



CRIMINAL CODE EVALUATION TASK FORCE

2018 FINAL REPORT

Executive Summary

During the 2018 General Session, Senate Bill 30 (S.B. 30), “Aggravated Murder Amendments,” created the 15-member mixed Criminal Code Evaluation Task Force to “review the state’s criminal code and make recommendations regarding the proper classification of crimes by degrees of felony and misdemeanor.” The task force is statutorily required to report to the Law Enforcement and Criminal Justice Interim Committee and the Legislative Management Committee before November 30, 2018.

Beginning in July 2018, the task force held six meetings to explore the effectiveness of current criminal penalties in the Utah Code and to discuss potential changes relating to the following study areas:

- aggravated murder;
- domestic violence;
- driving under the influence;
- drug sentencing;
- expungement;
- sex offenses and the sex offender registry; and
- tax fraud.

In addition to discussions relating to the above study areas, the task force received recommendations from other members of the public and a working group that was formed within the task force to evaluate and recommend changes to criminal penalties.

Based on the presentations, recommendations, and deliberations and discussions by task force members, the task force recommends draft legislation, “Criminal Code Task Force Amendments,” which modifies certain criminal offenses and penalties. Representative Paul Ray, Chair, will serve as the chief sponsor of the legislation and Senator Karen Mayne, Chair, will serve as the floor sponsor through the 2019 General Session. The task force acknowledges the need for additional research about certain subjects and intends to continue its work in the 2019 Interim with the goal of providing recommendations for changes within the Utah Criminal Code.

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Task Force Members

Per S.B. 30, the task force is comprised of 15 members, including three members of the Senate appointed by the president of the Senate, three members of the House of Representatives appointed by the speaker of the House of Representatives, and a representative from the Commission on Criminal and Juvenile Justice, the Utah Sentencing Commission, the Utah Judicial Council, the Utah Prosecution Council, the Utah Department of Corrections, the Utah Department of Public Safety, the Utah Office for Victims of Crime, an association of criminal defense attorneys, and an association of victim advocates. In accordance with these requirements, the following members were appointed to serve on the task force:

- Senator Karen Mayne, Chair
- Representative Paul Ray, Chair
- Senator Lyle W. Hillyard
- Senator Daniel W. Thatcher
- Representative Eric K. Hutchings
- Representative Mark A. Wheatley
- Mr. Steve Burton, Utah Association of Criminal Defense Lawyers
- Mr. Will Carlson, Utah Prosecution Council
- Ms. Kim Cordova, Utah Commission on Criminal and Juvenile Justice
- Mr. Mike Haddon, Utah Department of Corrections
- Ms. Jacey Skinner, Utah Judicial Council
- Mr. Dee Smith, Utah Office for Victims of Crime
- Maj. Scott Stephenson, Utah Department of Public Safety
- Mr. Marshall Thompson, Utah Sentencing Commission
- Mr. Travis Wood, Utah People Not Prisons

Background

Sentencing Principles

During the first task force meeting, the Sentencing Commission presented information relating to the legal and policy values that impact criminal sentencing to provide context for the task force responsibilities. The Sentencing Commission noted that criminal sentencing must comply with the Eighth Amendment's prohibition against "cruel and unusual punishment," which requires the "punishment to fit the crime," as well as the constitutional requirements of due process and equal protection to ensure that criminal punishments are fundamentally fair and treat similarly situated individuals equally.

The Sentencing Commission further explained certain policy objectives that inform whether behavior should be considered criminal and, if so, how the punishment for the behavior should be determined, including: (1) preservation of public safety; (2) deterrence of criminal behavior; (3) rehabilitation of offenders; (4) restitution to victims; and (5) retribution. While these objectives may coexist, conflicts often arise depending on the type of offense and the underlying goals. These legal and policy values provided a foundation for task force discussions.

Indeterminate Sentencing Structure

Utah currently employs what is known as an “indeterminate sentencing structure.” The indeterminate sentencing structure requires the following penalties be applied to the following crime classifications unless a statute clearly provides an alternative period of imprisonment or fine:

<u>Classification</u>	<u>Imprisonment Period</u>	<u>Fine</u>
First degree felony	Five years to life	Up to \$10,000
Second degree felony	One to 15 years	Up to \$10,000
Third degree felony	Up to five years	Up to \$5,000
Class A misdemeanor	Up to one year	Up to \$2,500
Class B misdemeanor	Up to six months	Up to \$1,000
Class C misdemeanor	Up to 90 days	Up to \$750
Infraction	None	Up to \$750

The task force worked within the above structure when determining classification and punishment of crimes.

The Master Offense List

Per Utah Code Subsection 63M-7-405(4), the Sentencing Commission is required to compile a “Master Offense List” each year that includes a list of all criminal offenses that exist in statute and the associated penalty. A copy of the Master Offense List was distributed and discussed during the first task force meeting to provide context for the number and types of crimes included in the Utah Code. A copy of the 2018 Master Offense List can be found [at the task force’s web page](#).

Areas of Study

During the first meeting, task force members discussed items in the Utah Criminal Code that pose enforcement challenges or require clarification or further study. The task force chairs then compiled a list of suggested study items (see Appendix A) and identified seven items for study during the 2018 Interim, which were discussed as follows:

- **Aggravated Murder**

Task force staff presented information relating to Utah’s current aggravated murder statute, including the constitutionality of aggravating factors and their impact on application of the death penalty, and provided a comparison of Utah’s aggravated murder statute with other similar state statutes. An overview of this presentation is included in Appendix B.

The Office of the Attorney General provided comment to the task force suggesting that because an aggravated murder sentence is applied infrequently a successful challenge to the constitutionality of Utah’s statute appears unlikely. The task force received comment from the Salt Lake Legal Defender Association relating to the Utah case law that indicates a potential constitutional

challenge is feasible. The task force further discussed modifying the current statute to eradicate aggravating factors that are redundant.

- **Domestic Violence**

Task force members discussed current provisions and penalties in the Utah Code relating to domestic violence. The president of the Chiefs of Police Association provided comment relating to the difficulties law enforcement faces given the nature of domestic violence between intimate partners and the frequency with which domestic violence occurs (an estimated 15,000 court cases in Utah were related to domestic violence in 2017). The task force discussed a possible increase in penalty for class B misdemeanor offenses that are the result of domestic violence.

- **Driving Under the Influence (DUI)**

The Department of Public Safety and the Substance Abuse Advisory Council presented information to the task force relating to effective sentencing for DUI offenders, the federal requirements and penalties for DUI repeat offenders, the current DUI sentencing scheme in Utah (see Appendix C), and recommendations for statutory changes, including: (1) mandating a 48 consecutive hour jail sentence for a first DUI offense and eliminating the option for 48 hours compensatory service; and (2) permitting the use of new DUI offender monitoring technologies. The task force discussed the pros and cons of a mandatory 48-hour jail sentence and further discussed the use of new technologies to monitor sobriety of DUI offenders and increased treatment opportunities for DUI offenders.

- **Drug Sentencing**

The task force received a presentation from the Sentencing Commission on the history of and current guidelines for drug sentencing in the state and the current research available relating to drug sentencing effectiveness since the 2015 Justice Reinvestment Initiative (JRI) (see Appendix D for data relating to the effect of JRI on the Utah prison population and public safety). The Sentencing Commission provided the task force recommendations for approaching drug sentencing and indicated recent drug sentencing reforms are working effectively.

- **Expungement**

The task force received comment from the Utah Department of Commerce on the degree to which expunged criminal records are considered in professional licensing decisions. The task force directed the Department of Commerce to compile and provide the task force a report that includes recommended changes to punishments that impact licensing restrictions.

The task force also discussed the difficulties in applying current penalty enhancements when an offender commits multiple domestic violence offenses in different jurisdictions.

- **Sex Offenses and the Sex Offender Registry**

Through public comment and task force presentations, questions arose relating to sex offense statutes and sex offender registry requirements. In the legislation included as Appendix F and

described below, the task force recommends certain modifications to penalties for “sexting” and for failure to properly register as a sex offender. The task force also discussed the possibility of amending the statutes relating to sexual exploitation of a minor to make a distinction between the possession or viewing of child pornography and the production or distribution of child pornography.

- **Tax Fraud**

Due to a request during public comment, the task force examined the prevalence of violations to payroll tax and minimum wage laws in certain industries. As part of this discussion, the task force received comment from the State Tax Commission, the Office of the Attorney General, the Internal Revenue Service, and the Labor Commission. The task force focused on the possible utility of increasing penalties to curb tax fraud violations and identifying which entities should be held responsible for abuses. As part of their report (see Appendix E), the Master Offense List working group recommended that the penalty for repeated violations of the Minimum Wage Act should be changed to increase with each offense, a change the task force recommends as part of the task force legislation.

Legislation and Recommendations

The task force voted unanimously, with two members absent, to recommend the draft legislation included in Appendix F, titled “Criminal Code Task Force Amendments,” as a task force bill. Representative Paul Ray, Chair, will serve as the bill’s chief sponsor and Senator Karen Mayne, Chair, will serve as the bill’s floor sponsor. As described below, the bill includes statutory changes relating to prostitution and solicitation and changes stemming from the Master Offense List Evaluation completed by the informal working group.

During the most recent meeting, the task force discussed future study items and received additional recommendations from task force members and representatives from the Statewide Association of Prosecutors and Public Attorneys (SWAP). In response to the recommendations, the task force elected to open a second task force bill, which is further described below.

Master Offense List Evaluation

The task force created an informal working group comprised of task force members Steve Burton, Will Carlson, and Dee Smith to review the Master Offense List. Mr. Burton and Mr. Carlson presented recommendations based on their review of the list, which included statutory changes both agreed were needed, statutes and subject areas both agreed were inconsistent and should be studied further, and statutes and subject areas they did not agree required a change. The handout describing the research by Mr. Burton and Mr. Carlson is included in Appendix E.

Based on Mr. Burton and Mr. Carlson’s presentation, the task force recommends, as part of the “Criminal Code Task Force Amendments” bill, the changes the presenters agreed should be made, including:

- reduction of the penalty for obstructing Alcoholic Beverage Control investigations under Section 32B-4-505 from a second degree felony to a class A misdemeanor to be consistent with the offense of obstruction of a criminal investigation under Section 76-8-306;

- reduction of the mandatory minimum sentence for failure to properly register as a sex offender under Section 77-41-107 from 90 days in jail to 30 days in jail;
- modification to the penalty for theft of livestock under Section 76-6-412 to reflect the monetary value of the livestock stolen, as is the case for other stolen property;
- extension of current “Romeo and Juliet laws” to sexting under Section 76-10-1206 by mirroring the penalties applied to consensual sex between a minor aged 16 or 17 and a young adult under Section 76-5-401.2;
- modification of the indefinite penalty enhancement for felony theft under Section 76-6-412 to apply for a ten-year window;
- repeal of penalties associated with consensual sodomy, Subsection 76-5-403(1), and adultery, Section 76-7-103, which are unconstitutional as a result of *Lawrence v. Texas*, 539 U.S. 558 (2003);
- increase of the penalty for the offense of rendering a dead body unavailable for postmortem investigation under Section 26-2-18.5 from a class B misdemeanor to a third degree felony to be consistent with the penalty for intentionally and unlawfully moving a dead body under Section 76-9-704; and
- modification of the penalty for violations of the Minimum Wage Act under Section 34-40-204 to increase with each offense.

Prostitution and Solicitation

During a task force meeting, a representative from the Magdalene Collective provided comment to the task force relating to protection for sex workers who are victims of a crime and fear coming forward due to possible prosecution for prostitution or sexual solicitation. Based on the presentation and additional staff research, the task force recommends as part of the “Criminal Code Task Force Amendments” bill that changes be made to the prostitution and sexual solicitation statutes to provide criminal immunity for a sex worker who witnesses or is a victim of a crime and reports the crime to law enforcement in good faith.

Future Legislation

As noted above, the task force voted unanimously to open a second task force bill to address certain changes to criminal penalties based on comments by task force members and SWAP. The bill is expected to amend statutes relating to:

- drug production and distribution penalties;
- marriage permit violations;
- electronic communications harassment; and
- vehicle theft.



The task force intends to consider a draft of the bill before the 2019 General Session.

Future Areas of Study

In addition to the items likely to be addressed by task force legislation, the task force expects to revisit certain subject areas and discuss additional items, including:

- aggravated murder;
- forgery;
- domestic violence penalty enhancements;
- surcharges;
- mandatory DUI jail sentences;
- criminal penalties that impact professional licensing;
- child pornography; and
- suggestions made by the Master Offense List working group not addressed in the task force legislation.

The task force also received comment regarding possible changes to pleas in abeyance and the statutory authority of U.S. Immigration and Customs Enforcement to hold a prisoner for additional time after the prisoner's sentence is complete. As the purpose of the task force is to evaluate misdemeanor and felony penalties, the chairs note these items in this report as possible study items for the Law Enforcement and Criminal Justice Interim Committee during the 2019 interim.

Appendix A

Study Items

During the first meeting, task force members discussed items in the Utah Criminal Code that pose enforcement challenges or require clarification or further study. These responses were compiled and tallied to track the frequency of each recommendation. The task force chairs then considered all items recommended by at least two task force members and prioritized them for study based on the purpose of the task force. The table below depicts the nine items that received more than one recommendation and includes the number of task force members that suggested each item.

POTENTIAL STUDY ITEM	OCCURRENCE
Drug Sentencing	4
Collateral Consequences of Incarceration	3
Domestic Violence Offenses	3
Expungement	3
Sex Offender Registry	3
Bail/Risk Assessment Tools	2
DUI Penalties	2
Mandatory Incarceration	2
White Collar Crime/Penalty Proportionality	2

Appendix B

Utah's Aggravated Murder Statute: Current Law, Context, and Criticisms

An individual may be charged with aggravated murder if the individual commits a murder under any of the “aggravating” circumstances described in Section 76-5-202 of the Utah Code. An aggravated murder conviction is the only conviction in the Utah Code that may result in the death penalty.

Relevant Case Law

A series of United States Supreme Court decisions guide the current statutory framework in Utah and other states with a death penalty statute. In the case *Furman v. Georgia*, 408 U.S. 238 (1972), the Supreme Court examined Georgia and Texas statutes that provided prosecutors and jurors discretion to determine whether a defendant was death eligible. The Court found the statutes were arbitrarily and inconsistently applied and ultimately violated the Eighth and Fourteenth Amendments. This effectively invalidated approximately 40 state death penalty statutes at the time.

Following *Furman*, states modified their death penalty related statutes, many creating a list of aggravating factors that must be considered before the death penalty could be imposed. The Supreme Court further expanded on the constitutionality of such an approach by finding that aggravating factors help “narrowly define” those cases where the death penalty may be applied and provide guidance to prosecutors and juries. See generally, *Gregg v. Georgia*, 428 U.S. 153 (1976); *Zant v. Stephens*, 462 U.S. 862 (1983).

Based on the “arbitrary and inconsistent” language stemming from *Furman*, the constitutionality of statutes that include many aggravating factors such that all murders in the state would be considered death eligible have been called into question over the years. See, e.g., *State v. Young*, 853 P.2d 327 (Utah 1993) (Durham, J., dissenting).

Aggravating Factors

Per Utah Code Section 76-3-207, the same aggravating factors that result in an aggravated murder charge may be considered at sentencing, in addition to any other factors the court deems relevant. There are approximately 19 aggravating factors that may be considered in Utah, including:

- the homicide was committed by an individual confined in a jail or correctional institution;
- the homicide was committed for pecuniary gain;
- the homicide was committed to avoid or prevent an arrest
- the homicide was committed in an “especially heinous, atrocious, cruel, or exceptionally depraved manner” demonstrated by physical torture or serious physical abuse or bodily injury.

In a 2017 [report by the Commission on Criminal and Juvenile Justice Death Penalty Working Group](#), it was reported that over 60 circumstances may qualify for the death penalty in Utah based on the aggravating factors in statute.

Mitigating Factors

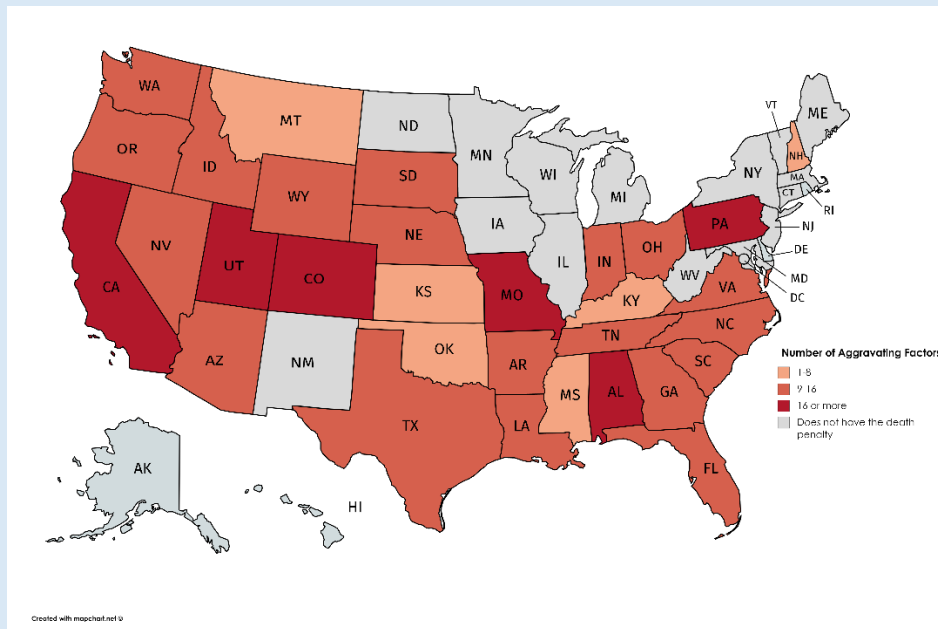
In addition to aggravating factors, Utah Code Section 76-3-207 provides that mitigating factors may be brought up during sentencing for a conviction of aggravated murder, including:

- the defendant’s lack of criminal history;
- the defendant’s mental or emotional disturbance;
- whether the defendant acted under duress;
- the defendant’s capacity;
- the defendant’s age; and
- the defendant’s minor role in the offense.

Per the statute, the above list is not exhaustive and any other mitigating factors the court deems relevant may also be considered.

Aggravating Factors in the States

The following is a summary of the number of aggravating factors those states with the death penalty include in their aggravated murder statutes:



Utah falls into the “16 or more” classification, which places it among those states that have the highest number of aggravating factors in statute. However, Utah ranks 24th out of 31 states for the highest number of inmates on death row. In addition, the last execution in Utah was in 2010 and the last death sentence was in 2015.



Appendix C

DUI Sentencing Matrix

UTAH DUI SENTENCING MATRIX

(Current as of May 8, 2018)

Court-Ordered Sentencing	MISDEMEANOR DUI		FELONY DUI
	FIRST OFFENSE	SECOND OFFENSE WITHIN 10 YEARS	
CLASSIFICATION (§41-6a-503)	CLASS B MISDEMEANOR CLASS A MISDEMEANOR: <ul style="list-style-type: none"> • if bodily injury¹ • if passenger is under 16 • if passenger is under 18 and driver is 21 or older • if driving in the wrong direction on a freeway or controlled-access highway 	CLASS B MISDEMEANOR CLASS A MISDEMEANOR: <ul style="list-style-type: none"> • if bodily injury¹ • if passenger under 16 • if passenger is under 18 and driver is 21 or older • if driving in the wrong direction on a freeway or controlled-access highway 	THIRD DEGREE FELONY <ul style="list-style-type: none"> • if third or subsequent offense within 10 years • if serious bodily injury¹ • if any prior felony DUI conviction or automobile homicide¹ conviction
Jail (§41-6a-505)	SHALL order: 48 consecutive hours OR 48 hours compensatory Service	SHALL order: 240 hours (10 days) OR 120 hours (5 days) AND 720 consecutive hours (30 days) electronic home confinement ² that includes substance abuse testing	SHALL order: 0-5 year prison term OR 1,500 hours jail (62.5 days)
Fine, Surcharge, and Court Security Fee (§41-6a-505) (§51-9-401)	SHALL order: \$700 minimum fine plus a \$630 surcharge plus a \$50 court security fee	SHALL order: \$800 minimum fine plus a \$720 surcharge plus a \$50 court security fee	SHALL order: \$1,500 minimum fine plus a \$1,350 surcharge plus a \$50 court security fee, unless a 0-5 prison term is imposed
Screening, Assessment, Educational Series, and Treatment (§41-6a-505)	SHALL order: <ul style="list-style-type: none"> • Screening • Assessment (if found appropriate by screening) • Educational series, unless treatment is ordered MAY order: <ul style="list-style-type: none"> • Treatment 	SHALL order: <ul style="list-style-type: none"> • Screening • Assessment (if found appropriate by screening) • Educational series, unless treatment is ordered MAY order: <ul style="list-style-type: none"> • Treatment 	SHALL order: <ul style="list-style-type: none"> • Screening • Assessment • Treatment as appropriate, unless 0-5 prison term is imposed • Supervised probation, unless 0-5 prison term is not imposed
Supervised Probation³ (§41-6a-507)	MAY order supervised probation	SHALL order supervised probation	SHALL order supervised probation if 0-5 prison term is not imposed
Ignition Interlock⁴ (§41-6a-518) (§41-6a-530)	MAY order: <ul style="list-style-type: none"> • Ignition interlock SHALL order: <ul style="list-style-type: none"> • Interlock if under 21 • Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate 	SHALL order: <ul style="list-style-type: none"> • Ignition interlock SHALL order: <ul style="list-style-type: none"> • Interlock if under 21 • Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate 	SHALL order: <ul style="list-style-type: none"> • Ignition interlock SHALL order: <ul style="list-style-type: none"> • Interlock if under 21 • Interlock for an ARD⁵ violation OR describe on the record why such order not appropriate
High BAC (.16 or higher) (§41-6a-505)	SHALL order: <ul style="list-style-type: none"> • Supervised probation • Treatment and interlock and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement OR describe on the record why such order(s) not appropriate 	SHALL order: <ul style="list-style-type: none"> • Supervised probation • Treatment and interlock and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement OR describe on the record why such order(s) not appropriate 	SHALL order: <ul style="list-style-type: none"> • Supervised probation if 0-5 prison term is not imposed • Treatment and interlock and/or ankle attached continuous transdermal alcohol monitoring device and/or electronic home confinement OR describe on the record why such order(s) not appropriate
Driver License Suspension (§41-6a-509)	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years	Court MAY order additional 90 days, 120 days, 180 days, one year or 2 years

¹ A person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury or death, whether or not the injuries arise from the same episode of driving.

² See §41-6a-506 for electronic home confinement provisions.

³ Supervised probation is also required for all violations of §41-6a-517 (driving with any measurable controlled substance or metabolite in the body).

⁴ Adoption of the ignition interlock restricted driver (IRD) provision (§41-6a-518.2) does not change the obligation of judges to impose interlock as a condition of probation.

Note: If a person's violation of Section 41-6a-502 does not involve alcohol, the requirement to order ignition interlock does not apply.

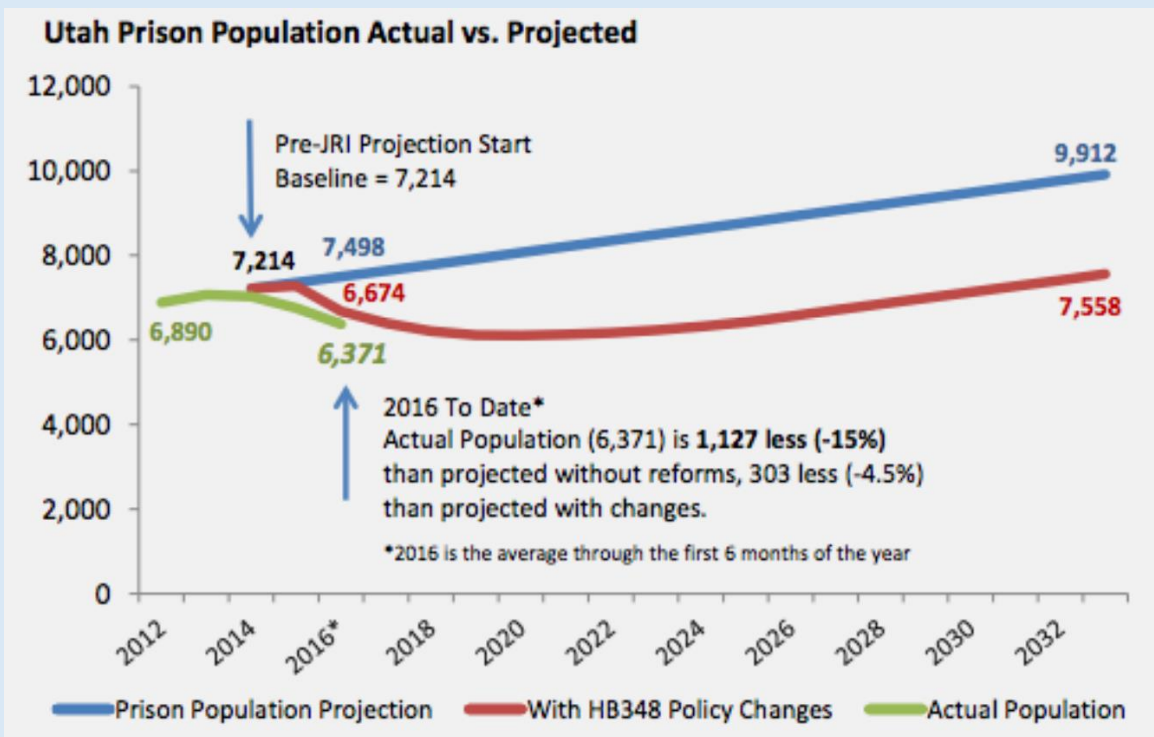
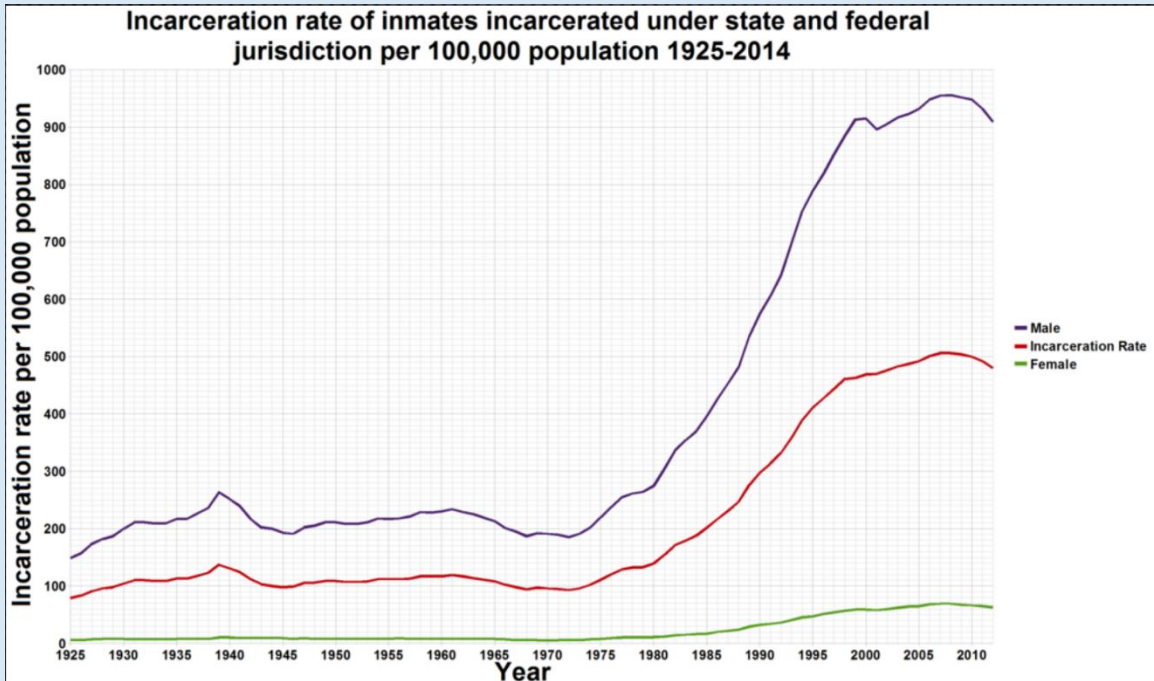
⁵ ARD = Alcohol Restricted Driver.

The following statutory provisions also apply to DUI offenders, although they do not require a court order. Failure to comply carries additional criminal sanctions.

Statutory Provisions	FIRST OFFENSE	SECOND OR SUBSEQUENT OFFENSES WITHIN 10 YEARS
Driver License Denial, Suspension, or Revocation		
Driving Under the Influence/ DUI Conviction (§41-6a-509)	<p>If 21 or older: 120 days</p> <p>If 19-20: Longer of one year or until 21st birthday</p> <p>If under 19: Until 21st birthday</p> <p>Early License Reinstatement for Drivers Under 21: Court may order shortening of the suspension period after 6 months if the person completes a screening; completes an assessment if appropriate; completes an education series or substance abuse treatment, as deemed appropriate by the court; has not been convicted of a violation of a motor vehicle law during the suspension period; has complied with all terms of probation or all court orders if not ordered to probation; and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period.</p>	<p>If 21 or older: 2 years</p> <p>If 19-20: Longer of 2 years or until 21st birthday</p> <p>If under 19: Until 21st birthday</p>
Driving with Controlled Substance/ Metabolite in Body Conviction (§41-6a-517)	<p>If 21 or older: 120 days</p> <p>If 19-20: Longer of one year or until 21st birthday</p> <p>If under 19: Until 21st birthday</p> <p>Early License Reinstatement for Drivers Under 21: Same as above, but sworn statement must include the person has not consumed a controlled substance not prescribed by a practitioner during the suspension period.</p>	<p>If 21 or older: 2 years</p> <p>If 19-20: Longer of two years or until 21st birthday</p> <p>If under 19: Until 21st birthday</p>
Refusal of Chemical Test (§41-6a-521)	<p>If 21 or older: 18 months</p> <p>If under 21: Longer of 2 years or until 21st birthday</p>	<p>If 21 or older: 36 months</p> <p>If under 21: Longer of 36 months or until 21st birthday</p>
Per se Arrest (§53-3-223) <small>≥ .08 BAC, impaired to degree unsafe to drive, operating with metabolite of drug in system</small>	<p>If 21 or older: 120 days</p> <p>If under 21: 6 months</p>	<p>If 21 or older: 2 years</p> <p>If under 21: Longer of 2 years or until 21st birthday</p>
Not A Drop (§53-3-231) <small>A person under 21 may not operate a vehicle or motorboat with detectable alcohol in body</small>	<p>If under 21: Until successful completion of substance abuse program recommendation, but not less than 6 months</p>	<p>If under 21: Until successful completion of substance abuse program recommendation, and the longer of 2 years or until 21st birthday</p>
Failure to Install or Removal of Ignition Interlock Device (§53-3-1007)	<p>A person who is an interlock restricted driver (IRD) shall have their driving privilege suspended until they have had an, interlock device installed in their vehicle. If the interlock device is removed prior to the ending date of the interlock restriction period, the driver license shall be re-suspended until an interlock device is re-installed. This suspension may be imposed in addition to other license sanctions as listed above.</p>	
Other Sanctions		
IRD – Interlock Restricted Driver (§41-6a-518.2) <small>An "interlock restricted driver" may not operate a motor vehicle without an ignition interlock system.</small>	<ul style="list-style-type: none"> • 18 months IRD for 1st DUI (§41-6a-502) if over 21 • 3 years IRD for 1st Driving Without Ignition Interlock Device if IRD (§41-6a-518.2), Refusal to Submit to Chemical Test (§41-6a-521), or 1st DUI (§41-6a-502) if under 21 • 3 years IRD for a combination of two of the following within 10 years: DUI (§41-6a-502), Refusal to Submit to Chemical Test (§41-6a-521), Controlled Substance/Metabolite (§41-6a-517), Alcohol-Related Reckless (§41-6a-512 – <i>only violations prior to July 1, 2008</i>), Impaired Driving (§41-6a-502.5), Driving with Controlled Substance/Bodily Injury or Death (§58-37-8(2)(g)), or Automobile Homicide (§76-5-207) • 6 years IRD for Felony DUI (§41-6a-502) • 10 years IRD for Automobile Homicide (§76-5-207) <p><small>Note: If a person's violation of Section 41-6a-502 does not involve alcohol, or if all offenses are for metabolite convictions under Section 41-6a-517 (no alcohol involved), IRD does not apply.</small></p>	
ARD – Alcohol Restricted Driver (§41-6a-529) <small>An "alcohol restricted driver" may not operate or be in actual physical control of a vehicle with any measurable or detectable amount of alcohol in the person's body.</small>	<ul style="list-style-type: none"> • 2 years ARD for 1st DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), or Impaired Driving (§41-6a-502.5) • 2 years ARD for any Per se offense (§53-3-223) • 3 years ARD for any driving without an IID if an IRD (§41-6a-518.2) or driving with alcohol in body if an ARD (§41-6a-530) offense • 5 years ARD for 1st Refusal to Submit to Test (§41-6a-521) or Class A misdemeanor DUI (§41-6a-502) • 10 years ARD for 2nd offense, if 2nd offense is DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), Impaired Driving (§41-6a-502.5), or Refusal to Submit to Chemical Test (§41-6a-521); and 1st offense is DUI (§41-6a-502), Alcohol-Related Reckless (<i>only violations prior to July 1, 2008</i>), or Impaired Driving (§41-6a-502.5) • Lifetime ARD for any Felony DUI (§41-6a-502) or Automobile Homicide (§76-5-207) <p><small>Note: If Per se is drug only or metabolite, ARD does not apply.</small></p>	

Appendix D

The Sentencing Commission presented the following charts to the task force, which indicate the impact of JRI on Utah's incarceration rate:





Appendix E

Master Offense List Evaluation

Criminal Code Evaluation Task Force
Master Offense List Evaluation
by Steve Burton, Criminal Defense Attorney, Intermountain Legal
and Will Carlson, Deputy District Attorney, Salt Lake County

The Task Force should consider decreasing the following classifications/penalties:

1. **Consensual sodomy** (76-5-403(1))- in light of the SCOTUS decision in *Lawrence v. Texas*, this criminal offense is unconstitutional.
2. **Adultery** (76-7-103)- See *Lawrence v. Texas*
3. **Obstructing Alcoholic Beverage Control investigations** (32B-4-505)- obstructing DABC investigations is currently a second degree felony, however the default for obstructing a generic criminal investigation is only a class A misdemeanor (76-8-306(3)(c)) [Obstructing investigation of a capital or first degree felony is an F2].
4. **Decrease the mandatory minimum 90 days jail for failure to register or providing false or incomplete information on the Sex and Kidnap Offender Registry to 30 days.** (77-41-107(1)(a) and (b)).
5. **Theft of livestock should depend on the value of the livestock** (76-6-412(1)(b)(iii)). Stealing a hen or any other livestock listed is currently a third-degree felony regardless of value.
6. **Extend Romeo and Juliet laws to sexting** (dealing in material harmful to a minor 76-10-1206)- Utah law recognizes that sex sometimes happens between a young adult and an older adolescent. For example, consensual sex between a 17 year old and an 18 year old is not criminal (76-5-401.2). However if those same two people exchange erotic messages over the phone, the 18 year old commits a third-degree felony. Sexting should have the same nuanced and escalating penalties based on age of the participants that sex does.
7. **Insurance fraud should be based on value.**
8. **A felony theft conviction should not enhance all future thefts forever.** A ten-year enhancement window, similar to DUIs, would be more just. §76-6-412(1)(b)(v).

The Task Force should consider addressing the following inconsistencies:

1. **False statements-** the second-degree felony should be decreased, and the class B misdemeanors should be increased
 - A. False or inconsistent material statements, U.C.A. §76-8-502: second-degree felony
 - B. False or inconsistent statements U.C.A. §76-8-503: class B misdemeanor
 - C. Written false statements U.C.A. §76-8-504: class B misdemeanor
2. **Unauthorized disclosure of information-** the penalties for unauthorized disclosure of records currently depends on the database the record comes from. Instead it should be based on the mens rea of the person disclosing and the privacy interests in the disclosed record.
 - A. Unauthorized disclosure of vehicle insurance database information U.C.A. §41-12a-805(4)): third-degree felony
 - B. Unauthorized disclosure of driver license division records U.C.A. §53-3-109(8)(a): class B misdemeanor
 - C. Unauthorized disclosure under GRAMA U.C.A. §63G-2-801(1)(a): class B misdemeanor
3. **Threats-** Threatening a judge, a bailiff, or anybody else in a court leads to different results
 - A. Threatening to assault a judge or member of the Board of Pardons is a third-degree felony: §76-8-316(2)
 - B. Threatening a juror is a third-degree felony: §76-8-508.5
 - C. Threatening violence against a peace officer or member of the military is a class A misdemeanor: §76-5-102.4
 - D. There is no explicit prohibition against threatening a prosecutor or defense attorney
 - E. Threatening to assault an elected official is a class B misdemeanor: §76-8-315
 - F. Threatening violence against any member of the public is a class B misdemeanor (76-5-107).

The Task Force should consider increasing the following classifications/penalties:

1. **Rendering a dead body unavailable for postmortem investigation without permission from the medical examiner is only a class B misdemeanor** (§26-2-18.5), but intentionally and unlawfully moving a dead body is a third-degree felony (76-9-704). This class B should be increased since preventing a postmortem investigation can have significant public safety consequences, but a clarification of the mens rea may be appropriate.
2. **Repeated violations of the Minimum Wage Act** is just a class B misdemeanor (34-40-204(1)). The penalty should increase with each offense.

The Defense and the Prosecution disagree on whether and how the Task Force should address the following issues:

1. **Auto Homicide DUI v. Driving with a Measurable Controlled Substance and killing someone-**
 - A. Auto homicide is a third-degree felony if someone operates a vehicle in a negligent manner causing death and is over the legal alcohol limit or is under the influence of drugs and/or alcohol to a degree that renders them incapable of safely operating a vehicle (§76-5-207(2)).
 - B. The same person who has a measurable schedule I or II controlled substance in their system is guilty of a second-degree felony even if the person is no longer experiencing the effects of the substance (58-37-8(2)(h)(i)).
 - C. Prosecutors support increasing auto homicide to a second-degree felony. Defense attorneys support decreasing the second-degree felony in title 58 to a third-degree felony.
2. **Possession of child pornography/Sexual exploitation of a minor §76-5b-201:** currently the law treats production, distribution, and possession with intent to distribute child porn the same as simple possession or viewing, as second-degree felony. Steve Burton believes simple possession should be a lower level offense. Will Carlson disagrees and thinks the current classification is appropriate.
3. **Bringing dangerous weapons to school U.C.A. §76-10-505.5** It is a class B misdemeanor to bring a dangerous weapon to school while bringing a firearm or short-barreled shotgun is a class A. Will Carlson believes both of these penalties should be increased by one level. Steve Burton disagrees and thinks the current classification is appropriate.
4. **Explosives §76-10-306** Under circumstances not amounting to weapons of mass destruction, possessing an explosive, chemical, or incendiary device is a second-degree felony and possessing explosive, chemical, or incendiary parts is a third-degree felony. Steve Burton compares this to building a “firework bomb” and wants the penalty decreased. Will Carlson disagrees and points out that prosecutors recently used this section to charge Kevin Wayne Billings, the man who allegedly killed West Valley code enforcement officer Jill Robinson, when officers found three spools of detonation cord and 400 blasting caps with altered shock tubes.
5. **Defense attorneys also asked Steve Burton to propose the following recommendations which prosecutor Will Carlson disagrees with.**
 - A. Robbery’s that come from thefts there should be some financial minimum so that the State cannot turn retail thefts into 2nd degree robberies because the defendant makes some verbal threat or pushes someone out of the way. Either there needs to be much more force or the underlying theft should have to be more than a MB theft or retail theft.
 - B. I also think theft should totally be based on money and we should get rid of the automobile charge. Why is taking a \$500 car a 2nd degree felony, but taking \$900 in jewelry is a misdemeanor?
 - C. 76-6-410.5-theft of a rental vehicle. 76-6-408- theft by receiving a motor vehicle (this should be lessor than theft of a motor vehicle.) Theft by rental agreement should be based on value. It is absurd that it is the same severity as stealing a car. The loss is monetary. If they steal the car they can be charged with stealing the car.
 - D. Possession with intent should be a 3rd that can be enhanced. It should be one degree higher like it always was before. At the very least, there should be a lesser degree for arranging or assisting. The people at the park that are mere addict assistants for the dealer and are acting in that capacity only get drugs for their habit should be treated differently than the actual dealer. It should be an A.
 - E. Charging and punishing an adult for a sex offense that was committed as a minor. And, like I mentioned, I found someone (an LDA client) who went through this, and is willing to be used as an example.
 - F. 76-8-311.3 makes it a third-degree felony to bring any medication (even over the counter ibuprofen) into the jail. The substance does not need to be a controlled substance. The statute punishes ibuprofen the same way as alcohol or poison. Contrast with 58-37-8(2)(E), which punishes certain controlled substances into the jail as a Class A Misdemeanor, depending on which schedule the controlled substance is. Bringing a substance into the jail which is neither scheduled nor listed should not be punished more severely than bringing in a controlled substance; nor should it be punished the same as alcohol or poison.
 - G. Forgery should be value-based. Why is it automatically a higher penalty? It seems inconsistent.

Appendix F

Legislation: Criminal Code Task Force
Amendments

CRIMINAL CODE TASK FORCE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies criminal offenses and penalties in the Utah Code.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "health professional" as the term relates to certain sexual offenses;
- ▶ modifies certain criminal offenses and penalties relating to:
 - dealing in material harmful to minors between a young adult and adolescent;
 - obstruction of alcoholic beverage control investigations;
 - registration as a sex offender;
 - rendering a dead body unavailable for postmortem investigation;
 - repeated violations of the Minimum Wage Act; and
 - theft;
- ▶ repeals the criminal offenses of adultery and sodomy;
- ▶ provides immunity from prosecution for the offenses of prostitution and sexual solicitation under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-18.5, as enacted by Laws of Utah 2009, Chapter 223

31A-22-726, as last amended by Laws of Utah 2015, Chapter 283

32B-4-505, as enacted by Laws of Utah 2010, Chapter 276

34-40-204, as last amended by Laws of Utah 1997, Chapter 375

33 **53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3
 34 **62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322
 35 **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397
 36 **76-5-403**, as last amended by Laws of Utah 2013, Chapter 81
 37 **76-5-404**, as last amended by Laws of Utah 2018, Chapter 192
 38 **76-5-406**, as last amended by Laws of Utah 2018, Chapter 176
 39 **76-5-407**, as last amended by Laws of Utah 2000, Chapter 128
 40 **76-6-412**, as last amended by Laws of Utah 2018, Chapter 265
 41 **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282
 42 **76-7-305 (Effective 01/01/19)**, as last amended by Laws of Utah 2018, Chapter 282
 43 **76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345
 44 **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433
 45 **76-10-1313**, as last amended by Laws of Utah 2018, Chapter 308
 46 **77-41-107**, as last amended by Laws of Utah 2015, Chapter 210

47 REPEALS:

48 **76-7-103**, as last amended by Laws of Utah 1991, Chapter 241

49

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

51 Section 1. Section **26-2-18.5** is amended to read:

52 **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

53 (1) As used in this section:

54 (a) "Medical examiner" [~~is as~~] means the same as that term is defined in Section

55 26-4-2.

56 (b) "Unavailable for postmortem investigation" [~~is as~~] means the same as that term is
 57 defined in Section 26-4-2.

58 (2) It is unlawful for a person to engage in any conduct that makes a dead body
 59 unavailable for postmortem investigation, unless, before engaging in that conduct, the person
 60 obtains a permit from the medical examiner to render the dead body unavailable for
 61 postmortem investigation, under Section 26-4-29[-], if the person intends to make the body
 62 unavailable for postmortem investigation.

63 (3) A person who violates Subsection (2) is guilty of a [~~class B misdemeanor~~] third

64 degree felony.

65 (4) If a person engages in conduct that constitutes both a violation of this section and a
66 violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 [~~supercede~~
67 supersede the provisions and penalties of this section.

68 Section 2. Section **31A-22-726** is amended to read:

69 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**
70 **insurance exchange.**

71 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

72 (a) that is necessary to avert:

73 (i) the death of the woman on whom the abortion is performed; or

74 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
75 of the woman on whom the abortion is performed;

76 (b) of a fetus that has a defect that is documented by a physician or physicians to be
77 uniformly diagnosable and uniformly lethal; or

78 (c) where the woman is pregnant as a result of:

79 (i) rape, as described in Section 76-5-402;

80 (ii) rape of a child, as described in Section 76-5-402.1; or

81 (iii) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102.

82 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
83 coverage is a type of permitted abortion coverage.

84 [~~(3) A person may not offer a health benefit plan that provides coverage for an abortion~~
85 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~
86 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

87 [~~(4)~~] (3) A person may not offer a health benefit plan that provides coverage for an
88 abortion in a health insurance exchange created under the federal Patient Protection and
89 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion
90 coverage.

91 Section 3. Section **32B-4-505** is amended to read:

92 **32B-4-505. Obstructing a search, official proceeding, or investigation.**

93 (1) A person who is in the premises or has charge over premises may not refuse or fail
94 to admit to the premises or obstruct the entry of any of the following who demands entry when

95 acting under this title:

96 (a) a commissioner;

97 (b) an authorized representative of the commission or department; or

98 (c) a law enforcement officer.

99 (2) A person who is in the premises or has charge of the premises may not interfere
100 with any of the following who is conducting an investigation under this title at the premises:

101 (a) a commissioner;

102 (b) an authorized representative of the commission or department; or

103 (c) a law enforcement officer.

104 (3) A person is guilty of a [~~second degree felony~~] class A misdemeanor if, believing
105 that an official proceeding or investigation is pending or about to be instituted under this title,
106 that person:

107 (a) alters, destroys, conceals, or removes a record with a purpose to impair [its] the
108 record's verity or availability in the proceeding or investigation; or

109 (b) makes, presents, or uses anything that the person knows to be false with a purpose
110 to deceive any of the following who may be engaged in a proceeding or investigation under this
111 title:

112 (i) a commissioner;

113 (ii) an authorized representative of the commission or department;

114 (iii) a law enforcement officer; or

115 (iv) other person.

116 Section 4. Section ~~34-40-204~~ is amended to read:

117 **34-40-204. Criminal penalty -- Enforcement.**

118 (1) [~~(a) Repeated violation of this chapter is a class B misdemeanor.~~]

119 [~~(b) "Repeated violations" does not include~~] As used in this section, "violation"

120 includes separate violations as to individual employees arising out of the same investigation or
121 enforcement action.

122 (2) (a) A violation of this chapter is an infraction.

123 (b) A second violation of this chapter is a class C misdemeanor.

124 (c) A third or subsequent violation of this chapter is a class B misdemeanor.

125 [~~(2) Upon the third violation by the same employer within a three-year period, the~~]

126 (3) Upon an employer's violation of this section, the commission may prosecute a
127 criminal action in the name of the state.

128 ~~[(3)]~~ (4) The county attorney, district attorney, or attorney general shall provide
129 assistance in prosecutions under this section at the request of the commission.

130 Section 5. Section **53G-6-707** is amended to read:

131 **53G-6-707. Interstate compact students -- Inclusion in attendance count --**
132 **Foreign exchange students -- Annual report -- Requirements for exchange student**
133 **agencies.**

134 (1) A school district or charter school may include the following students in the
135 district's or school's membership and attendance count for the purpose of apportionment of
136 state money:

137 (a) a student enrolled under an interstate compact, established between the State Board
138 of Education and the state education authority of another state, under which a student from one
139 compact state would be permitted to enroll in a public school in the other compact state on the
140 same basis as a resident student of the receiving state; or

141 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact
142 on Placement of Children.

143 (2) A school district or charter school may:

144 (a) enroll foreign exchange students that do not qualify for state money; and

145 (b) pay for the costs of those students with other funds available to the school district
146 or charter school.

147 (3) Due to the benefits to all students of having the opportunity to become familiar
148 with individuals from diverse backgrounds and cultures, school districts are encouraged to
149 enroll foreign exchange students, as provided in Subsection (2), particularly in schools with
150 declining or stable enrollments where the incremental cost of enrolling the foreign exchange
151 student may be minimal.

152 (4) The board shall make an annual report to the Legislature on the number of
153 exchange students and the number of interstate compact students sent to or received from
154 public schools outside the state.

155 (5) (a) A local school board or charter school governing board shall require each
156 approved exchange student agency to provide it with a sworn affidavit of compliance prior to

157 the beginning of each school year.

158 (b) The affidavit shall include the following assurances:

159 (i) that the agency has complied with all applicable policies of the board;

160 (ii) that a household study, including a background check of all adult residents, has
161 been made of each household where an exchange student is to reside, and that the study was of
162 sufficient scope to provide reasonable assurance that the exchange student will receive proper
163 care and supervision in a safe environment;

164 (iii) that host parents have received training appropriate to their positions, including
165 information about enhanced criminal penalties under Subsection 76-5-406~~(10)~~(2)(j) for
166 persons who are in a position of special trust;

167 (iv) that a representative of the exchange student agency shall visit each student's place
168 of residence at least once each month during the student's stay in Utah;

169 (v) that the agency will cooperate with school and other public authorities to ensure
170 that no exchange student becomes an unreasonable burden upon the public schools or other
171 public agencies;

172 (vi) that each exchange student will be given in the exchange student's native language
173 names and telephone numbers of agency representatives and others who could be called at any
174 time if a serious problem occurs; and

175 (vii) that alternate placements are readily available so that no student is required to
176 remain in a household if conditions appear to exist which unreasonably endanger the student's
177 welfare.

178 (6) (a) A local school board or charter school governing board shall provide each
179 approved exchange student agency with a list of names and telephone numbers of individuals
180 not associated with the agency who could be called by an exchange student in the event of a
181 serious problem.

182 (b) The agency shall make a copy of the list available to each of its exchange students
183 in the exchange student's native language.

184 (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school
185 shall enroll a foreign exchange student if the foreign exchange student:

186 (a) is sponsored by an agency approved by the State Board of Education;

187 (b) attends the same school during the same time period that another student from the

188 school is:

- 189 (i) sponsored by the same agency; and
- 190 (ii) enrolled in a school in a foreign country; and
- 191 (c) is enrolled in the school for one year or less.

192 Section 6. Section **62A-15-602** is amended to read:

193 **62A-15-602. Definitions.**

194 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
195 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
196 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part
197 12, Essential Treatment and Intervention Act:

198 (1) "Adult" means an individual 18 years of age or older.

199 (2) "Approved treatment facility or program" means a treatment provider that meets the
200 standards described in Subsection 62A-15-103(2)(a)(v).

201 (3) "Commitment to the custody of a local mental health authority" means that an adult
202 is committed to the custody of the local mental health authority that governs the mental health
203 catchment area where the adult resides or is found.

204 (4) "Community mental health center" means an entity that provides treatment and
205 services to a resident of a designated geographical area, that operates by or under contract with
206 a local mental health authority, and that complies with state standards for community mental
207 health centers.

208 (5) "Designated examiner" means:

209 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
210 specially qualified by training or experience in the diagnosis of mental or related illness; or

211 (b) a licensed mental health professional designated by the division as specially
212 qualified by training and who has at least five years' continual experience in the treatment of
213 mental illness.

214 (6) "Designee" means a physician who has responsibility for medical functions
215 including admission and discharge, an employee of a local mental health authority, or an
216 employee of a person that has contracted with a local mental health authority to provide mental
217 health services under Section 17-43-304.

218 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered

219 treatment at a local substance abuse authority or an approved treatment facility or program for
220 the treatment of an adult's substance use disorder.

221 (8) "Harmful sexual conduct" means the following conduct upon an individual without
222 the individual's consent, including the nonconsensual circumstances described in Subsections
223 76-5-406~~(1) through (12)~~ (2)(a) through (l):

224 (a) sexual intercourse;

225 (b) penetration, however slight, of the genital or anal opening of the individual;

226 (c) any sexual act involving the genitals or anus of the actor or the individual and the
227 mouth or anus of either individual, regardless of the gender of either participant; or

228 (d) any sexual act causing substantial emotional injury or bodily pain.

229 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

230 (10) "Local substance abuse authority" means the same as that term is defined in
231 Section 62A-15-102 and described in Section 17-43-201.

232 (11) "Mental health facility" means the Utah State Hospital or other facility that
233 provides mental health services under contract with the division, a local mental health
234 authority, a person that contracts with a local mental health authority, or a person that provides
235 acute inpatient psychiatric services to a patient.

236 (12) "Mental health officer" means an individual who is designated by a local mental
237 health authority as qualified by training and experience in the recognition and identification of
238 mental illness, to:

239 (a) apply for and provide certification for a temporary commitment; or

240 (b) assist in the arrangement of transportation to a designated mental health facility.

241 (13) "Mental illness" means:

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

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

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

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

249 (14) "Patient" means an individual who is:

250 (a) under commitment to the custody or to the treatment services of a local mental
251 health authority; or

252 (b) undergoing essential treatment and intervention.

253 (15) "Physician" means an individual who is:

254 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

255 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
256 Practice Act.

257 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of
258 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
259 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

260 (17) "Substantial danger" means that due to mental illness, an individual is at serious
261 risk of:

262 (a) suicide;

263 (b) serious bodily self-injury;

264 (c) serious bodily injury because the individual is incapable of providing the basic
265 necessities of life, including food, clothing, or shelter;

266 (d) causing or attempting to cause serious bodily injury to another individual; or

267 (e) engaging in harmful sexual conduct.

268 (18) "Treatment" means psychotherapy, medication, including the administration of
269 psychotropic medication, or other medical treatments that are generally accepted medical or
270 psychosocial interventions for the purpose of restoring the patient to an optimal level of
271 functioning in the least restrictive environment.

272 Section 7. Section **76-3-406** is amended to read:

273 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
274 **offense, or hospitalization may not be granted.**

275 (1) Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
276 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
277 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be
278 suspended, the court may not enter a judgment for a lower category of offense, and
279 hospitalization may not be ordered, the effect of which would in any way shorten the prison
280 sentence for [~~any person~~] an individual who commits a capital felony or a first degree felony

- 281 involving:
- 282 (a) Section 76-5-202, aggravated murder;
- 283 (b) Section 76-5-203, murder;
- 284 (c) Section 76-5-301.1, child kidnaping;
- 285 (d) Section 76-5-302, aggravated kidnaping;
- 286 (e) Section 76-5-402, rape, if the [person] individual is sentenced under Subsection
- 287 76-5-402(3)(b), (3)(c), or (4);
- 288 (f) Section 76-5-402.1, rape of a child;
- 289 (g) Section 76-5-402.2, object rape, if the [person] individual is sentenced under
- 290 Subsection 76-5-402.2(1)(b), (1)(c), or (2);
- 291 (h) Section 76-5-402.3, object rape of a child;
- 292 (i) Section 76-5-403, forcible sodomy, if the [person] individual is sentenced under
- 293 Subsection 76-5-403[(4)] (3)(b), [(4)] (3)(c), or [(5)] (4);
- 294 (j) Section 76-5-403.1, sodomy on a child;
- 295 (k) Section 76-5-404, forcible sexual abuse, if the [person] individual is sentenced
- 296 under Subsection 76-5-404(2)(b) or (3);
- 297 (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 298 (m) Section 76-5-405, aggravated sexual assault; or
- 299 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 300 (2) The provisions of this section do not apply if the sentencing court finds that the
- 301 defendant was under the age of 18 at the time of the offense and could have been adjudicated in
- 302 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the
- 303 offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

304 Section 8. Section **76-5-403** is amended to read:

305 **76-5-403. Forcible sodomy.**

- 306 (1) [~~A person commits sodomy when the actor engages in any sexual act with a person~~
- 307 ~~who is 14 years of age or older involving the genitals of one person and mouth or anus of~~
- 308 ~~another person, regardless of the sex of either participant.] As used in this section, "sodomy"~~
- 309 means engaging in any sexual act with an individual who is 14 years of age or older involving
- 310 the genitals of one individual and the mouth or anus of another individual, regardless of the sex
- 311 of either participant.

312 (2) ~~[A person]~~ An individual commits forcible sodomy when the actor commits
313 sodomy upon another without the other's consent.

314 ~~[(3) Sodomy is a class B misdemeanor.]~~

315 ~~[(4)]~~ (3) Forcible sodomy is a first degree felony, punishable by a term of
316 imprisonment of:

317 (a) except as provided in Subsection ~~[(4)]~~ (3)(b) or (c), not less than five years and
318 which may be for life;

319 (b) except as provided in Subsection ~~[(4)]~~ (3)(c) or ~~[(5)]~~ (4), 15 years and which may
320 be for life, if the trier of fact finds that:

321 (i) during the course of the commission of the forcible sodomy the defendant caused
322 serious bodily injury to another; or

323 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
324 of age and was previously convicted of a grievous sexual offense; or

325 (c) life without parole, if the trier of fact finds that at the time of the commission of the
326 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

327 ~~[(5)]~~ (4) If, when imposing a sentence under Subsection ~~[(4)]~~ (3)(b), a court finds that a
328 lesser term than the term described in Subsection ~~[(4)]~~ (3)(b) is in the interests of justice and
329 states the reasons for this finding on the record, the court may impose a term of imprisonment
330 of not less than:

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

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

333 ~~[(6)]~~ (5) The provisions of Subsection ~~[(5)]~~ (4) do not apply when ~~[a person]~~ an
334 individual is sentenced under Subsection ~~[(4)]~~ (3)(a) or (c).

335 ~~[(7)]~~ (6) Imprisonment under Subsection ~~[(4)]~~ (3)(b), ~~[(4)]~~ (3)(c), or ~~[(5)]~~ (4) is
336 mandatory in accordance with Section 76-3-406.

337 Section 9. Section **76-5-404** is amended to read:

338 **76-5-404. Forcible sexual abuse.**

339 (1) An individual commits forcible sexual abuse if the victim is 14 years of age or
340 older and, under circumstances not amounting to rape, object rape, forcible sodomy, or
341 attempted rape or forcible sodomy, the actor touches the anus, buttocks, pubic area, or any part
342 of the genitals of another, or touches the breast of a female, or otherwise takes indecent

343 liberties with another, with intent to cause substantial emotional or bodily pain to any
344 individual or with the intent to arouse or gratify the sexual desire of any individual, without the
345 consent of the other, regardless of the sex of any participant.

346 (2) Forcible sexual abuse is:

347 (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable
348 by a term of imprisonment of not less than one year nor more than 15 years; or

349 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a
350 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that
351 during the course of the commission of the forcible sexual abuse the defendant caused serious
352 bodily injury to another.

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

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

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

359 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with
360 Section 76-3-406.

361 Section 10. Section ~~76-5-406~~ is amended to read:

362 **76-5-406. Sexual offenses against the victim without consent of victim --**

363 **Circumstances.**

364 (1) As used in this section:

365 (a) "Health professional" means an individual who is licensed or who holds the
366 individual out to be licensed, or who otherwise provides professional physical or mental health
367 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,
368 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
369 social service worker, clinical social worker, certified social worker, marriage and family
370 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
371 specialist, or substance abuse counselor.

372 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized
373 member of the clergy.

374 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

375 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of
376 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a
377 child, [~~sodomy, attempted sodomy,~~] forcible sodomy, attempted forcible sodomy, sodomy on a
378 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
379 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
380 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
381 victim under any of the following circumstances:

382 ~~[(1)]~~ (a) the victim expresses lack of consent through words or conduct;

383 ~~[(2)]~~ (b) the actor overcomes the victim through the actual application of physical force
384 or violence;

385 ~~[(3)]~~ (c) the actor is able to overcome the victim through concealment or by the
386 element of surprise;

387 ~~[(4)-(a)-(i)]~~ (d) (i) the actor coerces the victim to submit by threatening to retaliate in
388 the immediate future against the victim or any other person, and the victim perceives at the
389 time that the actor has the ability to execute this threat; or

390 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
391 against the victim or any other person, and the victim believes at the time that the actor has the
392 ability to execute this threat;

393 ~~[(b) as used in this Subsection (4), "to retaliate" includes threats of physical force,~~
394 ~~kidnapping, or extortion;]~~

395 ~~[(5)]~~ (e) the actor knows the victim is unconscious, unaware that the act is occurring, or
396 physically unable to resist;

397 ~~[(6)]~~ (f) the actor knows or reasonably should know that the victim has a mental
398 disease or defect, which renders the victim unable to:

399 ~~[(a)]~~ (i) appraise the nature of the act;

400 ~~[(b)]~~ (ii) resist the act;

401 ~~[(c)]~~ (iii) understand the possible consequences to the victim's health or safety; or

402 ~~[(d)]~~ (iv) appraise the nature of the relationship between the actor and the victim[-];

403 ~~[(7)]~~ (g) the actor knows that the victim submits or participates because the victim
404 erroneously believes that the actor is the victim's spouse;

405 ~~[(8)]~~ (h) the actor intentionally impaired the power of the victim to appraise or control
406 his or her conduct by administering any substance without the victim's knowledge;

407 ~~[(9)]~~ (i) the victim is younger than 14 years of age;

408 ~~[(10)]~~ (j) the victim is younger than 18 years of age and at the time of the offense the
409 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a
410 position of special trust in relation to the victim as defined in Section 76-5-404.1;

411 ~~[(11)]~~ (k) the victim is 14 years of age or older, but younger than 18 years of age, and
412 the actor is more than three years older than the victim and entices or coerces the victim to
413 submit or participate, under circumstances not amounting to the force or threat required under
414 Subsection ~~[(2) or (4)]~~ (2)(b) or (d); or

415 ~~[(12)]~~ (l) the actor is a health professional or religious counselor, ~~[as those terms are~~
416 ~~defined in this Subsection (12),]~~ the act is committed under the guise of providing professional
417 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
418 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
419 to the extent that resistance by the victim could not reasonably be expected to have been
420 manifested~~]; for purposes of this Subsection (12):]~~

421 ~~[(a) "health professional" means an individual who is licensed or who holds himself or~~
422 ~~herself out to be licensed, or who otherwise provides professional physical or mental health~~
423 ~~services, diagnosis, treatment, or counseling including, but not limited to, a physician,~~
424 ~~osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,~~
425 ~~social service worker, clinical social worker, certified social worker, marriage and family~~
426 ~~therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse~~
427 ~~specialist, or substance abuse counselor; and]~~

428 ~~[(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized~~
429 ~~member of the clergy].~~

430 Section 11. Section ~~76-5-407~~ is amended to read:

431 **76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to**
432 **constitute offense.**

433 (1) The provisions of this part do not apply to consensual conduct between ~~[persons]~~
434 individuals married to each other.

435 (2) In any prosecution for:

436 (a) the following offenses, any sexual penetration, however slight, is sufficient to
 437 constitute the relevant element of the offense:

438 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving
 439 sexual intercourse;

440 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section
 441 76-5-401.2, involving sexual intercourse; or

442 (iii) rape, a violation of Section 76-5-402; or

443 (b) the following offenses, any touching, however slight, is sufficient to constitute the
 444 relevant element of the offense:

445 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving
 446 acts of sodomy;

447 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section
 448 76-5-401.2, involving acts of sodomy;

449 [~~(iii) sodomy, a violation of Subsection 76-5-403(1);~~]

450 [~~(iv)~~] (iii) forcible sodomy, a violation of Subsection 76-5-403(2);

451 [~~(v)~~] (iv) rape of a child, a violation of Section 76-5-402.1; or

452 [~~(vi)~~] (v) object rape of a child, a violation of Section 76-5-402.3.

453 (3) In any prosecution for the following offenses, any touching, even if accomplished
 454 through clothing, is sufficient to constitute the relevant element of the offense:

455 (a) sodomy on a child, a violation of Section 76-5-403.1; or

456 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section
 457 76-5-404.1.

458 Section 12. Section **76-6-412** is amended to read:

459 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

460 (1) Theft of property and services as provided in this chapter is punishable:

461 (a) as a second degree felony if the:

462 (i) value of the property or services is or exceeds \$5,000;

463 (ii) property stolen is a firearm or an operable motor vehicle; or

464 (iii) property is stolen from the person of another;

465 (b) as a third degree felony if:

466 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

467 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice
468 before convicted of any of the following offenses, if each prior offense was committed within
469 10 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the
470 current conviction is based and at least one of those convictions is for a class A misdemeanor:

471 (A) any theft, any robbery, or any burglary with intent to commit theft;

472 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

473 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

474 ~~[(iii) in a case not amounting to a second degree felony, the property taken is a stallion,
475 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,
476 poultry, or a fur-bearing animal raised for commercial purposes; or]~~

477 ~~[(iv)]~~ (iii) (A) the value of property or services is or exceeds \$500 but is less than
478 \$1,500;

479 (B) the theft occurs on a property where the offender has committed any theft within
480 the past five years; and

481 (C) the offender has received written notice from the merchant prohibiting the offender
482 from entering the property pursuant to Subsection 78B-3-108(4);

483 ~~[(v)]~~ (iv) the actor has been previously convicted of a felony violation of any of the
484 offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was
485 committed within 10 years before the date of the current conviction or the date of the offense
486 upon which the current conviction is based;

487 (c) as a class A misdemeanor if:

488 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

489 (ii) (A) the value of property or services is less than \$500;

490 (B) the theft occurs on a property where the offender has committed any theft within
491 the past five years; and

492 (C) the offender has received written notice from the merchant prohibiting the offender
493 from entering the property pursuant to Subsection 78B-3-108(4); or

494 (iii) the actor has been twice before convicted of any of the offenses listed in
495 Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10
496 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the
497 current conviction is based; or

498 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and
499 the theft is not an offense under Subsection (1)(c).

500 (2) Any individual who violates Subsection 76-6-408(1) or Subsection 76-6-413(1), or
501 commits theft of [~~property described in Subsection 76-6-412(1)(b)(iii)] a stallion, mare, colt,
502 gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a
503 fur-bearing animal raised for commercial purposes, is civilly liable for three times the amount
504 of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney
505 fees.~~

506 Section 13. Section **76-7-302** is amended to read:

507 **76-7-302. Circumstances under which abortion authorized.**

508 (1) As used in this section, "viable" means that the unborn child has reached a stage of
509 fetal development when the unborn child is potentially able to live outside the womb, as
510 determined by the attending physician to a reasonable degree of medical certainty.

511 (2) An abortion may be performed in this state only by a physician.

512 (3) An abortion may be performed in this state only under the following circumstances:

513 (a) the unborn child is not viable; or

514 (b) the unborn child is viable, if:

515 (i) the abortion is necessary to avert:

516 (A) the death of the woman on whom the abortion is performed; or

517 (B) a serious risk of substantial and irreversible impairment of a major bodily function
518 of the woman on whom the abortion is performed;

519 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
520 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
521 lethal; or

522 (iii) (A) the woman is pregnant as a result of:

523 (I) rape, as described in Section 76-5-402;

524 (II) rape of a child, as described in Section 76-5-402.1; or

525 (III) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102; and

526 (B) before the abortion is performed, the physician who performs the abortion:

527 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
528 law enforcement; and

529 (II) complies with the requirements of Section 62A-4a-403.

530 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
531 necessary to perform the abortion in another location due to a medical emergency.

532 Section 14. Section **76-7-305 (Effective 01/01/19)** is amended to read:

533 **76-7-305 (Effective 01/01/19). Informed consent requirements for abortion --**
534 **72-hour wait mandatory -- Exceptions.**

535 (1) A person may not perform an abortion, unless, before performing the abortion, the
536 physician who will perform the abortion obtains a voluntary and informed written consent from
537 the woman on whom the abortion is performed, that is consistent with:

538 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
539 Current Opinions; and

540 (b) the provisions of this section.

541 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
542 informed only if, at least 72 hours before the abortion:

543 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
544 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
545 physician's assistant presents the information module to the pregnant woman;

546 (b) the pregnant woman views the entire information module and presents evidence to
547 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
548 information module;

549 (c) after receiving the evidence described in Subsection (2)(b), the individual described
550 in Subsection (2)(a):

551 (i) documents that the pregnant woman viewed the entire information module;

552 (ii) gives the pregnant woman, upon her request, a copy of the documentation
553 described in Subsection (2)(c)(i); and

554 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
555 who is to perform the abortion, upon request of that physician or the pregnant woman;

556 (d) after the pregnant woman views the entire information module, the physician who
557 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
558 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
559 physician's assistant, in a face-to-face consultation in any location in the state, orally informs

560 the woman of:

561 (i) the nature of the proposed abortion procedure;

562 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
563 fetus;

564 (iii) the risks and alternatives to the abortion procedure or treatment;

565 (iv) the options and consequences of aborting a medication-induced abortion, if the
566 proposed abortion procedure is a medication-induced abortion;

567 (v) the probable gestational age and a description of the development of the unborn
568 child at the time the abortion would be performed;

569 (vi) the medical risks associated with carrying her child to term; and

570 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
571 woman, upon her request; and

572 (e) after the pregnant woman views the entire information module, a staff member of
573 the abortion clinic or hospital provides to the pregnant woman:

574 (i) on a document that the pregnant woman may take home:

575 (A) the address for the department's website described in Section 76-7-305.5; and

576 (B) a statement that the woman may request, from a staff member of the abortion clinic
577 or hospital where the woman viewed the information module, a printed copy of the material on
578 the department's website; and

579 (ii) a printed copy of the material on the department's website described in Section
580 76-7-305.5, if requested by the pregnant woman.

581 (3) Before performing an abortion, the physician who is to perform the abortion shall:

582 (a) in a face-to-face consultation, provide the information described in Subsection
583 (2)(d), unless the attending physician or referring physician is the individual who provided the
584 information required under Subsection (2)(d); and

585 (b) (i) obtain from the pregnant woman a written certification that the information
586 required to be provided under Subsection (2) and this Subsection (3) was provided in
587 accordance with the requirements of Subsection (2) and this Subsection (3); and

588 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

589 (4) When a serious medical emergency compels the performance of an abortion, the
590 physician shall inform the woman prior to the abortion, if possible, of the medical indications

591 supporting the physician's judgment that an abortion is necessary.

592 (5) If an ultrasound is performed on a woman before an abortion is performed, the
593 individual who performs the ultrasound, or another qualified individual, shall:

594 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
595 manner to permit her to:

596 (i) view the images, if she chooses to view the images; or

597 (ii) not view the images, if she chooses not to view the images;

598 (b) simultaneously display the ultrasound images in order to permit the woman to:

599 (i) view the images, if she chooses to view the images; or

600 (ii) not view the images, if she chooses not to view the images;

601 (c) inform the woman that, if she desires, the person performing the ultrasound, or

602 another qualified person shall provide a detailed description of the ultrasound images,

603 including:

604 (i) the dimensions of the unborn child;

605 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

606 (iii) the presence of external body parts or internal organs, if present and viewable; and

607 (d) provide the detailed description described in Subsection [~~(6)~~] (5)(c), if the woman

608 requests it.

609 (6) The information described in Subsections (2), (3), and (5) is not required to be

610 provided to a pregnant woman under this section if the abortion is performed for a reason

611 described in:

612 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician

613 concur, in writing, that the abortion is necessary to avert:

614 (i) the death of the woman on whom the abortion is performed; or

615 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

616 of the woman on whom the abortion is performed; or

617 (b) Subsection 76-7-302(3)(b)(ii).

618 (7) In addition to the criminal penalties described in this part, a physician who violates

619 the provisions of this section:

620 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

621 and

622 (b) shall be subject to:

623 (i) suspension or revocation of the physician's license for the practice of medicine and
624 surgery in accordance with Section 58-67-401 or 58-68-401; and

625 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

626 (8) A physician is not guilty of violating this section for failure to furnish any of the
627 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

628 (a) the physician can demonstrate by a preponderance of the evidence that the
629 physician reasonably believed that furnishing the information would have resulted in a severely
630 adverse effect on the physical or mental health of the pregnant woman;

631 (b) in the physician's professional judgment, the abortion was necessary to avert:

632 (i) the death of the woman on whom the abortion is performed; or

633 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
634 of the woman on whom the abortion is performed;

635 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
636 76-5-402 and 76-5-402.1;

637 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406~~[(10)]~~
638 (2)(j) and Section 76-7-102; or

639 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

640 (9) A physician who complies with the provisions of this section and Section
641 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
642 informed consent under Section 78B-3-406.

643 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
644 of Subsection (5)(b), at no expense to the pregnant woman.

645 (b) A local health department shall refer a pregnant woman who requests an ultrasound
646 described in Subsection (10)(a) to the department.

647 (11) A physician is not guilty of violating this section if:

648 (a) the information described in Subsection (2) is provided less than 72 hours before
649 the physician performs the abortion; and

650 (b) in the physician's professional judgment, the abortion was necessary in a case
651 where:

652 (i) a ruptured membrane, documented by the attending or referring physician, will

653 cause a serious infection; or

654 (ii) a serious infection, documented by the attending or referring physician, will cause a
655 ruptured membrane.

656 Section 15. Section **76-10-1206** is amended to read:

657 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for**
658 **Internet service providers and hosting companies.**

659 (1) A person is guilty of dealing in material harmful to minors when, knowing or
660 believing that [~~a person~~] an individual is a minor, or having negligently failed to determine the
661 proper age of a minor, the person intentionally:

662 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or [~~a~~
663 ~~person the actor~~] an individual whom the person believes to be a minor, any material harmful
664 to minors;

665 (b) produces, performs, or directs any performance, before a minor or [~~a person the~~
666 ~~actor~~] an individual whom the person believes to be a minor, that is harmful to minors; or

667 (c) participates in any performance, before a minor or [~~a person the actor~~] an individual
668 whom the person believes to be a minor, that is harmful to minors.

669 (2) (a) [~~Each~~] Except as provided in Subsection (2)(b), each separate offense under this
670 section committed by a person 18 years of age or older is a third degree felony punishable by:

671 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
672 exhibited up to the maximum allowed by law; and

673 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

674 (b) Each separate offense under this section committed by a person 18 years of age or
675 older against a minor 16 years of age or older, but younger than 18 years of age, is a class A
676 misdemeanor if the person is less than seven years older than the minor at the time of the
677 offense.

678 [~~(b)~~] (c) Each separate offense under this section committed by a person 16 or 17 years
679 of age is a class A misdemeanor.

680 [~~(c)~~] (d) Each separate offense under this section committed by a person younger than
681 16 years of age is a class B misdemeanor.

682 [~~(d)~~] (e) Subsection (2)(a) supersedes Section 77-18-1.

683 (3) (a) [~~H~~] Except for a defendant described in Subsection (2)(b), if a defendant 18

684 years of age or older has been previously convicted or adjudicated to be under the jurisdiction
685 of the juvenile court under this section, each separate subsequent offense is a second degree
686 felony punishable by:

687 (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article
688 exhibited up to the maximum allowed by law; and

689 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

690 (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years
691 of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile
692 court under this section, each separate subsequent offense is a third degree felony.

693 (c) Subsection (3)(a) supersedes Section 77-18-1.

694 (d) (i) This section does not apply to an Internet service provider, as defined in Section
695 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec.
696 2510, a telecommunications service, information service, or mobile service as defined in 47
697 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or
698 a cable operator as defined in 47 U.S.C. Sec. 522, if:

699 (A) the distribution of pornographic material by the Internet service provider occurs
700 only incidentally through the provider's function of:

701 (I) transmitting or routing data from one person to another person; or

702 (II) providing a connection between one person and another person;

703 (B) the provider does not intentionally aid or abet in the distribution of the
704 pornographic material; and

705 (C) the provider does not knowingly receive from or through a person who distributes
706 the pornographic material a fee greater than the fee generally charged by the provider, as a
707 specific condition for permitting the person to distribute the pornographic material.

708 (ii) This section does not apply to a hosting company, as defined in Section
709 76-10-1230, if:

710 (A) the distribution of pornographic material by the hosting company occurs only
711 incidentally through the hosting company's function of providing data storage space or data
712 caching to a person;

713 (B) the hosting company does not intentionally engage, aid, or abet in the distribution
714 of the pornographic material; and

715 (C) the hosting company does not knowingly receive from or through a person who
716 distributes the pornographic material a fee greater than the fee generally charged by the
717 provider, as a specific condition for permitting the person to distribute, store, or cache the
718 pornographic material.

719 (4) A service provider, as defined in Section 76-10-1230, is not negligent under this
720 section if it complies with Section 76-10-1231.

721 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
722 encourages, or intentionally aids another person younger than 18 years of age to engage in
723 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the
724 penalties under Subsection (2)(a).

725 Section 16. Section **76-10-1302** is amended to read:

726 **76-10-1302. Prostitution.**

727 (1) An individual is guilty of prostitution when the individual:

728 (a) engages, offers, or agrees to engage in any sexual activity with another individual
729 for a fee, or the functional equivalent of a fee;

730 (b) takes steps in arranging a meeting through any form of advertising, agreeing to
731 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
732 or the functional equivalent of a fee; or

733 (c) loiters in or within view of any public place for the purpose of being hired to
734 engage in sexual activity.

735 (2) (a) Except as provided in Subsection (2)(b) [or] and Section 76-10-1309,
736 prostitution is a class B misdemeanor.

737 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
738 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
739 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of
740 a class A misdemeanor.

741 (3) (a) As used in this Subsection (3):

742 (i) "Child" means the same as that term is defined in Section 76-10-1301.

743 (ii) "Child engaged in prostitution" means a child who engages in conduct described in
744 Subsection (1).

745 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to

746 commit or engage in any sexual activity with another person for a fee or the functional
747 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

748 (iv) "Division" means the Division of Child and Family Services created in Section
749 62A-4a-103.

750 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

751 (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law
752 enforcement officer shall:

753 (i) conduct an investigation;

754 (ii) refer the child to the division;

755 (iii) if an arrest is made, bring the child to a receiving center, if available; and

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

757 (c) When law enforcement has referred the child to the division under Subsection
758 (3)(b)(ii):

759 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child
760 and Family Services; and

761 (ii) the child may not be subjected to delinquency proceedings under Title 62A,
762 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

763 (4) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
764 the individual engages in a violation of Subsection (1) at or near the time the individual
765 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
766 following offenses, and the individual reports the offense or attempt to law enforcement in
767 good faith:

768 (a) assault, Section 76-5-102;

769 (b) aggravated assault, Section 76-5-103;

770 (c) mayhem, Section 76-5-105;

771 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
772 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;

773 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
774 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
775 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and
776 Smuggling;

- 777 (f) rape, Section 76-5-402;
 778 (g) rape of a child, Section 76-5-402.1;
 779 (h) object rape, Section 76-5-402.2;
 780 (i) object rape of a child, Section 76-5-402.3;
 781 (j) forcible sodomy, Section 76-5-403;
 782 (k) sodomy on a child, Section 76-5-403.1;
 783 (l) forcible sexual abuse, Section 76-5-404;
 784 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
 785 (n) aggravated sexual assault, Section 76-5-405;
 786 (o) sexual exploitation of a minor, Section 76-5b-201;
 787 (p) sexual exploitation of a vulnerable adult, Section 76-5b-202;
 788 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,
 789 Burglary and Criminal Trespass;
 790 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or
 791 (s) theft by extortion under Subsection 76-6-406(2)(a) or (b).

792 Section 17. Section **76-10-1313** is amended to read:

793 **76-10-1313. Sexual solicitation -- Penalty.**

794 (1) An individual is guilty of sexual solicitation when the individual:

- 795 (a) offers or agrees to commit any sexual activity with another individual for a fee, or
 796 the functional equivalent of a fee;
 797 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
 798 individual to commit any sexual activity; or
 799 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
 800 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
 801 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
 802 of the following acts:
 803 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
 804 female breast below the top of the areola;
 805 (ii) masturbation;
 806 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
 807 female breast; or

808 (iv) any act of lewdness.

809 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
810 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
811 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

812 (3) ~~[(a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).]~~

813 ~~[(b) An]~~ Except as provided in Section 76-10-1309 and Subsections (4) and (5), an
814 individual who is convicted ~~[a second time]~~ of sexual solicitation under this section or under a
815 local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A
816 misdemeanor~~[, except as provided in Section 76-10-1309].~~

817 (4) An individual who is convicted a third time under this section or a local ordinance
818 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

819 (5) If an individual commits an act of sexual solicitation and the individual solicited is
820 a child, the offense is a third degree felony if the solicitation does not amount to human
821 trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human
822 trafficking or aggravated human smuggling, a violation of Section 76-5-310.

823 (6) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
824 the individual engages in a violation of Subsection (1) at or near the time the individual
825 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
826 described in Subsection 76-10-1302(4), and the individual reports the offense or attempt to law
827 enforcement in good faith.

828 Section 18. Section ~~77-41-107~~ is amended to read:

829 **77-41-107. Penalties.**

830 (1) An offender who knowingly fails to register under this chapter or provides false or
831 incomplete information is guilty of:

832 (a) a third degree felony and shall be sentenced to serve a term of incarceration for not
833 less than ~~[90]~~ 30 days and also at least one year of probation if:

834 (i) the offender is required to register for a felony conviction or adjudicated delinquent
835 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
836 77-41-102(9)(a) or (17)(a); or

837 (ii) the offender is required to register for the offender's lifetime under Subsection
838 77-41-105(3)(c); or

839 (b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
840 not fewer than [90] 30 days and also at least one year of probation if the offender is required to
841 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
842 misdemeanor if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or
843 (17)(a).

844 (2) (a) Neither the court nor the Board of Pardons and Parole may release [~~a person~~] an
845 individual who violates this chapter from serving the term required under Subsection (1).

846 (b) This Subsection (2) supersedes any other provision of the law contrary to this
847 chapter.

848 (3) The offender shall register for an additional year for every year in which the
849 offender does not comply with the registration requirements of this chapter.

850 Section 19. **Repealer.**

851 This bill repeals:

852 Section **76-7-103, Adultery.**