fraud by an applicant for public assistance under Section
 2211 76-8-1203.1;
 2212 [~~(eeee)~~] (gggg) public assistance fraud by a recipient of public assistance under Section
 2213 76-8-1203.3;
 2214 [~~(dddd)~~] (hhhh) public assistance fraud by a provider under Section 76-8-1203.5;
 2215 [~~(eeee)~~] (iiii) fraudulently misappropriating public assistance funds under Section
 2216 76-8-1203.7;
 2217 [~~(ffff)~~] (jjjj) false statement to obtain or increase unemployment compensation under
 2218 Section 76-8-1301;
 2219 [~~(gggg)~~] (kkkk) false statement to prevent or reduce unemployment compensation or
 2220 liability under Section 76-8-1302;
 2221 [~~(hhhh)~~] (llll) unlawful failure to comply with Employment Security Act requirements
 2222 under Section 76-8-1303;
 2223 [~~(iiii)~~] (mmmm) unlawful use or disclosure of employment information under Section
 2224 76-8-1304;
 2225 [~~(jjjj)~~] (nnnn) intentionally or knowingly causing one animal to fight with another under
 2226 Subsection 76-13-202(2)(d) or (3), or Section 76-13-205 or 76-13-206 concerning
 2227 dog fighting;
 2228 [~~(kkkk)~~] (oooo) soliciting, recruiting, enticing, or intimidating a minor to join a criminal
 2229 street gang under Section 76-9-803;
 2230 [~~(HHH)~~] (pppp) aggravated soliciting, recruiting, enticing, or intimidating a minor to join a
 2231 criminal street gang under Section 76-9-803.1;
 2232 [~~(mmmm)~~] (qqqq) intimidating a minor to remain in a criminal street gang under Section
 2233 76-9-803.2;
 2234 [~~(nnnn)~~] (rrrr) aggravated intimidating a minor to remain in a criminal street gang under
 2235 Section 76-9-803.3;
 2236 [~~(oooo)~~] (ssss) unlawful conduct involving an explosive, chemical, or incendiary device
 2237 under Section 76-15-210;
 2238 [~~(pppp)~~] (tttt) unlawful conduct involving an explosive, chemical, or incendiary part

2239 under Section 76-15-211;
 2240 [~~(qqqq)~~] (uuuu) unlawful delivery or mailing of an explosive, chemical, or incendiary
 2241 device under Section 76-15-209;
 2242 [~~(rrrr)~~] (vvvv) forging or counterfeiting trademarks, trade name, or trade device under
 2243 Section 76-16-302;
 2244 [~~(ssss)~~] (www) selling goods under counterfeited trademark, trade name, or trade
 2245 devices under Section 76-16-303;
 2246 [~~(tttt)~~] (xxxx) sales in containers bearing registered trademark of substituted articles
 2247 under Section 76-16-304;
 2248 [~~(uuuu)~~] (yyyy) selling or dealing with article bearing registered trademark or service
 2249 mark with intent to defraud under Section 76-16-306;
 2250 [~~(vvvv)~~] (zzzz) participating in gambling under Section 76-9-1402;
 2251 [~~(wwww)~~] (aaaa) permitting gambling under Section 76-9-1403;
 2252 [~~(xxxx)~~] (bbbb) online gambling prohibition under Section 76-9-1404;
 2253 [~~(yyyy)~~] (cccc) gambling promotion under Section 76-9-1405;
 2254 [~~(zzzz)~~] (dddd) gambling fraud under Section 76-9-1406;
 2255 [~~(aaaa)~~] (eeee) possessing a gambling device or record under Section 76-9-1407;
 2256 [~~(bbbb)~~] (ffff) obtaining a benefit from a confidence game under Section 76-9-1410;
 2257 [~~(eeee)~~] (gggg) distributing pornographic material under Section 76-5c-202;
 2258 [~~(dddd)~~] (hhhh) aiding or abetting a minor in distributing pornographic material under
 2259 Section 76-5c-203;
 2260 [~~(eeee)~~] (iiii) inducing acceptance of pornographic material under Section 76-5c-204;
 2261 [~~(ffff)~~] (jjjj) distributing material harmful to minors under Section 76-5c-205;
 2262 [~~(gggg)~~] (kkkk) aiding or abetting a minor in distributing material harmful to minors
 2263 under Section 76-5c-206;
 2264 [~~(hhhh)~~] (llll) distribution of a pornographic file for exhibition under Section 76-5c-305;
 2265 [~~(iiii)~~] (mmmm) indecent public display in the presence of a minor under Section
 2266 76-5c-207;
 2267 [~~(jjjj)~~] (nnnn) engaging in prostitution under Section 76-5d-202;
 2268 [~~(kkkk)~~] (oooo) aiding prostitution under Section 76-5d-206;
 2269 [~~(HHH)~~] (pppp) exploiting prostitution under Section 76-5d-207;
 2270 [~~(mmmm)~~] (qqqq) aggravated exploitation of prostitution under Section 76-5d-208;
 2271 [~~(nnnn)~~] (rrrr) communications fraud under Section 76-6-525;
 2272 [~~(oooo)~~] (ssss) possession of a dangerous weapon with criminal intent under Section

2273 76-11-208;
 2274 [(~~ppppp~~)] (~~ttttt~~) an act prohibited by the criminal provisions of Chapter 9, Part 16, Money
 2275 Laundering and Currency Transaction Reporting;
 2276 [(~~qqqqq~~)] (~~uuuuu~~) vehicle compartment for contraband under Section 76-9-1902 or
 2277 76-9-1903;
 2278 [(~~rrrrr~~)] (~~vvvvv~~) an act prohibited by the criminal provisions of the laws governing
 2279 taxation in this state; or
 2280 [(~~sssss~~)] (~~wwwww~~) an act illegal under the laws of the United States and enumerated in
 2281 18 U.S.C. Secs. 1961(1)(B), (C), and (D).
 2282 Section 32. Section **77-22-2.5** is amended to read:
 2283 **77-22-2.5 . Court orders for criminal investigations for records concerning an**
 2284 **electronic communications system or service or remote computing service -- Content --**
 2285 **Fee for providing information.**
 2286 (1) As used in this section:
 2287 (a)(i) "Electronic communication" means any transfer of signs, signals, writing,
 2288 images, sounds, data, or intelligence of any nature transmitted in whole or in part
 2289 by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
 2290 (ii) "Electronic communication" does not include:
 2291 (A) a wire or oral communication;
 2292 (B) a communication made through a tone-only paging device;
 2293 (C) a communication from a tracking device; or
 2294 (D) electronic funds transfer information stored by a financial institution in a
 2295 communications system used for the electronic storage and transfer of funds.
 2296 (b) "Electronic communications service" means a service which provides for users the
 2297 ability to send or receive wire or electronic communications.
 2298 (c) "Electronic communications system" means a wire, radio, electromagnetic,
 2299 photooptical, or photoelectronic facilities for the transmission of wire or electronic
 2300 communications, and a computer facilities or related electronic equipment for the
 2301 electronic storage of the communication.
 2302 (d) "Internet service provider" means the same as that term is defined in Section
 2303 76-5c-401.
 2304 (e) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.
 2305 (f) "Remote computing service" means the provision to the public of computer storage
 2306 or processing services by means of an electronic communications system.

(g)(i) "Sexual offense against a minor" means:

(A) sexual exploitation of a minor or attempted sexual exploitation of a minor in violation of Section 76-5b-201;

(B) aggravated sexual exploitation of a minor or attempted aggravated sexual exploitation of a minor in violation of Section 76-5b-201.1;

(C) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(D) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-5c-205 or 76-5c-206;

(E) human trafficking of a child for commercial sexual exploitation in violation of Section ~~[76-5-308.5]~~ 76-5-308.6; or

(F) aggravated sexual extortion of a child in violation of Section 76-5b-204.

(ii) "Sexual offense against a minor" does not include an offense described in Section 76-5-418, 76-5-419, or 76-5-420.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec. 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier is suspected of being used in the commission of the offense:

(i) names of subscribers, service customers, and users;

(ii) addresses of subscribers, service customers, and users;

(iii) records of session times and durations;

- 2341 (iv) length of service, including the start date and types of service utilized; and
2342 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
2343 including a temporarily assigned network address.
- 2344 (3) A court order issued under this section shall state that the electronic communications
2345 system or service or remote computing service provider shall produce a record under
2346 Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the
2347 suspected criminal activity or offense as described in the court order.
- 2348 (4)(a) An electronic communications system or service or remote computing service
2349 provider that provides information in response to a court order issued under this
2350 section may charge a fee, not to exceed the actual cost, for providing the information.
- 2351 (b) The law enforcement agency conducting the investigation shall pay the fee.
- 2352 (5) The electronic communications system or service or remote computing service provider
2353 served with or responding to the court order may not disclose the court order to the
2354 account holder identified pursuant to the court order for a period of 90 days.
- 2355 (6) If the electronic communications system or service or remote computing service
2356 provider served with the court order does not own or control the Internet protocol
2357 address, websites, or email address, or provide service for the telephone number that is
2358 the subject of the court order, the provider shall notify the investigating law enforcement
2359 agency that the provider does not have the information.
- 2360 (7) There is no cause of action against a provider or wire or electronic communication
2361 service, or the provider or service's officers, employees, agents, or other specified
2362 persons, for providing information, facilities, or assistance in accordance with the terms
2363 of the court order issued under this section or statutory authorization.
- 2364 (8)(a) A court order issued under this section is subject to the provisions of [~~Title 77,~~
2365 ~~Chapter 23b, Access to Electronic Communications~~] Chapter 23b, Access to
2366 Electronic Communications.
- 2367 (b) Rights and remedies for providers and subscribers under [~~Title 77, Chapter 23b,~~
2368 ~~Access to Electronic Communications~~] Chapter 23b, Access to Electronic
2369 Communications, apply to providers and subscribers subject to a court order issued
2370 under this section.
- 2371 (9) A prosecutorial agency shall annually on or before February 15 report to the
2372 Commission on Criminal and Juvenile Justice:
- 2373 (a) the number of requests for court orders authorized by the prosecutorial agency;
2374 (b) the number of orders issued by the court and the criminal offense, pursuant to

2375 Subsection (2), each order was used to investigate; and
2376 (c) if the court order led to criminal charges being filed, the type and number of offenses
2377 charged.

2378 Section 33. Section **77-23a-8** is amended to read:

2379 **77-23a-8 . Court order to authorize or approve interception -- Procedure.**

- 2380 (1) The attorney general of the state, any assistant attorney general specially designated by
2381 the attorney general, any county attorney, district attorney, deputy county attorney, or
2382 deputy district attorney specially designated by the county attorney or by the district
2383 attorney, may authorize an application to a judge of competent jurisdiction for an order
2384 for an interception of wire, electronic, or oral communications by any law enforcement
2385 agency of the state, the federal government or of any political subdivision of the state
2386 that is responsible for investigating the type of offense for which the application is made.
- 2387 (2) The judge may grant the order in conformity with the required procedures when the
2388 interception sought may provide or has provided evidence of the commission of:
- 2389 (a) an act:
- 2390 (i) prohibited by the criminal provisions of:
- 2391 (A) Title 58, Chapter 37, Utah Controlled Substances Act;
- 2392 (B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
- 2393 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and
- 2394 (ii) punishable by a term of imprisonment of more than one year;
- 2395 (b) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform
2396 Securities Act, and punishable by a term of imprisonment of more than one year;
- 2397 (c) an offense:
- 2398 (i) of:
- 2399 (A) attempt under Section 76-4-101;
- 2400 (B) conspiracy under Section 76-4-201;
- 2401 (C) criminal solicitation of an adult, Section 76-4-203; or
- 2402 (D) criminal solicitation of a minor, Section 76-4-205; and
- 2403 (ii) punishable by a term of imprisonment of more than one year;
- 2404 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of
2405 more than one year under Section 76-5-107.3;
- 2406 (e)(i) aggravated murder under Section 76-5-202;
- 2407 (ii) murder under Section 76-5-203; or
- 2408 (iii) manslaughter under Section 76-5-205;

- 2409 (f)(i) kidnapping under Section 76-5-301;
- 2410 (ii) child kidnapping under Section 76-5-301.1;
- 2411 (iii) aggravated kidnapping under Section 76-5-302;
- 2412 (iv) human trafficking for labor under Section 76-5-308;
- 2413 (v) human trafficking for commercial sexual exploitation under Section 76-5-308.1;
- 2414 (vi) human trafficking of a child for labor under Section 76-5-308.5;
- 2415 (vii) human trafficking of a child for commercial sexual exploitation under Section
- 2416 76-5-308.6;
- 2417 [~~(vii) human smuggling under Section 76-5-308.3;~~]
- 2418 (viii) aggravated human trafficking for labor under Section 76-5-310;[~~or~~]
- 2419 (ix) aggravated human trafficking for commercial sexual exploitation under Section
- 2420 76-5-310.2;
- 2421 (x) human trafficking of a vulnerable adult for labor under Section 76-5-311;
- 2422 (xi) human trafficking of a vulnerable adult for commercial sexual exploitation
- 2423 under Section 76-5-312;
- 2424 (xii) human smuggling under Section 76-5-316; or
- 2425 [~~(ix)~~] (xiii) aggravated human smuggling under Section [~~76-5-310.1~~] 76-5-317;
- 2426 (g)(i) arson under Section 76-6-102; or
- 2427 (ii) aggravated arson under Section 76-6-103;
- 2428 (h)(i) burglary under Section 76-6-202; or
- 2429 (ii) aggravated burglary under Section 76-6-203;
- 2430 (i)(i) robbery under Section 76-6-301; or
- 2431 (ii) aggravated robbery under Section 76-6-302;
- 2432 (j) an offense:
- 2433 (i) of:
- 2434 (A) theft under Section 76-6-404;
- 2435 (B) theft by deception under Section 76-6-405; or
- 2436 (C) theft by extortion under Section 76-6-406; and
- 2437 (ii) punishable by a maximum term of imprisonment of more than one year;
- 2438 (k) an offense of receiving stolen property that is punishable by a maximum term of
- 2439 imprisonment of more than one year under Section 76-6-408;
- 2440 (l) a financial card transaction offense punishable by a maximum term of imprisonment
- 2441 of more than one year under Section 76-6-506.2, 76-6-506.3, or 76-6-506.6;
- 2442 (m) bribery of a labor official under Section 76-6-509;

- 2443 (n) bribery or threat to influence a publicly exhibited contest under Section 76-6-514;
- 2444 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
- 2445 more than one year under Section 76-6-518;
- 2446 (p) criminal usury under Section 76-6-520;
- 2447 (q) insurance fraud punishable by a maximum term of imprisonment of more than one
- 2448 year under Section 76-6-521;
- 2449 (r) a violation under Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable
- 2450 by a maximum term of imprisonment of more than one year under Section 76-6-703;
- 2451 (s) bribery to influence official or political actions under Section 76-8-103;
- 2452 (t) misusing public money or public property under Section 76-8-402;
- 2453 (u) tampering with a witness under Section 76-8-508;
- 2454 (v) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 2455 (w) tampering or retaliating against a juror under Section 76-8-508.5;
- 2456 (x) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
- 2457 (y) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;
- 2458 (z) obstruction of justice in a criminal investigation or proceeding under Section
- 2459 76-8-306;
- 2460 (aa) harboring or concealing offender who has escaped from official custody under
- 2461 Section 76-8-309.2;
- 2462 (bb) destruction of property to interfere with preparations for defense or war under
- 2463 Section 76-8-802;
- 2464 (cc) an attempt to commit crimes of sabotage under Section 76-8-804;
- 2465 (dd) conspiracy to commit crimes of sabotage under Section 76-8-805;
- 2466 (ee) advocating criminal syndicalism or sabotage under Section 76-8-902;
- 2467 (ff) assembling for advocating criminal syndicalism or sabotage under Section 76-8-903;
- 2468 (gg) riot punishable by a maximum term of imprisonment of more than one year under
- 2469 Section 76-9-101;
- 2470 (hh) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a
- 2471 maximum term of imprisonment of more than one year under Section 76-13-205;
- 2472 (ii) delivery to a common carrier or mailing of an explosive, chemical, or incendiary
- 2473 device under Section 76-15-209;
- 2474 (jj) unlawful conduct involving an explosive, chemical, or incendiary device under
- 2475 Section 76-15-210;
- 2476 (kk) unlawful conduct involving an explosive, chemical, or incendiary part under

Section 76-15-211;

(ll) exploiting prostitution under Section 76-5d-207;

(mm) aggravated exploitation of prostitution under Section 76-5d-208;

(nn) bus hijacking under Section 76-9-1502;

(oo) assault with intent to commit bus hijacking under Section 76-9-1503;

(pp) unlawful discharge of a firearm or hurling of a missile into a bus or terminal under

Section 76-9-1504;

(qq) violations under Title 76, Chapter 17, Part 4, Offenses Concerning [a-Pattern]

Patterns of Unlawful Activity, and the offenses listed under the definition of unlawful

activity in the act, including the offenses not punishable by a maximum term of

imprisonment of more than one year when those offenses are investigated as

predicates for the offenses prohibited by the act under Section 76-17-401;

(rr) communications fraud under Section 76-6-525;

(ss) money laundering under Sections 76-9-1602 and 76-9-1603; or

(tt) reporting by a person engaged in a trade or business when the offense is punishable

by a maximum term of imprisonment of more than one year under Section 76-9-1604.

Section 34. Section **77-38-3** is amended to read:

77-38-3 . Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.

(1) Within seven days after the day on which felony criminal charges are filed against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (g) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime:

(a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (g), which the victim has requested; and

(b) for a restitution request to be submitted in accordance with Section 77-38b-202.

(4)(a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, described in Subsections 77-38-2(5)(a) through (g) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5)(a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (g) permit an opportunity for victims of crimes to be notified.

(b) The court shall consider whether any notification system that the court might use to provide notice of judicial proceedings to defendants could be used to provide notice of judicial proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, the Division of Adult Probation and Parole created in Section 64-14-202, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (g) in advance of any requested court hearing or action so that the prosecuting agency may comply with the prosecuting agency's notification obligation.

(7)(a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing under Subsection 77-38-2(5)(h).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (g) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) To facilitate the payment of restitution and the notice of hearings regarding restitution, a victim who seeks restitution and notice of restitution hearings shall provide the court with the victim's current address and telephone number.

(10)(a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice the prosecuting agency has received from a victim to the Board of Pardons and Parole.

- (11) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in the prosecuting agency's discretion to a representative sample of the victims.
- (12)(a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice and Youth Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for purposes of providing notice under this section, are classified as protected under Subsection 63G-2-305(10).
- (b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:
- (i) a law enforcement agency, including the prosecuting agency;
 - (ii) a victims' right committee as provided in Section 77-37-5;
 - (iii) a governmentally sponsored victim or witness program;
 - (iv) the Department of Corrections;
 - (v) the Utah Office for Victims of Crime;
 - (vi) the Commission on Criminal and Juvenile Justice;
 - (vii) the Utah State Courts; and
 - (viii) the Board of Pardons and Parole.
- (13) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.
- (14)(a) When a defendant is charged with a felony crime under Sections 76-5-301 through ~~[76-5-310.1]~~ 76-5-317 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413.2 regarding sexual offenses; or Section 76-5d-208 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:
- (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
 - (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
 - (iii) ordering any other relief that the court considers necessary to protect and provide

for the safety of the victim and any designated family or household member of the victim.

(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.

(c)(i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

(15)(a) When a case involving a victim may resolve before trial with a plea deal, the prosecutor shall notify the victim of that possibility as soon as practicable.

(b) Upon the request of a victim described in Subsection (15)(a), the prosecutor shall explain the available details of an anticipated plea deal.

Section 35. Section **77-38-601** is amended to read:

77-38-601 . Definitions.

As used in this part:

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

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

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

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

(3) "Assailant" means an individual who commits or threatens to commit abuse, human trafficking, domestic violence, stalking, or a sexual offense against an applicant for the program or a minor or incapacitated individual residing with an applicant for the program.

(4) "Assigned address" means an address designated by the commission and assigned to a program participant.

(5) "Authorization card" means a card issued by the commission that identifies a program participant as enrolled in the program with the program participant's assigned address and the date on which the program participant will no longer be enrolled in the program.

(6) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(7) "Domestic violence" means the same as that term is defined in Section 77-36-1.

- 2613 (8) "Human trafficking" means a human trafficking offense under Section 76-5-308,
2614 76-5-308.1, 76-5-308.5, 76-5-308.6, 76-5-310, 76-5-310.2, 76-5-311, or 76-5-312.
- 2615 (9) "Incapacitated individual" means an individual who is incapacitated, as defined in
2616 Section 75-1-201.
- 2617 (10)(a) "Mail" means first class letters or flats delivered by the United States Postal
2618 Service, including priority, express, and certified mail.
- 2619 (b) "Mail" does not include a package, parcel, periodical, or catalogue, unless the
2620 package, parcel, periodical, or catalogue is clearly identifiable as:
- 2621 (i) being sent by a federal, state, or local agency or another government entity; or
2622 (ii) a pharmaceutical or medical item.
- 2623 (11) "Minor" means an individual who is younger than 18 years old.
- 2624 (12) "Notification form" means a form issued by the commission that a program participant
2625 may send to a person demonstrating that the program participant is enrolled in the
2626 program.
- 2627 (13) "Program" means the Safe at Home Program created in Section 77-38-602.
- 2628 (14) "Program assistant" means an individual designated by the commission under Section
2629 77-38-604 to assist an applicant or program participant.
- 2630 (15) "Program participant" means an individual who is enrolled under Section 77-38-606 by
2631 the commission to participate in the program.
- 2632 (16) "Record" means the same as that term is defined in Section 63G-2-103.
- 2633 (17)(a) "Sexual offense" means:
- 2634 (i) a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses; or
2635 (ii) a sexual exploitation offense under Title 76, Chapter 5b, Part 2, Sexual
2636 Exploitation.
- 2637 (b) "Sexual offense" does not include an offense under:
- 2638 (i) Section 76-5-417, enticing a minor;
2639 (ii) Section 76-5-418, sexual battery;
2640 (iii) Section 76-5-419, lewdness;
2641 (iv) Section 76-5-420, lewdness involving a child; or
2642 (v) Section 76-5b-206, failure to report child sexual abuse material by a computer
2643 technician.
- 2644 (18) "Stalking" means the same as that term is defined in Section 76-5-106.5.
- 2645 (19) "State or local government entity" means a county, municipality, higher education
2646 institution, special district, special service district, or any other political subdivision of

the state or an administrative subunit of the executive, legislative, or judicial branch of this state, including:

- (a) a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission; or
- (b) an individual acting or purporting to act for or on behalf of a state or local entity, including an elected or appointed public official.

(20) "Victim" means a victim of abuse, domestic violence, human trafficking, stalking, or sexual assault.

Section 36. Section **78B-3-113** is amended to read:

78B-3-113 . Right of action for a victim of a human trafficking offense.

(1) As used in this section:

- (a) "Human trafficking offense" means an offense for:
 - (i) human trafficking for labor under Section 76-5-308;
 - (ii) human trafficking for commercial sexual exploitation under Section 76-5-308.1;
 - ~~[(iii) human smuggling under Section 76-5-308.3;]~~
 - ~~[(iv)]~~ (iii) human trafficking of a child for labor under Section 76-5-308.5;
 - ~~(iv)~~ human trafficking of a child for commercial sexual exploitation under Section 76-5-308.6;
 - (v) aggravated human trafficking for labor under Section 76-5-310;
 - ~~(vi)~~ aggravated human trafficking for commercial sexual exploitation under Section 76-5-310.2;
 - ~~(vii)~~ human trafficking of a vulnerable adult for labor under Section 76-5-311;
 - ~~(viii)~~ human trafficking of a vulnerable adult for commercial sexual exploitation under Section 76-5-312;
 - ~~(ix)~~ patronizing a victim of human labor trafficking under Section 76-5-313;
 - ~~(x)~~ patronizing a child victim of human labor trafficking under Section 76-5-314;
 - ~~(xi)~~ patronizing a vulnerable adult victim of human labor trafficking under Section 76-5-315;
 - ~~(xii)~~ human smuggling under Section 76-5-316; or
 - ~~[(vi)]~~ ~~(xiii)~~ aggravated human smuggling under Section [76-5-310.1; or] 76-5-317.
 - ~~[(vii)]~~ benefitting from human trafficking under Section 76-5-309.]
- (b) "Victim" means an individual against whom a human trafficking offense has been committed.

(2) A victim has a right of action against a person that committed a human trafficking

offense against the victim to recover:

(a) actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief for the human trafficking offense; and

(b) treble damages on proof of actual damages for the human trafficking offense if the court finds that the person's acts were willful and malicious.

(3) Notwithstanding any other statute of limitation or repose that may be applicable to an action described in this section, a victim may only bring an action described in this section within 10 years after the later of:

(a) the day on which the victim was freed from the human trafficking or human smuggling situation;

(b) the day on which the victim reaches 18 years old; or

(c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.

(4) The time period described in Subsection (3) is tolled during a period of time when the victim fails to bring an action due to the person:

(a) inducing the victim to delay filing the action;

(b) preventing the victim from filing the action; or

(c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

(5) The court shall credit any restitution paid by the person to the victim as described in Subsection 77-38b-303(5)(b).

(6) The court shall award reasonable attorney fees and costs as described in Subsection 77-38b-303(7) in an action brought under this section.

(7)(a) Notwithstanding Chapter 3a, Venue for Civil Actions, a victim shall bring an action under this section in the county in which:

(i) the human trafficking offense occurred;

(ii) the victim resides; or

(iii) the defendant resides at the commencement of the action.

(b) If the defendant is a business organization as defined in Section 78B-3a-101, the residence of the business organization is as described in Section 78B-3a-104.

(8) If the victim is deceased or otherwise unable to represent the victim's own interests in the action, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.

(9) This section does not preclude any other remedy available to the victim under the laws

of this state or under federal law.

Section 37. Section **78B-7-201** is amended to read:

78B-7-201 . Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) physical abuse;
 - (b) sexual abuse;
 - (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or
 - (d) human trafficking of a child for commercial sexual exploitation under Section [~~76-5-308.5~~] 76-5-308.6.
- (2) "Child protective order" means an order issued under this part after a hearing on the petition, of which the petitioner and respondent have been given notice.
- (3) "Court" means the district court or juvenile court.
- (4) "Ex parte child protective order" means an order issued without notice to the respondent under this part.
- (5) "Protective order" means:
 - (a) a child protective order; or
 - (b) an ex parte child protective order.
- (6) All other terms have the same meaning as defined in Section 80-1-102.

Section 38. Section **78B-7-502** is amended to read:

78B-7-502 . Definitions.

As used in this part:

- (1) "Ex parte sexual violence protective order" means an order issued without notice to the respondent under this part.
- (2) "Protective order" means:
 - (a) a sexual violence protective order; or
 - (b) an ex parte sexual violence protective order.
- (3)(a) "Sexual violence" means the commission or the attempt to commit:
 - (i) any sexual offense described in:
 - (A) Title 76, Chapter 5, Part 4, Sexual Offenses; or
 - (B) Title 76, Chapter 5b, Part 2, Sexual Exploitation;
 - (ii) human trafficking for commercial sexual exploitation under Section 76-5-308.1; or
 - (iii) aggravated human trafficking for [foreed] commercial sexual exploitation under

2749 Section ~~[76-5-310]~~ 76-5-310.2.

2750 (b) "Sexual violence" does not include an offense described in:

2751 (i) Section 76-5-417, enticing a minor;

2752 (ii) Section 76-5-418, sexual battery;

2753 (iii) Section 76-5-419, lewdness;

2754 (iv) Section 76-5-420, lewdness involving a child; or

2755 (v) Section 76-5b-206, failure to report child sexual abuse material by a computer
2756 technician.

2757 (4) "Sexual violence protective order" means an order issued under this part after a hearing
2758 on the petition, of which the petitioner and respondent have been given notice.

2759 Section 39. Section **80-1-102** is amended to read:

2760 **80-1-102 . Juvenile Code definitions.**

2761 Except as provided in Section 80-6-1103, as used in this title:

2762 (1)(a) "Abuse" means:

2763 (i)(A) nonaccidental harm of a child;

2764 (B) threatened harm of a child;

2765 (C) sexual exploitation;

2766 (D) sexual abuse; or

2767 (E) human trafficking of a child for labor in violation of Section 76-5-308.5;

2768 (F) human trafficking of a child for commercial sexual exploitation in violation of
2769 section 76-5-308.6; or

2770 (ii) that a child's parent:

2771 (A) intentionally, knowingly, or recklessly causes the death of another parent of
2772 the child;

2773 (B) is identified by a law enforcement agency as the primary suspect in an
2774 investigation for intentionally, knowingly, or recklessly causing the death of
2775 another parent of the child; or

2776 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
2777 recklessly causing the death of another parent of the child.

2778 (b) "Abuse" does not include:

2779 (i) reasonable discipline or management of a child, including withholding privileges;

2780 (ii) conduct described in Section 76-2-401; or

2781 (iii) the use of reasonable and necessary physical restraint or force on a child:

2782 (A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

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

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

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

(A) a finding by the juvenile court that the facts alleged in a delinquency petition or criminal information alleging that a minor committed an offense have been proved;

(B) an admission by a minor in the juvenile court as described in Section 80-6-306; or

(C) a plea of no contest by minor in the juvenile court; or

(ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in the petition have been proved.

(b) "Adjudication" does not include:

(i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's admission; or

(ii) a finding of not competent to proceed in accordance with Section 80-6-402.

(4)(a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(6) "Board" means the Board of Juvenile Court Judges.

(7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18 years old.

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 80-3-307.

(9) "Child placing" means the same as that term is defined in Section 26B-2-101.

(10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.

(11) "Child protection team" means a team consisting of:

- 2817 (a) the child welfare caseworker assigned to the case;
- 2818 (b) if applicable, the child welfare caseworker who made the decision to remove the
- 2819 child;
- 2820 (c) a representative of the school or school district where the child attends school;
- 2821 (d) if applicable, the law enforcement officer who removed the child from the home;
- 2822 (e) a representative of the appropriate Children's Justice Center, if one is established
- 2823 within the county where the child resides;
- 2824 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
- 2825 with the child's circumstances;
- 2826 (g) if appropriate, a representative of law enforcement selected by the chief of police or
- 2827 sheriff in the city or county where the child resides; and
- 2828 (h) any other individuals determined appropriate and necessary by the team coordinator
- 2829 and chair.
- 2830 (12)(a) "Chronic abuse" means repeated or patterned abuse.
- 2831 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 2832 (13)(a) "Chronic neglect" means repeated or patterned neglect.
- 2833 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 2834 (14) "Clandestine laboratory operation" means the same as that term is defined in Section
- 2835 58-37d-3.
- 2836 (15) "Commit" or "committed" means, unless specified otherwise:
- 2837 (a) with respect to a child, to transfer legal custody; and
- 2838 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 2839 (16) "Community-based program" means a nonsecure residential or nonresidential program,
- 2840 designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
- 2841 restrictive setting, consistent with public safety, and operated by or under contract with
- 2842 the Division of Juvenile Justice and Youth Services.
- 2843 (17) "Community placement" means placement of a minor in a community-based program
- 2844 described in Section 80-5-402.
- 2845 (18) "Correctional facility" means:
- 2846 (a) a county jail; or
- 2847 (b) a secure correctional facility as defined in Section 64-13-1.
- 2848 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a
- 2849 minor's likelihood of reoffending.
- 2850 (20) "Department" means the Department of Health and Human Services created in Section

- 2851 26B-1-201.
- 2852 (21) "Dependent child" or "dependency" means a child who is without proper care through
2853 no fault of the child's parent, guardian, or custodian.
- 2854 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a
2855 parent or a previous custodian to another person, agency, or institution.
- 2856 (23) "Detention" means home detention or secure detention.
- 2857 (24) "Detention facility" means a facility, established by the Division of Juvenile Justice
2858 and Youth Services in accordance with Section 80-5-501, for minors held in detention.
- 2859 (25) "Detention risk assessment tool" means an evidence-based tool established under
2860 Section 80-5-203 that:
- 2861 (a) assesses a minor's risk of failing to appear in court or reoffending before
2862 adjudication; and
- 2863 (b) is designed to assist in making a determination of whether a minor shall be held in
2864 detention.
- 2865 (26) "Developmental immaturity" means incomplete development in one or more domains
2866 that manifests as a functional limitation in the minor's present ability to:
- 2867 (a) consult with counsel with a reasonable degree of rational understanding; and
2868 (b) have a rational as well as factual understanding of the proceedings.
- 2869 (27) "Disposition" means an order by a juvenile court, after the adjudication of a minor,
2870 under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.
- 2871 (28) "Educational neglect" means that, after receiving a notice of compulsory education
2872 violation under Section 53G-6-202, the parent or guardian fails to make a good faith
2873 effort to ensure that the child receives an appropriate education.
- 2874 (29) "Educational series" means an evidence-based instructional series:
- 2875 (a) obtained at a substance abuse program that is approved by the Division of Integrated
2876 Healthcare in accordance with Section 26B-5-104; and
- 2877 (b) designed to prevent substance use or the onset of a mental health disorder.
- 2878 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 2879 (31) "Evidence-based" means a program or practice that has had multiple randomized
2880 control studies or a meta-analysis demonstrating that the program or practice is effective
2881 for a specific population or has been rated as effective by a standardized program
2882 evaluation tool.
- 2883 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 2884 (33) "Formal probation" means a minor is:

- 2885 (a) supervised in the community by, and reports to, a juvenile probation officer or an
2886 agency designated by the juvenile court; and
- 2887 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2888 (34) "Gender identity" means the same as that term is defined in Section 34A-5-102.
- 2889 (35) "Group rehabilitation therapy" means psychological and social counseling of one or
2890 more individuals in the group, depending upon the recommendation of the therapist.
- 2891 (36) "Guardian" means a person appointed by a court to make decisions regarding a minor,
2892 including the authority to consent to:
- 2893 (a) marriage;
- 2894 (b) enlistment in the armed forces;
- 2895 (c) major medical, surgical, or psychiatric treatment; or
- 2896 (d) legal custody, if legal custody is not vested in another individual, agency, or
2897 institution.
- 2898 (37) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 2899 (38) "Harm" means:
- 2900 (a) physical or developmental injury or damage;
- 2901 (b) emotional damage that results in a serious impairment in the child's growth,
2902 development, behavior, or psychological functioning;
- 2903 (c) sexual abuse; or
- 2904 (d) sexual exploitation.
- 2905 (39) "Home detention" means placement of a minor:
- 2906 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent
2907 of the minor's parent, guardian, or custodian, under terms and conditions established
2908 by the Division of Juvenile Justice and Youth Services or the juvenile court; or
- 2909 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the
2910 minor's home, or in a surrogate home with the consent of the minor's parent,
2911 guardian, or custodian, under terms and conditions established by the Division of
2912 Juvenile Justice and Youth Services or the juvenile court.
- 2913 (40)(a) "Incest" means engaging in sexual intercourse with an individual whom the
2914 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,
2915 aunt, nephew, niece, or first cousin.
- 2916 (b) "Incest" includes:
- 2917 (i) blood relationships of the whole or half blood, regardless of whether the
2918 relationship is legally recognized;

- 2919 (ii) relationships of parent and child by adoption; and
2920 (iii) relationships of stepparent and stepchild while the marriage creating the
2921 relationship of a stepparent and stepchild exists.
- 2922 (41) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
2923 (42) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
2924 (43) "Indigent defense service provider" means the same as that term is defined in Section
2925 78B-22-102.
2926 (44) "Indigent defense services" means the same as that term is defined in Section
2927 78B-22-102.
2928 (45) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
2929 (46)(a) "Intake probation" means a minor is:
2930 (i) monitored by a juvenile probation officer; and
2931 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
2932 (b) "Intake probation" does not include formal probation.
- 2933 (47) "Intellectual disability" means a significant subaverage general intellectual functioning
2934 existing concurrently with deficits in adaptive behavior that constitutes a substantial
2935 limitation to the individual's ability to function in society.
- 2936 (48) "Juvenile offender" means:
2937 (a) a serious youth offender; or
2938 (b) a youth offender.
- 2939 (49) "Juvenile probation officer" means a probation officer appointed under Section
2940 78A-6-205.
- 2941 (50) "Juvenile receiving center" means a nonsecure, nonresidential program established by
2942 the Division of Juvenile Justice and Youth Services, or under contract with the Division
2943 of Juvenile Justice and Youth Services, that is responsible for minors taken into
2944 temporary custody under Section 80-6-201.
- 2945 (51) "Legal custody" means a relationship embodying:
2946 (a) the right to physical custody of the minor;
2947 (b) the right and duty to protect, train, and discipline the minor;
2948 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
2949 medical care;
2950 (d) the right to determine where and with whom the minor shall live; and
2951 (e) the right, in an emergency, to authorize surgery or other extraordinary[-] care.
2952 (52) "Licensing Information System" means the Licensing Information System maintained

by the Division of Child and Family Services under Section 80-2-1002.

(53) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.

(54) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(55) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

(a) a child; or

(b) an individual:

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

(B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense;

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

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

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

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

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

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

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

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

- 2987 (ii) lack of proper parental care of a child by reason of the fault or habits of the
2988 parent, guardian, or custodian;
- 2989 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or
2990 necessary subsistence or medical care, or any other care necessary for the child's
2991 health, safety, morals, or well-being;
- 2992 (iv) a child to be at risk of being neglected or abused because another child in the
2993 same home is neglected or abused;
- 2994 (v) abandonment of a child through an unregulated child custody transfer under
2995 Section 81-14-203; or
- 2996 (vi) educational neglect.
- 2997 (b) "Neglect" does not include:
- 2998 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
2999 reason, does not provide specified medical treatment for a child;
- 3000 (ii) a health care decision made for a child by the child's parent or guardian, unless
3001 the state or other party to a proceeding shows, by clear and convincing evidence,
3002 that the health care decision is not reasonable and informed;
- 3003 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 3004 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
3005 maturity to avoid harm or unreasonable risk of harm, to engage in independent
3006 activities, including:
- 3007 (A) traveling to and from school, including by walking, running, or bicycling;
- 3008 (B) traveling to and from nearby commercial or recreational facilities;
- 3009 (C) engaging in outdoor play;
- 3010 (D) remaining in a vehicle unattended, except under the conditions described in
3011 Subsection 76-5-115(2);
- 3012 (E) remaining at home unattended; or
- 3013 (F) engaging in a similar independent activity.
- 3014 (59) "Neglected child" means a child who has been subjected to neglect.
- 3015 (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation
3016 officer, without an adjudication of the minor's case under Section 80-6-701, upon the
3017 consent in writing of:
- 3018 (a) the assigned juvenile probation officer; and
- 3019 (b)(i) the minor; or
- 3020 (ii) the minor and the minor's parent, guardian, or custodian.

- 3021 (61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual
3022 disability or related condition, or developmental immaturity, lacks the ability to:
3023 (a) understand the nature of the proceedings against the minor or of the potential
3024 disposition for the offense charged; or
3025 (b) consult with counsel and participate in the proceedings against the minor with a
3026 reasonable degree of rational understanding.
- 3027 (62)(a) "Parent" means, except as provided in Section 80-3-302, an individual with a
3028 parent-child relationship to a minor under Section 81-5-201.
3029 (b) "Parent" includes the minor's noncustodial parent as defined in Section 81-1-101.
- 3030 (63) "Parole" means a conditional release of a juvenile offender from residency in secure
3031 care to live outside of secure care under the supervision of the Division of Juvenile
3032 Justice and Youth Services, or another person designated by the Division of Juvenile
3033 Justice and Youth Services.
- 3034 (64) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 3035 (65)(a) "Probation" means a legal status created by court order, following an
3036 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the
3037 minor's home under prescribed conditions.
3038 (b) "Probation" includes intake probation or formal probation.
- 3039 (66) "Prosecuting attorney" means:
3040 (a) the attorney general and any assistant attorney general;
3041 (b) any district attorney or deputy district attorney;
3042 (c) any county attorney or assistant county attorney; and
3043 (d) any other attorney authorized to commence an action on behalf of the state.
- 3044 (67) "Protective custody" means the shelter of a child by the Division of Child and Family
3045 Services from the time the child is removed from the home until the earlier of:
3046 (a) the day on which the shelter hearing is held under Section 80-3-301; or
3047 (b) the day on which the child is returned home.
- 3048 (68) "Protective services" means expedited services that are provided:
3049 (a) in response to evidence of neglect, abuse, or dependency of a child;
3050 (b) to a cohabitant who is neglecting or abusing a child, in order to:
3051 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
3052 causes of neglect or abuse; and
3053 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
3054 (c) in cases where the child's welfare is endangered:

- 3055 (i) to bring the situation to the attention of the appropriate juvenile court and law
3056 enforcement agency;
- 3057 (ii) to cause a protective order to be issued for the protection of the child, when
3058 appropriate; and
- 3059 (iii) to protect the child from the circumstances that endanger the child's welfare
3060 including, when appropriate:
- 3061 (A) removal from the child's home;
- 3062 (B) placement in substitute care; and
- 3063 (C) petitioning the court for termination of parental rights.
- 3064 (69) "Protective supervision" means a legal status created by court order, following an
3065 adjudication on the ground of abuse, neglect, or dependency, whereby:
- 3066 (a) the minor is permitted to remain in the minor's home; and
- 3067 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
3068 by an agency designated by the juvenile court.
- 3069 (70)(a) "Related condition" means a condition that:
- 3070 (i) is found to be closely related to intellectual disability;
- 3071 (ii) results in impairment of general intellectual functioning or adaptive behavior
3072 similar to that of an intellectually disabled individual;
- 3073 (iii) is likely to continue indefinitely; and
- 3074 (iv) constitutes a substantial limitation to the individual's ability to function in society.
- 3075 (b) "Related condition" does not include mental illness, psychiatric impairment, or
3076 serious emotional or behavioral disturbance.
- 3077 (71)(a) "Residual parental rights and duties" means the rights and duties remaining with
3078 a parent after legal custody or guardianship, or both, have been vested in another
3079 person or agency, including:
- 3080 (i) the responsibility for support;
- 3081 (ii) the right to consent to adoption;
- 3082 (iii) the right to determine the child's religious affiliation; and
- 3083 (iv) the right to reasonable parent-time unless restricted by the court.
- 3084 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
3085 right to consent to:
- 3086 (i) marriage;
- 3087 (ii) enlistment; and
- 3088 (iii) major medical, surgical, or psychiatric treatment.

- 3089 (72) "Runaway" means a child, other than an emancipated child, who willfully leaves the
3090 home of the child's parent or guardian, or the lawfully prescribed residence of the child,
3091 without permission.
- 3092 (73) "Secure care" means placement of a minor, who is committed to the Division of
3093 Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under
3094 contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour
3095 supervision and confinement of the minor.
- 3096 (74) "Secure care facility" means a facility, established in accordance with Section 80-5-503,
3097 for juvenile offenders in secure care.
- 3098 (75) "Secure detention" means temporary care of a minor who requires secure custody in a
3099 physically restricting facility operated by, or under contract with, the Division of
3100 Juvenile Justice and Youth Services:
- 3101 (a) before disposition of an offense that is alleged to have been committed by the minor;
3102 or
3103 (b) under Section 80-6-704.
- 3104 (76) "Serious youth offender" means an individual who:
- 3105 (a) is at least 14 years old, but under 25 years old;
3106 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
3107 of the juvenile court was extended over the individual's case until the individual was
3108 25 years old in accordance with Section 80-6-605; and
3109 (c) is committed by the juvenile court to the Division of Juvenile Justice and Youth
3110 Services for secure care under Sections 80-6-703 and 80-6-705.
- 3111 (77) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
- 3112 (78) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
3113 child.
- 3114 (79)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection
3115 (79)(b):
- 3116 (i) if committed by an individual who is 18 years old or older:
- 3117 (A) chronic abuse;
3118 (B) severe abuse;
3119 (C) sexual abuse;
3120 (D) sexual exploitation;
3121 (E) abandonment;
3122 (F) chronic neglect; or

- 3123 (G) severe neglect; or
- 3124 (ii) if committed by an individual who is under 18 years old:
- 3125 (A) causing serious injury, as defined in Subsection 76-5-109(1), to another child
- 3126 that indicates a significant risk to other children; or
- 3127 (B) sexual behavior with or upon another child that indicates a significant risk to
- 3128 other children.
- 3129 (b) "Severe type of child abuse or neglect" does not include:
- 3130 (i) the use of reasonable and necessary physical restraint by an educator in
- 3131 accordance with Section 53G-8-301 or Section 76-2-401;
- 3132 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the
- 3133 use of reasonable and necessary physical restraint or force in self-defense or
- 3134 otherwise appropriate to the circumstances to obtain possession of a weapon or
- 3135 other dangerous object in the possession or under the control of a child or to
- 3136 protect the child or another individual from physical injury; or
- 3137 (iii) a health care decision made for a child by a child's parent or guardian, unless,
- 3138 subject to Subsection (79)(c), the state or other party to the proceeding shows, by
- 3139 clear and convincing evidence, that the health care decision is not reasonable and
- 3140 informed.
- 3141 (c) Subsection (79)(b)(iii) does not prohibit a parent or guardian from exercising the
- 3142 right to obtain a second health care opinion.
- 3143 (80)(a) "Sexual abuse" means:
- 3144 (i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
- 3145 adult directed towards a child;
- 3146 (ii) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
- 3147 committed by a child towards another child if:
- 3148 (A) there is an indication of force or coercion;
- 3149 (B) the children are related, as described in Subsection (40), including siblings by
- 3150 marriage while the marriage exists or by adoption; or
- 3151 (C) the act or attempted act constitutes unlawful sexual activity as described in
- 3152 Section 76-5-401.3.
- 3153 (iii) engaging in any conduct with a child that would constitute an offense under any
- 3154 of the following, regardless of whether the individual who engages in the conduct
- 3155 is actually charged with, or convicted of, the offense:
- 3156 (A) Title 76, Chapter 5, Part 4, Sexual Offenses;

- 3157 (B) child bigamy, Section 76-7-101.5;
3158 (C) incest, Section 76-7-102;
3159 (D) voyeurism, Section 76-12-306;
3160 (E) recorded or photographed voyeurism, Section 76-12-307; or
3161 (F) distribution of images obtained through voyeurism, Section 76-12-308; or
3162 (iv) subjecting a child to participate in or threatening to subject a child to participate
3163 in a sexual relationship, regardless of whether that sexual relationship is part of a
3164 legal or cultural marriage.
- 3165 (b) "Sexual abuse" does not include engaging in any conduct with a child that would
3166 constitute an offense described in:
3167 (i) Section 76-5-401, unlawful sexual activity with a minor, if the alleged perpetrator
3168 of the offense is a minor; or
3169 (ii) Section 76-5-417, enticing a minor.
- 3170 (81) "Sexual exploitation" means knowingly:
3171 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
3172 (i) pose in the nude for the purpose of sexual arousal of any individual; or
3173 (ii) engage in any sexual or simulated sexual conduct for the purpose of
3174 photographing, filming, recording, or displaying in any way the sexual or
3175 simulated sexual conduct;
3176 (b) displaying, distributing, possessing for the purpose of distribution, or selling material
3177 depicting a child:
3178 (i) in the nude, for the purpose of sexual arousal of any individual; or
3179 (ii) engaging in sexual or simulated sexual conduct; or
3180 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
3181 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
3182 exploitation of a minor, regardless of whether the individual who engages in the
3183 conduct is actually charged with, or convicted of, the offense.
- 3184 (82) "Shelter" means the temporary care of a child in a physically unrestricted facility
3185 pending a disposition or transfer to another jurisdiction.
- 3186 (83) "Shelter facility" means a nonsecure facility that provides shelter for a minor.
- 3187 (84) "Significant risk" means a risk of harm that is determined to be significant in
3188 accordance with risk assessment tools and rules established by the Division of Child and
3189 Family Services in accordance with Title 63G, Chapter 3, Utah Administrative
3190 Rulemaking Act, that focus on:

- 3191 (a) age;
- 3192 (b) social factors;
- 3193 (c) emotional factors;
- 3194 (d) sexual factors;
- 3195 (e) intellectual factors;
- 3196 (f) family risk factors; and
- 3197 (g) other related considerations.
- 3198 (85) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- 3199 (86) "Status offense" means an offense that would not be an offense but for the age of the
- 3200 offender.
- 3201 (87) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or
- 3202 excessive use of alcohol or other drugs or substances.
- 3203 (88) "Substantiated" or "substantiation" means a judicial finding based on a preponderance
- 3204 of the evidence, and separate consideration of each allegation made or identified in the
- 3205 case, that abuse, neglect, or dependency occurred.
- 3206 (89) "Substitute care" means:
- 3207 (a) the placement of a minor in a family home, group care facility, or other placement
- 3208 outside the minor's own home, either at the request of a parent or other responsible
- 3209 relative, or upon court order, when it is determined that continuation of care in the
- 3210 minor's own home would be contrary to the minor's welfare;
- 3211 (b) services provided for a minor in the protective custody of the Division of Child and
- 3212 Family Services, or a minor in the temporary custody or custody of the Division of
- 3213 Child and Family Services, as those terms are defined in Section 80-2-102; or
- 3214 (c) the licensing and supervision of a substitute care facility.
- 3215 (90) "Supported" means a finding by the Division of Child and Family Services based on
- 3216 the evidence available at the completion of an investigation, and separate consideration
- 3217 of each allegation made or identified during the investigation, that there is a reasonable
- 3218 basis to conclude that abuse, neglect, or dependency occurred.
- 3219 (91) "Termination of parental rights" means the permanent elimination of all parental rights
- 3220 and duties, including residual parental rights and duties, by court order.
- 3221 (92) "Therapist" means:
- 3222 (a) an individual employed by a state division or agency for the purpose of conducting
- 3223 psychological treatment and counseling of a minor in the division's or agency's
- 3224 custody; or

- 3225 (b) any other individual licensed or approved by the state for the purpose of conducting
3226 psychological treatment and counseling.
- 3227 (93) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that
3228 the child is at an unreasonable risk of harm or neglect.
- 3229 (94) "Torture" means:
- 3230 (a) the infliction of a serious injury upon a child in an exceptionally cruel or
3231 exceptionally depraved manner that causes the child to experience extreme physical
3232 or psychological pain or anguish; or
- 3233 (b) the infliction of a serious injury, or more than one serious injury, upon a child as part
3234 of a course of conduct or over a prolonged period of time.
- 3235 (95) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
- 3236 (a) results in behavior that is beyond the control or ability of the child, or the parent or
3237 guardian, to manage effectively;
- 3238 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
3239 (c) results in the situations described in Subsections (95)(a) and (b).
- 3240 (96) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
3241 conclude that abuse, neglect, or dependency occurred.
- 3242 (97) "Unsupported" means a finding by the Division of Child and Family Services at the
3243 completion of an investigation, after the day on which the Division of Child and Family
3244 Services concludes the alleged abuse, neglect, or dependency is not without merit, that
3245 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
- 3246 (98) "Validated risk and needs assessment" means an evidence-based tool that assesses a
3247 minor's risk of reoffending and a minor's criminogenic needs.
- 3248 (99) "Without merit" means a finding at the completion of an investigation by the Division
3249 of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or
3250 dependency did not occur, or that the alleged perpetrator was not responsible for the
3251 abuse, neglect, or dependency.
- 3252 (100) "Youth offender" means an individual who is:
- 3253 (a) at least 12 years old, but under 21 years old; and
3254 (b) committed by the juvenile court to the Division of Juvenile Justice and Youth
3255 Services for secure care under Sections 80-6-703 and 80-6-705.
- 3256 Section 40. Section **80-2-301** is amended to read:
- 3257 **80-2-301 . Division responsibilities.**
- 3258 (1) The division is the child, youth, and family services authority of the state.

- 3259 (2) The division shall:
- 3260 (a) administer services to minors and families, including:
- 3261 (i) child welfare services;
- 3262 (ii) domestic violence services; and
- 3263 (iii) all other responsibilities that the Legislature or the executive director of the
- 3264 department may assign to the division;
- 3265 (b) provide the following services:
- 3266 (i) financial and other assistance to an individual adopting a child with special needs
- 3267 under Sections 80-2-806 through 80-2-809, not to exceed the amount the division
- 3268 would provide for the child as a legal ward of the state;
- 3269 (ii) non-custodial and in-home services in accordance with Section 80-2-306,
- 3270 including:
- 3271 (A) services designed to prevent family break-up; and
- 3272 (B) family preservation services;
- 3273 (iii) reunification services to families whose children are in substitute care in
- 3274 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 3275 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 3276 (iv) protective supervision of a family, upon court order, in an effort to eliminate
- 3277 abuse or neglect of a child in that family;
- 3278 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective
- 3279 Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 3280 (vi) domestic violence services, in accordance with the requirements of federal law;
- 3281 (vii) protective services to victims of domestic violence and the victims' children, in
- 3282 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 3283 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 3284 (viii) substitute care for dependent, abused, and neglected children;
- 3285 (ix) services for minors who are victims of human trafficking or human smuggling,
- 3286 as described in Sections 76-5-308 through ~~[76-5-310.1]~~ 76-5-317, or who have
- 3287 engaged in prostitution or sexual solicitation, as defined in Sections 76-5d-202
- 3288 and 76-5d-209; and
- 3289 (x) training for staff and providers involved in the administration and delivery of
- 3290 services offered by the division in accordance with this chapter and Chapter 2a,
- 3291 Removal and Protective Custody of a Child;
- 3292 (c) establish standards for all:

- 3293 (i) contract providers of out-of-home care for minors and families;
3294 (ii) facilities that provide substitute care for dependent, abused, or neglected children
3295 placed in the custody of the division; and
3296 (iii) direct or contract providers of domestic violence services described in
3297 Subsection (2)(b)(vi);
- 3298 (d) have authority to:
- 3299 (i) contract with a private, nonprofit organization to recruit and train foster care
3300 families and child welfare volunteers in accordance with Section 80-2-405;
3301 (ii) approve facilities that meet the standards established under Subsection (2)(c) to
3302 provide substitute care for dependent, abused, or neglected children placed in the
3303 custody of the division; and
3304 (iii) approve an individual to provide short-term relief care to a foster parent if the
3305 individual:
- 3306 (A) provides the relief care for less than six consecutive nights;
3307 (B) provides the relief care in the short-term relief care provider's home;
3308 (C) is direct access qualified, as that term is defined in Section 26B-2-120; and
3309 (D) is an immediate family member or relative, as those terms are defined in
3310 Section 80-3-102, of the foster parent;
- 3311 (e) cooperate with the federal government in the administration of child welfare and
3312 domestic violence programs and other human service activities assigned by the
3313 department;
- 3314 (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws
3315 enacted for the protection of abused, neglected, or dependent children, in accordance
3316 with this chapter and Chapter 2a, Removal and Protective Custody of a Child, unless
3317 administration is expressly vested in another division or department of the state;
- 3318 (g) cooperate with the Workforce Development Division within the Department of
3319 Workforce Services in meeting the social and economic needs of an individual who is
3320 eligible for public assistance;
- 3321 (h) compile relevant information, statistics, and reports on child and family service
3322 matters in the state;
- 3323 (i) prepare and submit to the department, the governor, and the Legislature reports of the
3324 operation and administration of the division in accordance with the requirements of
3325 Sections 80-2-1102 and 80-2-1103;
- 3326 (j) within appropriations from the Legislature, provide or contract for a variety of

- 3327 domestic violence services and treatment methods;
- 3328 (k) enter into contracts for programs designed to reduce the occurrence or recurrence of
- 3329 abuse and neglect in accordance with Section 80-2-503;
- 3330 (l) seek reimbursement of funds the division expends on behalf of a child in the
- 3331 protective custody, temporary custody, or custody of the division, from the child's
- 3332 parent or guardian in accordance with an order for child support under Section
- 3333 78A-6-356;
- 3334 (m) ensure regular, periodic publication, including electronic publication, regarding the
- 3335 number of children in the custody of the division who:
- 3336 (i) have a permanency goal of adoption; or
- 3337 (ii) have a final plan of termination of parental rights, under Section 80-3-409, and
- 3338 promote adoption of the children;
- 3339 (n) subject to Subsections (5) and (7), refer an individual receiving services from the
- 3340 division to the local substance abuse authority or other private or public resource for
- 3341 a court-ordered drug screening test;
- 3342 (o) report before November 30, 2020, and every third year thereafter, to the Social
- 3343 Services Appropriations Subcommittee regarding:
- 3344 (i) the daily reimbursement rate that is provided to licensed foster parents based on
- 3345 level of care;
- 3346 (ii) the amount of money spent on daily reimbursements for licensed foster parents
- 3347 during the previous fiscal year; and
- 3348 (iii) any recommended changes to the division's budget to support the daily
- 3349 reimbursement rates described in Subsection (2)(o)(i);
- 3350 (p) when a division child welfare caseworker identifies a safety concern with the foster
- 3351 home, cooperate with the Office of Licensing and make a recommendation to the
- 3352 Office of Licensing concerning whether the foster home's license should be placed on
- 3353 conditions, suspended, or revoked; and
- 3354 (q) perform other duties and functions required by law.
- 3355 (3)(a) The division may provide, directly or through contract, services that include the
- 3356 following:
- 3357 (i) adoptions;
- 3358 (ii) day-care services;
- 3359 (iii) out-of-home placements for minors;
- 3360 (iv) health-related services;

- 3361 (v) homemaking services;
3362 (vi) home management services;
3363 (vii) protective services for minors;
3364 (viii) transportation services; or
3365 (ix) domestic violence services.
- 3366 (b) The division shall monitor services provided directly by the division or through
3367 contract to ensure compliance with applicable law and rules made in accordance with
3368 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3369 (c)(i) Except as provided in Subsection (3)(c)(ii), if the division provides a service
3370 through a private contract, the division shall post the name of the service provider
3371 on the division's website.
- 3372 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.
- 3373 (4)(a) The division may:
- 3374 (i) receive gifts, grants, devises, and donations;
3375 (ii) encourage merchants and service providers to:
3376 (A) donate goods or services; or
3377 (B) provide goods or services at a nominal price or below cost;
3378 (iii) distribute goods to applicants or consumers of division services free or for a
3379 nominal charge and tax free; and
3380 (iv) appeal to the public for funds to meet needs of applicants or consumers of
3381 division services that are not otherwise provided by law, including Sub-for-Santa
3382 programs, recreational programs for minors, and requests for household
3383 appliances and home repairs.
- 3384 (b) If requested by the donor and subject to state and federal law, the division shall use a
3385 gift, grant, devise, donation, or proceeds from the gift, grant, devise, or donation for
3386 the purpose requested by the donor.
- 3387 (5)(a) In carrying out the requirements of Subsection (2)(f), the division shall:
- 3388 (i) cooperate with the juvenile courts, the Division of Juvenile Justice and Youth
3389 Services, and with all public and private licensed child welfare agencies and
3390 institutions to develop and administer a broad range of services and support;
3391 (ii) take the initiative in all matters involving the protection of abused or neglected
3392 children, if adequate provisions have not been made or are not likely to be made;
3393 and
3394 (iii) make expenditures necessary for the care and protection of the children described

in Subsection (5)(a)(ii), within the division's budget.

(b) If an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (2)(n), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is an indigent individual.

(6) Except to the extent provided by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division is not required to investigate domestic violence in the presence of a child, as described in Section 76-5-114.

(7)(a) Except as provided in Subsection (7)(b), the division may not:

(i) require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo; or

(ii) refer an individual who is receiving services from the division for drug testing by means of a hair, fingernail, or saliva test that is administered to detect the presence of drugs.

(b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is receiving services from the division for drug testing by means of a saliva test if:

(i) the individual consents to drug testing by means of a saliva test; or

(ii) the court, based on a finding that a saliva test is necessary in the circumstances, orders the individual to complete drug testing by means of a saliva test.

Section 41. Section **80-3-406** is amended to read:

80-3-406 . Permanency plan -- Reunification services.

(1) If the juvenile court orders continued removal at the dispositional hearing under Section 80-3-402, and that the minor remain in the custody of the division, the juvenile court shall first:

(a) establish a primary permanency plan and a concurrent permanency plan for the minor in accordance with this section; and

(b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family under Subsections (5) through (8).

(2)(a) The concurrent permanency plan shall include:

(i) a representative list of the conditions under which the primary permanency plan will be abandoned in favor of the concurrent permanency plan; and

- 3429 (ii) an explanation of the effect of abandoning or modifying the primary permanency
3430 plan.
- 3431 (b) In determining the primary permanency plan and concurrent permanency plan, the
3432 juvenile court shall consider:
- 3433 (i) the preference for kinship placement over nonkinship placement, including the
3434 rebuttable presumption described in Subsection 80-3-302(7)(a);
- 3435 (ii) the potential for a guardianship placement if parental rights are terminated and no
3436 appropriate adoption placement is available; and
- 3437 (iii) the use of an individualized permanency plan, only as a last resort.
- 3438 (3)(a) The juvenile court may amend a minor's primary permanency plan before the
3439 establishment of a final permanency plan under Section 80-3-409.
- 3440 (b) The juvenile court is not limited to the terms of the concurrent permanency plan in
3441 the event that the primary permanency plan is abandoned.
- 3442 (c) If, at any time, the juvenile court determines that reunification is no longer a minor's
3443 primary permanency plan, the juvenile court shall conduct a permanency hearing in
3444 accordance with Section 80-3-409 on or before the earlier of:
- 3445 (i) 30 days after the day on which the juvenile court makes the determination
3446 described in this Subsection (3)(c); or
- 3447 (ii) the day on which the provision of reunification services, described in Section
3448 80-3-409, ends.
- 3449 (4)(a) Because of the state's interest in and responsibility to protect and provide
3450 permanency for minors who are abused, neglected, or dependent, the Legislature
3451 finds that a parent's interest in receiving reunification services is limited.
- 3452 (b) The juvenile court may determine that:
- 3453 (i) efforts to reunify a minor with the minor's family are not reasonable or
3454 appropriate, based on the individual circumstances; and
- 3455 (ii) reunification services should not be provided.
- 3456 (c) In determining reasonable efforts to be made with respect to a minor, and in making
3457 reasonable efforts, the juvenile court and the division shall consider the minor's
3458 health, safety, and welfare as the paramount concern.
- 3459 (d) Subject to Subsection (4)(e), the juvenile court may not determine that reunification
3460 services should not be provided solely on the basis of a parent's agreement or
3461 disagreement with the minor's:
- 3462 (i) assertion that the minor's gender identity is different from the minor's biological

sex;

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

(iii) sexual orientation.

(e) Subsection (4)(d) does not preclude the juvenile court from determining that reunification services should not be provided if the parent's agreement or disagreement with a minor as described in Subsection (4)(d) results in or is related to harm, as that term is defined in Section 80-1-102, to the minor.

(5) There is a presumption that reunification services should not be provided to a parent if the juvenile court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based on a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection (6)(a), the parent is suffering from a mental illness of such magnitude that the mental illness renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the child:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

(i) caused the death of another minor through abuse or neglect;

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a minor; or

(B) child abuse homicide;

(iii) committed sexual abuse against the minor;

(iv) is a sex offender under Subsection 53-29-202(2)(b); or

(v)(A) intentionally, knowingly, or recklessly causes the death of another parent of the minor;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the minor; or

- 3497 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
3498 recklessly causing the death of another parent of the minor;
- 3499 (e) the minor suffered severe abuse by the parent or by any individual known by the
3500 parent if the parent knew or reasonably should have known that the individual was
3501 abusing the minor;
- 3502 (f) the minor is adjudicated as an abused minor as a result of severe abuse by the parent,
3503 and the juvenile court finds that it would not benefit the minor to pursue reunification
3504 services with the offending parent;
- 3505 (g) the parent's rights are involuntarily terminated with regard to any other minor;
- 3506 (h) the minor was removed from the minor's home on at least two previous occasions
3507 and reunification services were offered or provided to the family at those times;
- 3508 (i) the parent has abandoned the minor for a period of six months or longer;
- 3509 (j) the parent permitted the minor to reside, on a permanent or temporary basis, at a
3510 location where the parent knew or should have known that a clandestine laboratory
3511 operation was located;
- 3512 (k) except as provided in Subsection (6)(b), with respect to a parent who is the minor's
3513 birth mother, the minor has fetal alcohol syndrome, fetal alcohol spectrum disorder,
3514 or was exposed to an illegal or prescription drug that was abused by the minor's
3515 mother while the minor was in utero, if the minor was taken into division custody for
3516 that reason, unless the mother agrees to enroll in, is currently enrolled in, or has
3517 recently and successfully completed a substance use disorder treatment program
3518 approved by the department; or
- 3519 (l) subject to Subsection (4)(d), the parent has subjected the minor to aggravated
3520 circumstances, including:
- 3521 (i) a severe type of child abuse or neglect;
- 3522 (ii) torture; or
- 3523 (iii) human trafficking of a child as described in Section 76-5-308.5 or 76-5-308.6.
- 3524 (6)(a) The juvenile court shall base the finding under Subsection (5)(b) on competent
3525 evidence from at least two medical or mental health professionals, who are not
3526 associates, establishing that, even with the provision of services, the parent is not
3527 likely to be capable of adequately caring for the minor within 12 months after the day
3528 on which the juvenile court finding is made.
- 3529 (b) The juvenile court may disregard the provisions of Subsection (5)(k) if the juvenile
3530 court finds, under the circumstances of the case, that the substance use disorder

3531 treatment described in Subsection (5)(k) is not warranted.

3532 (7) In determining whether reunification services are appropriate, the juvenile court shall
3533 take into consideration:

3534 (a) failure of the parent to respond to previous services or comply with a previous child
3535 and family plan;

3536 (b) the fact that the minor was abused while the parent was under the influence of drugs
3537 or alcohol;

3538 (c) any history of violent behavior directed at the minor or an immediate family member;

3539 (d) the circumstances under which the parent's rights were voluntarily terminated with
3540 regard to any other minor;

3541 (e) whether a parent continues to live with an individual who abused the minor;

3542 (f) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

3543 (g) testimony by a competent professional that the parent's behavior is unlikely to be
3544 successful; and

3545 (h) whether the parent has expressed an interest in reunification with the minor.

3546 (8) If, under Subsections (5)(b) through (l), the juvenile court does not order reunification
3547 services, a permanency hearing shall be conducted within 30 days in accordance with
3548 Section 80-3-409.

3549 (9)(a) Subject to Subsections (9)(b) through (e), if the juvenile court determines that
3550 reunification services are appropriate for the minor and the minor's family, the
3551 juvenile court shall provide for reasonable parent-time with the parent or parents
3552 from whose custody the minor was removed, unless parent-time is not in the best
3553 interest of the minor.

3554 (b) Parent-time is in the best interests of a minor unless the juvenile court makes a
3555 finding that it is necessary to deny parent-time in order to:

3556 (i) protect the physical safety of the minor;

3557 (ii) protect the life of the minor; or

3558 (iii) prevent the minor from being traumatized by contact with the parent due to the
3559 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

3560 (c) Notwithstanding Subsection (9)(a), a juvenile court may not deny parent-time based
3561 solely on a parent's failure to:

3562 (i) prove that the parent has not used legal or illegal substances; or

3563 (ii) comply with an aspect of the child and family plan that is ordered by the juvenile
3564 court.

(d) Parent-time shall be under the least restrictive conditions necessary to:

(i) protect the physical safety of the child; or

(ii) prevent the child from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(e)(i) The division or the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the division or the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(A) protect the physical safety of the child;

(B) protect the life of the child; or

(C) consistent with Subsection (9)(e)(ii), prevent the child from being traumatized by contact with the parent.

(ii) In determining whether the condition of the parent described in Subsection (9)(e)(i) will traumatize a child, the division or the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(A) the child's fear of the parent; and

(B) the nature of the alleged abuse or neglect.

(10)(a) If the juvenile court determines that reunification services are appropriate, the juvenile court shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (10)(a), the juvenile court and the division shall consider the minor's health, safety, and welfare as the paramount concern.

(11) In cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved:

(a) the juvenile court does not have any duty to order reunification services; and

(b) the division does not have a duty to make reasonable efforts to or in any other way attempt to provide reunification services or attempt to rehabilitate the offending parent or parents.

(12)(a) The juvenile court shall:

(i) determine whether the services offered or provided by the division under the child and family plan constitute reasonable efforts on the part of the division;

- 3599 (ii) determine and define the responsibilities of the parent under the child and family
3600 plan in accordance with Subsection 80-3-307(5)(g)(iii); and
- 3601 (iii) identify verbally on the record, or in a written document provided to the parties,
3602 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting
3603 in any future determination regarding the provision of reasonable efforts, in
3604 accordance with state and federal law.
- 3605 (b) If the parent is in a substance use disorder treatment program, other than a certified
3606 drug court program, the juvenile court may order the parent:
- 3607 (i) to submit to supplementary drug or alcohol testing, in accordance with Subsection
3608 80-3-110(6), in addition to the testing recommended by the parent's substance use
3609 disorder program based on a finding of reasonable suspicion that the parent is
3610 abusing drugs or alcohol; and
- 3611 (ii) to provide the results of drug or alcohol testing recommended by the substance
3612 use disorder program to the juvenile court or division.
- 3613 (13)(a) The time period for reunification services may not exceed 12 months from the
3614 day on which the minor was initially removed from the minor's home, unless the time
3615 period is extended under Subsection 80-3-409(7).
- 3616 (b) This section does not entitle any parent to an entire 12 months of reunification
3617 services.
- 3618 (14)(a) If reunification services are ordered, the juvenile court may terminate those
3619 services at any time.
- 3620 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to
3621 be inconsistent with the final permanency plan for the minor established under
3622 Section 80-3-409, then measures shall be taken, in a timely manner, to:
- 3623 (i) place the minor in accordance with the final permanency plan; and
3624 (ii) complete whatever steps are necessary to finalize the permanent placement of the
3625 minor.
- 3626 (15) Any physical custody of the minor by the parent or a relative during the period
3627 described in Subsections (10) through (14) does not interrupt the running of the period.
- 3628 (16)(a) If reunification services are ordered, the juvenile court shall conduct a
3629 permanency hearing in accordance with Section 80-3-409 before the day on which
3630 the time period for reunification services expires.
- 3631 (b) The permanency hearing shall be held no later than 12 months after the original
3632 removal of the minor.

- 3633 (c) If reunification services are not ordered, a permanency hearing shall be conducted
3634 within 30 days in accordance with Section 80-3-409.
- 3635 (17) With regard to a minor in the custody of the division whose parent or parents are
3636 ordered to receive reunification services but who have abandoned that minor for a period
3637 of six months from the day on which reunification services are ordered:
- 3638 (a) the juvenile court shall terminate reunification services; and
3639 (b) the division shall petition the juvenile court for termination of parental rights.
- 3640 (18) When a minor is under the custody of the division and has been separated from a
3641 sibling due to foster care or adoptive placement, a juvenile court may order sibling
3642 visitation, subject to the division obtaining consent from the sibling's guardian,
3643 according to the juvenile court's determination of the best interests of the minor for
3644 whom the hearing is held.
- 3645 (19)(a) If reunification services are not ordered under this section, and the whereabouts
3646 of a parent becomes known within six months after the day on which the out-of-home
3647 placement of the minor is made, the juvenile court may order the division to provide
3648 reunification services.
- 3649 (b) The time limits described in this section are not tolled by the parent's absence.
- 3650 (20)(a) If a parent is incarcerated or institutionalized, the juvenile court shall order
3651 reasonable services unless the juvenile court determines that those services would be
3652 detrimental to the minor.
- 3653 (b) In making the determination described in Subsection (20)(a), the juvenile court shall
3654 consider:
- 3655 (i) the age of the minor;
3656 (ii) the degree of parent-child bonding;
3657 (iii) the length of the sentence;
3658 (iv) the nature of the treatment;
3659 (v) the nature of the crime or illness;
3660 (vi) the degree of detriment to the minor if services are not offered;
3661 (vii) for a minor who is 10 years old or older, the minor's attitude toward the
3662 implementation of family reunification services; and
3663 (viii) any other appropriate factors.
- 3664 (c) Reunification services for an incarcerated parent are subject to the time limitations
3665 imposed in this section.
- 3666 (d) Reunification services for an institutionalized parent are subject to the time

limitations imposed in this section, unless the juvenile court determines that continued reunification services would be in the minor's best interest.

Section 42. Section **81-9-402** is amended to read:

81-9-402 . Custody and visitation for individuals other than a parent -- Venue.

- (1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.
- (b) There is a rebuttable presumption that a parent's decisions are in the minor child's best interests.
- (2) The presumption in Subsection (1) is rebutted and a court may grant custodial or visitation rights to an individual other than a parent if the court finds, by clear and convincing evidence, that the individual seeking custodial or visitation rights has established that:
- (a) the individual has intentionally assumed the role and obligations of a parent;
 - (b) the individual and the minor child have formed a substantial emotional bond and created a parent-child type relationship;
 - (c) the individual substantially contributed emotionally or financially to the minor child's well being;
 - (d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
 - (e) the continuation of the relationship between the individual and the minor child is in the minor child's best interest;
 - (f) the loss or cessation of the relationship between the individual and the minor child would substantially harm the minor child; and
 - (g) the parent:
 - (i) is absent as of the time of filing of the petition;
 - (ii) does not have the ability to exercise primary physical custody of the minor child as of the time of filing of the petition; or
 - (iii) has abused or neglected the minor child, or that another court has found that the parent has abused or neglected the minor child.
- (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350, an individual shall file a verified petition, or a petition supported by an affidavit, for custodial or visitation rights to the minor child in the juvenile court if a matter is pending in the juvenile court, or in the district court in the county where the minor child:

- 3701 (a) currently resides; or
- 3702 (b) lived with a parent or an individual other than a parent who acted as a parent within
- 3703 six months before the commencement of the action.
- 3704 (4) An individual may file a petition under this section in a pending divorce, parentage
- 3705 action, or other proceeding, including a proceeding in the juvenile court involving
- 3706 custody of or visitation with a minor child.
- 3707 (5) The petition shall include detailed facts supporting the petitioner's right to file the
- 3708 petition including the criteria set forth in Subsection (2) and residency information
- 3709 described in Section 81-11-209.
- 3710 (6) An individual may not file a petition under this section against a parent who is actively
- 3711 serving outside the state in any branch of the military.
- 3712 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the
- 3713 Utah Rules of Civil Procedure on all of the following:
- 3714 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
- 3715 (b) any individual who has court-ordered custody or visitation rights;
- 3716 (c) the minor child's guardian;
- 3717 (d) the guardian ad litem, if one has been appointed;
- 3718 (e) an individual or agency that has physical custody of the minor child or that claims to
- 3719 have custody or visitation rights; and
- 3720 (f) any other individual or agency that has previously appeared in any action regarding
- 3721 custody of or visitation with the minor child.
- 3722 (8) The court may order a custody evaluation to be conducted in any proceeding brought
- 3723 under this section.
- 3724 (9) The court may enter temporary orders in a proceeding brought under this section
- 3725 pending the entry of final orders.
- 3726 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child
- 3727 under this section to an individual:
- 3728 (a) who is not the parent of the minor child; and
- 3729 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no
- 3730 contest to a felony or attempted felony involving conduct that constitutes any of the
- 3731 following:
- 3732 (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4,
- 3733 and 76-5-114;
- 3734 (ii) child abuse homicide, as described in Section 76-5-208;

- (iii) child kidnapping, as described in Section 76-5-301.1;
- (iv) human trafficking of a child for labor, as described in Section 76-5-308.5;
- (v) human trafficking of a child for commercial sexual exploitation, as described in Section 76-5-308.6;
- (vi) patronizing a child victim of human labor trafficking, as described in Section 76-5-314;
- ~~[(v)]~~ (vii) sexual abuse of a minor, as described in Section 76-5-401.1;
- ~~[(vi)]~~ (viii) rape of a child, as described in Section 76-5-402.1;
- ~~[(vii)]~~ (ix) object rape of a child, as described in Section 76-5-402.3;
- ~~[(viii)]~~ (x) sodomy on a child, as described in Section 76-5-403.1;
- ~~[(ix)]~~ (xi) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- ~~[(x)]~~ (xii) sexual exploitation of a minor, as described in Section 76-5b-201;
- ~~[(xi)]~~ (xiii) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- ~~[(xii)]~~ (xiv) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) An individual described in Subsection (10) may only be considered for custody of a minor child if the following criteria are met by clear and convincing evidence:

- (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;
- (ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- (iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;
- (iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
- (v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child

- 3769 currently or at any time in the future when considering all of the following:
- 3770 (A) the minor child's age;
- 3771 (B) the minor child's gender;
- 3772 (C) the minor child's development;
- 3773 (D) the nature and seriousness of the disqualifying offense;
- 3774 (E) the preferences of a minor child who is 12 years old or older;
- 3775 (F) any available assessments, including custody evaluations, parenting
- 3776 assessments, psychological or mental health assessments, and bonding
- 3777 assessments; and
- 3778 (G) any other relevant information;
- 3779 (vi) the individual can provide evidence of the following:
- 3780 (A) the relationship with the minor child is of long duration;
- 3781 (B) that an emotional bond exists with the minor child; and
- 3782 (C) that custody by the individual who has committed the disqualifying offense
- 3783 ensures the best interests of the minor child are met;
- 3784 (vii)(A) there is no other responsible relative known to the court who has or likely
- 3785 could develop an emotional bond with the minor child and does not have a
- 3786 disqualifying offense; or
- 3787 (B) if there is a responsible relative known to the court that does not have a
- 3788 disqualifying offense, Subsection (11)(d) applies; and
- 3789 (viii) that the continuation of the relationship between the individual with the
- 3790 disqualifying offense and the minor child could not be sufficiently maintained
- 3791 through any type of visitation if custody were given to the relative with no
- 3792 disqualifying offense described in Subsection (11)(d).
- 3793 (c) The individual with the disqualifying offense bears the burden of proof regarding
- 3794 why placement with that individual is in the best interest of the minor child over
- 3795 another responsible relative or equally situated individual who does not have a
- 3796 disqualifying offense.
- 3797 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to
- 3798 the court who does not have a disqualifying offense:
- 3799 (i) preference for custody is given to a relative who does not have a disqualifying
- 3800 offense; and
- 3801 (ii) before the court may place custody with the individual who has the disqualifying
- 3802 offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

Section 43. Section **81-13-203** is amended to read:

81-13-203 . Who may adopt -- Adoption of a minor child.

(1) An adult may adopt a minor child in accordance with this section and this chapter.

(2) Except as otherwise provided in this section and subject to the placement requirements described in Section 81-13-403, a minor child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) an adult who is not married.

(3) If an adult is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state, the adult may not adopt a minor child unless the individual is a relative of the minor child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

(4) A married adult who is lawfully separated from the married adult's spouse may not adopt a minor child without the consent of the married adult's spouse if the spouse is capable of giving consent.

(5) An adult may not adopt a minor child unless:

(a) the adult is at least 10 years older than the minor child; or

(b) at least one adult of a married couple is at least 10 years older than the minor child if a married couple is adopting the minor child.

(6) Except as provided in Subsection (7), an adult may not adopt a minor child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes:

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

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

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

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

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

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

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

- (h) human trafficking of a child for labor, as described in Section 76-5-308.5;
- (i) human trafficking of a child for commercial sexual exploitation, as described in Section 76-5-308.6;
- (j) patronizing a child victim of human labor trafficking, as described in Section 76-5-314;
- ~~(i)~~ (k) sexual abuse of a minor, as described in Section 76-5-401.1;
- ~~(j)~~ (l) rape of a child, as described in Section 76-5-402.1;
- ~~(k)~~ (m) object rape of a child, as described in Section 76-5-402.3;
- ~~(l)~~ (n) sodomy on a child, as described in Section 76-5-403.1;
- ~~(m)~~ (o) sexual abuse of a child, as described in Section 76-5-404.1;
- ~~(n)~~ (p) aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- ~~(o)~~ (q) sexual exploitation of a minor, as described in Section 76-5b-201;
- ~~(p)~~ (r) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;

or

- ~~(q)~~ (s) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (6).

(7)(a) As used in this Subsection (7), "disqualifying offense" means an offense listed in Subsection (6) that prevents a court from considering an adult for adoption of a minor child except as provided in this Subsection (7).

(b) An adult described in Subsection (6) may only be considered for adoption of a minor child if the following criteria are met by clear and convincing evidence:

- (i) at least 10 years have elapsed from the day on which the adult is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- (ii) during the 10 years before the day on which the adult files a petition with the court seeking adoption, the adult has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;
- (iii) the adult can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
- (iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:
 - (A) the minor child's age;
 - (B) the minor child's gender;

- 3871 (C) the minor child's development;
- 3872 (D) the nature and seriousness of the disqualifying offense;
- 3873 (E) the preferences of a minor child who is 12 years old or older;
- 3874 (F) any available assessments, including custody evaluations, home studies,
- 3875 pre-placement adoptive evaluations, parenting assessments, psychological or
- 3876 mental health assessments, and bonding assessments; and
- 3877 (G) any other relevant information;
- 3878 (v) the adult can provide evidence of all of the following:
- 3879 (A) the relationship with the minor child is of long duration;
- 3880 (B) that an emotional bond exists with the minor child; and
- 3881 (C) that adoption by the individual who has committed the disqualifying offense
- 3882 ensures the best interests of the minor child are met; and
- 3883 (vi) the adoption is by:
- 3884 (A) a stepparent whose spouse is the adoptee's parent and consents to the
- 3885 adoption; or
- 3886 (B) subject to Subsection (7)(d), a relative of the minor child, as defined in
- 3887 Section 80-3-102, and there is not another relative without a disqualifying
- 3888 offense filing an adoption petition.
- 3889 (c) The adult with the disqualifying offense bears the burden of proof regarding why
- 3890 adoption with that adult is in the best interest of the minor child over another
- 3891 responsible relative or equally situated adult who does not have a disqualifying
- 3892 offense.
- 3893 (d) If there is an alternative responsible relative who does not have a disqualifying
- 3894 offense filing an adoption petition:
- 3895 (i) preference for adoption shall be given to a relative who does not have a
- 3896 disqualifying offense; and
- 3897 (ii) before the court may grant adoption to the adult who has the disqualifying offense
- 3898 over another responsible, willing, and able relative:
- 3899 (A) an impartial custody evaluation shall be completed; and
- 3900 (B) a guardian ad litem shall be assigned.
- 3901 (8) Subsections (6) and (7) apply to a case pending on March 25, 2017, for which a final
- 3902 decision on adoption has not been made and to a case filed on or after March 25, 2017.
- 3903 Section 44. **Repealer.**
- 3904 This bill repeals:

3905 Section **76-5-307, Definitions.**
3906 Section 45. **Effective Date.**
3907 This bill takes effect on May 6, 2026.