

1 **CRIMINAL CODE RECODIFICATION CROSS REFERENCES**

2 2023 GENERAL SESSION

3 STATE OF UTAH

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4  
5 **LONG TITLE**

6 **General Description:**

7 This bill contains the cross-references for the Criminal Code Recodification.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ contains the cross-references for the Criminal Code Recodification; and  
11 ▶ makes technical and conforming changes.

12 **Money Appropriated in this Bill:**

13 None

14 **Other Special Clauses:**

15 None

16 **Utah Code Sections Affected:**

17 AMENDS:

18 **13-19-3**, as last amended by Laws of Utah 2018, Chapter 433

19 **24-1-102**, as last amended by Laws of Utah 2022, Chapter 179

20 **26-7-14**, as last amended by Laws of Utah 2022, Chapter 430

21 **26-20-9**, as last amended by Laws of Utah 2007, Chapter 48

22 **31A-23a-409**, as last amended by Laws of Utah 2021, Chapter 252

23 **31A-36-118**, as last amended by Laws of Utah 2009, Chapter 355

24 **35A-4-312.5**, as last amended by Laws of Utah 2011, Chapter 57

25 **41-1a-1314**, as last amended by Laws of Utah 2005, Chapter 71

26 **58-9-607**, as last amended by Laws of Utah 2020, Chapter 251

27 **58-9-613**, as enacted by Laws of Utah 2018, Chapter 326

28 **58-55-503**, as last amended by Laws of Utah 2022, Chapter 415

29 **63M-7-404**, as last amended by Laws of Utah 2022, Chapters 115, 185 and 328

30 **73-2-27**, as last amended by Laws of Utah 2015, Chapters 245, 249

31 **76-3-203.3**, as last amended by Laws of Utah 2020, Chapter 394

32           **76-3-203.5**, as last amended by Laws of Utah 2022, Chapters 181, 185 and 418  
 33           **77-18-105**, as last amended by Laws of Utah 2022, Chapters 115, 359  
 34           **77-23a-8**, as last amended by Laws of Utah 2022, Chapter 430  
 35           **77-36-1.1**, as last amended by Laws of Utah 2021, Chapter 213  
 36           **77-42-105**, as last amended by Laws of Utah 2016, Chapter 319  
 37           **78B-3-108**, as last amended by Laws of Utah 2022, Chapter 201  
 38           **78B-9-104**, as last amended by Laws of Utah 2022, Chapter 120  
 39           **80-6-610**, as renumbered and amended by Laws of Utah 2021, Chapter 261  
 40           **80-6-709**, as last amended by Laws of Utah 2022, Chapter 155

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

43           Section 1. Section **13-19-3** is amended to read:

44           **13-19-3. Violation an infraction.**

45           Notwithstanding the penalty provisions of [~~Section 76-6-606~~] Title 76, Chapter 6, Part  
 46 6, Retail theft, a violation of this chapter is an infraction.

47           Section 2. Section **24-1-102** is amended to read:

48           **24-1-102. Definitions.**

49           As used in this title:

50           (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
 51 24-4-116.

52           (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not  
 53 guilty.

54           (b) "Acquitted" does not include:

55           (i) a verdict of guilty on a lesser or reduced charge;

56           (ii) a plea of guilty to a lesser or reduced charge; or

57           (iii) dismissal of a charge as a result of a negotiated plea agreement.

58           (3) (a) "Agency" means an agency of this state or a political subdivision of this state.

59           (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

60           (4) "Claimant" means:

61           (a) an owner of property as defined in this section;

62           (b) an interest holder as defined in this section; or

63 (c) an individual or entity who asserts a claim to any property seized for forfeiture  
64 under this title.

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

67 (6) "Complaint" means a civil or criminal complaint seeking the forfeiture of any real  
68 or personal property under this title.

69 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other  
70 high-speed data processing device that performs logical, arithmetic, and storage functions.

71 (b) "Computer" includes any device that is used for the storage of digital or electronic  
72 files, flash memory, software, or other electronic information.

73 (c) "Computer" does not mean a computer server of an Internet or electronic service  
74 provider, or the service provider's employee, if used to comply with the requirements under 18  
75 U.S.C. Sec. 2258A.

76 (8) "Constructive seizure" means a seizure of property where the property is left in the  
77 control of the owner and an agency posts the property with a notice of intent to seek forfeiture.

78 (9) (a) "Contraband" means any property, item, or substance that is unlawful to  
79 produce or to possess under state or federal law.

80 (b) "Contraband" includes:

81 (i) a controlled substance that is possessed, transferred, distributed, or offered for  
82 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

83 (ii) a computer that:

84 (A) contains or houses child pornography, or is used to create, download, transfer,  
85 upload to a storage account, or store any electronic or digital files containing child  
86 pornography; or

87 (B) contains the personal identifying information of another individual, as defined in  
88 Subsection ~~[76-6-1102(1)]~~ 76-6-1101, whether that individual is alive or deceased, and the  
89 personal identifying information has been used to create false or fraudulent identification  
90 documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

91 (10) "Forfeit" means to divest a claimant of an ownership interest in property seized  
92 under this title.

93 (11) "Innocent owner" means a claimant who:

94 (a) held an ownership interest in property at the time of the commission of an offense  
95 subjecting the property to forfeiture under this title, and:

96 (i) did not have actual knowledge of the offense subjecting the property to forfeiture; or

97 (ii) upon learning of the commission of the offense, took reasonable steps to prohibit  
98 the use of the property in the commission of the offense; or

99 (b) acquired an ownership interest in the property and had no knowledge that the  
100 commission of the offense subjecting the property to forfeiture under this title had occurred or  
101 that the property had been seized for forfeiture, and:

102 (i) acquired the property in a bona fide transaction for value;

103 (ii) was an individual, including a minor child, who acquired an interest in the property  
104 through probate or inheritance; or

105 (iii) was a spouse who acquired an interest in property through dissolution of marriage  
106 or by operation of law.

107 (12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a  
108 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest  
109 or encumbrance pertaining to an interest in property, whose interest would be perfected against  
110 a good faith purchaser for value.

111 (b) "Interest holder" does not mean a person:

112 (i) who holds property for the benefit of or as an agent or nominee for another person;

113 or

114 (ii) who is not in substantial compliance with any statute requiring an interest in  
115 property to be:

116 (A) recorded or reflected in public records in order to perfect the interest against a good  
117 faith purchaser for value; or

118 (B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance  
119 with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for  
120 value.

121 (13) "Known address" means any address provided by a claimant to the peace officer  
122 or agency at the time the property is seized, or the claimant's most recent address on record  
123 with a governmental entity if no address was provided at the time of the seizure.

124 (14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture

125 action.

126 (15) "Legislative body" means:

127 (a) (i) the Legislature, county commission, county council, city commission, city  
128 council, or town council that has fiscal oversight and budgetary approval authority over an  
129 agency; or

130 (ii) the agency's governing political subdivision; or

131 (b) the lead governmental entity of a multijurisdictional task force, as designated in a  
132 memorandum of understanding executed by the agencies participating in the task force.

133 (16) "Multijurisdictional task force" means a law enforcement task force or other  
134 agency comprised of individuals who are employed by or acting under the authority of different  
135 governmental entities, including federal, state, county, or municipal governments, or any  
136 combination of federal, state, county, or municipal agencies.

137 (17) "Owner" means an individual or entity, other than an interest holder, that  
138 possesses a bona fide legal or equitable interest in real or personal property.

139 (18) "Peace officer" means an employee:

140 (a) of an agency;

141 (b) whose duties consist primarily of the prevention and detection of violations of laws  
142 of this state or a political subdivision of this state; and

143 (c) who is authorized by the agency to seize property under this title.

144 (19) (a) "Proceeds" means:

145 (i) property of any kind that is obtained directly or indirectly as a result of the  
146 commission of an offense; or

147 (ii) any property acquired directly or indirectly from, produced through, realized  
148 through, or caused by an act or omission regarding property under Subsection (19)(a)(i).

149 (b) "Proceeds" includes any property of any kind without reduction for expenses  
150 incurred in the acquisition, maintenance, or production of that property, or any other purpose  
151 regarding property under Subsection (19)(a)(i).

152 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that  
153 subjects the property to forfeiture.

154 (20) "Program" means the State Asset Forfeiture Grant Program created in Section  
155 24-4-117.

- 156 (21) (a) "Property" means all property, whether real or personal, tangible or intangible.  
157 (b) "Property" does not include contraband.
- 158 (22) "Prosecuting attorney" means:  
159 (a) the attorney general and an assistant attorney general;  
160 (b) a district attorney or deputy district attorney;  
161 (c) a county attorney or assistant county attorney; and  
162 (d) an attorney authorized to commence an action on behalf of the state under this title.
- 163 (23) "Public interest use" means a:  
164 (a) use by a government agency as determined by the legislative body of the agency's  
165 jurisdiction; or  
166 (b) donation of the property to a nonprofit charity registered with the state.
- 167 (24) "Real property" means land, including any building, fixture, improvement,  
168 appurtenance, structure, or other development that is affixed permanently to land.
- 169 Section 3. Section **26-7-14** is amended to read:  
170 **26-7-14. Study on violent incidents and fatalities involving substance abuse --**  
171 **Report.**
- 172 (1) As used in this section:  
173 (a) "Drug overdose event" means an acute condition, including a decreased level of  
174 consciousness or respiratory depression resulting from the consumption or use of a controlled  
175 substance, or another substance with which a controlled substance or alcohol was combined,  
176 that results in an individual requiring medical assistance.
- 177 (b) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or  
178 substances.
- 179 (c) "Violent incident" means:  
180 (i) aggravated assault as described in Section 76-5-103;  
181 (ii) child abuse as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and  
182 76-5-114;  
183 (iii) an offense described in Title 76, Chapter 5, Part 2, Criminal Homicide;  
184 (iv) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;  
185 (v) a burglary offense described in Sections 76-6-202 [~~through~~], 76-6-203, 76-6-204,  
186 and 76-6-204.5;

- 187 (vi) an offense described in Title 76, Chapter 6, Part 3, Robbery;  
188 (vii) a domestic violence offense, as defined in Section 77-36-1; and  
189 (viii) any other violent offense, as determined by the department.

190 (2) In 2021 and continuing every other year, the department shall provide a report  
191 before October 1 to the Health and Human Services Interim Committee regarding the number  
192 of:

193 (a) violent incidents and fatalities that occurred in the state during the preceding  
194 calendar year that, at the time of occurrence, involved substance abuse;

195 (b) drug overdose events in the state during the preceding calendar year; and

196 (c) recommendations for legislation, if any, to prevent the occurrence of the events  
197 described in Subsections (2)(a) and (b).

198 (3) Before October 1, 2020, the department shall:

199 (a) determine what information is necessary to complete the report described in  
200 Subsection (2) and from which local, state, and federal agencies the information may be  
201 obtained;

202 (b) determine the cost of any research or data collection that is necessary to complete  
203 the report described in Subsection (2);

204 (c) make recommendations for legislation, if any, that is necessary to facilitate the  
205 research or data collection described in Subsection (3)(b), including recommendations for  
206 legislation to assist with information sharing between local, state, federal, and private entities  
207 and the department; and

208 (d) report the findings described in Subsections (3)(a) through (c) to the Health and  
209 Human Services Interim Committee.

210 (4) The department may contract with another state agency, private entity, or research  
211 institution to assist the department with the report described in Subsection (2).

212 Section 4. Section **26-20-9** is amended to read:

213 **26-20-9. Criminal penalties.**

214 (1) (a) Except as provided in Subsection (1)(b) the culpable mental state required for a  
215 criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section  
216 76-2-103.

217 (b) The culpable mental state required for a criminal violation of this chapter for

218 kickbacks and bribes under Section 26-20-4 is knowingly and intentionally as defined in  
219 Section 76-2-103.

220 (2) The punishment for a criminal violation of any provision of this chapter, except as  
221 provided under Section 26-20-5, is determined by the cumulative value of the funds or other  
222 benefits received or claimed in the commission of all violations of a similar nature, and not by  
223 each separate violation.

224 (3) Punishment for criminal violation of this chapter, except as provided under Section  
225 26-20-5, is [~~a felony of the second degree, felony of the third degree, class A misdemeanor, or~~  
226 ~~class B misdemeanor based on the dollar amounts as prescribed by Subsection 76-6-412(1) for~~  
227 ~~theft of property and services]~~:

228 (a) a second degree felony if the value of the property or service is or exceeds \$5,000;

229 (b) a third degree felony if the value of the property or service is or exceeds \$1,500 but  
230 is less than \$5,000;

231 (c) a class A misdemeanor if the value of the property or service is or exceeds \$500 but  
232 is less than \$1,500; or

233 (d) a class B misdemeanor if the value of the property or service is less than \$500.

234 Section 5. Section **31A-23a-409** is amended to read:

235 **31A-23a-409. Trust obligation for money collected.**

236 (1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to,  
237 received by, or collected by a licensee for forwarding to insurers or to insureds.

238 (b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust  
239 funds with:

240 (A) the licensee's own money; or

241 (B) money held in any other capacity.

242 (ii) This Subsection (1)(b) does not apply to:

243 (A) amounts necessary to pay bank charges; and

244 (B) money paid by insureds and belonging in part to the licensee as a fee or  
245 commission.

246 (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers  
247 the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds  
248 through the licensee.



249 (d) (i) Unless money is sent to the appropriate payee by the close of the next business  
250 day after their receipt, the licensee shall deposit them in an account authorized under  
251 Subsection (2).

252 (ii) Money deposited under this Subsection (1)(d) shall remain in an account  
253 authorized under Subsection (2) until sent to the appropriate payee.

254 (2) Money required to be deposited under Subsection (1) shall be deposited:

255 (a) in a federally insured trust account in a depository institution, as defined in Section  
256 7-1-103, which:

257 (i) has an office in this state, if the licensee depositing the money is a resident licensee;

258 (ii) has federal deposit insurance; and

259 (iii) is authorized by its primary regulator to engage in the trust business, as defined by  
260 Section 7-5-1, in this state; or

261 (b) in some other account, that:

262 (i) the commissioner approves by rule or order; and

263 (ii) provides safety comparable to an account described in Subsection (2)(a).

264 (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the  
265 amount of the federal insurance on the accounts.

266 (4) A trust account into which money is deposited may be interest bearing. The  
267 interest accrued on the account may be paid to the licensee, so long as the licensee otherwise  
268 complies with this section and with the contract with the insurer.

269 (5) A depository institution or other organization holding trust funds under this section  
270 may not offset or impound trust account funds against debts and obligations incurred by the  
271 licensee.

272 (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any  
273 portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft  
274 under Title 76, Chapter 6, Part 4, Theft. [~~Section 76-6-412 applies in determining the~~  
275 ~~classification of the offense.~~] Sanctions under Section 31A-2-308 also apply.

276 (7) A nonresident licensee:

277 (a) shall comply with Subsection (1)(a) by complying with the trust account  
278 requirements of the nonresident licensee's home state; and

279 (b) is not required to comply with the other provisions of this section.

280 Section 6. Section **31A-36-118** is amended to read:

281 **31A-36-118. Criminal penalties and restitution.**

282 (1) A person subject to this chapter is subject to:

283 (a) Section 31A-2-308 for an administrative violation of this title;

284 (b) prosecution under [~~Section 76-6-412~~] Title 76, Chapter 6, Part 4, Theft, for [a]  
285 criminal activity involving a life settlement; or

286 (c) prosecution under Section 31A-31-103 for insurance fraud involving a life  
287 settlement.

288 (2) A person found to be in violation of this chapter may:

289 (a) be ordered to pay restitution to persons aggrieved by the violation;

290 (b) be ordered to pay a forfeiture;

291 (c) be imprisoned if found guilty of a criminal law by a court of competent jurisdiction;

292 and

293 (d) be subject to a combination of the penalties described in this Subsection (2).

294 (3) Except for a fraudulent act committed by an owner, this section does not apply to  
295 the owner.

296 Section 7. Section **35A-4-312.5** is amended to read:

297 **35A-4-312.5. Suspected misuse of personal identifying information.**

298 (1) As used in this section:

299 (a) "Child identity protection plan" is a program operated by the attorney general that  
300 uses IRIS and allows the attorney general to enter into an agreement with a third party to  
301 transmit verified personal information of a person younger than 18 years of age through  
302 secured means to enable the protection of the person's Social Security number from misuse.

303 (b) "IRIS" means the Identity Theft Reporting Information System operated by the  
304 attorney general.

305 (c) "Personal identifying information" has the same meaning as defined in Section  
306 [~~76-6-1102~~] 76-6-1101.

307 (d) "Suspected misuse of personal identifying information" includes:

308 (i) a Social Security number under which wages are being reported by two or more  
309 individuals; or

310 (ii) a Social Security number of an individual under the age of 18 with reported wages

311 exceeding \$1,000 for a single reporting quarter.

312 (2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected  
313 misuse of personal identifying information by an individual other than the purported owner of  
314 the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has  
315 enrolled in the child identity protection plan, the department may:

316 (a) inform the purported owner of the information or, if the purported owner is a minor,  
317 the minor's parent or guardian, of the suspected misuse; and

318 (b) provide information of the suspected misuse to an appropriate law enforcement  
319 agency responsible for investigating an identity fraud violation.

320 Section 8. Section **41-1a-1314** is amended to read:

321 **41-1a-1314. Unauthorized control for extended time.**

322 (1) Except as provided in Subsection (3), it is a class A misdemeanor for a person to  
323 exercise unauthorized control over a motor vehicle that is not his own, without the consent of  
324 the owner or lawful custodian, and with the intent to temporarily deprive the owner or lawful  
325 custodian of possession of the motor vehicle.

326 (2) The consent of the owner or legal custodian of a motor vehicle to its control by the  
327 actor is not in any case presumed or implied because of the owner's or legal custodian's consent  
328 on a previous occasion to the control of the motor vehicle by the same or a different person.

329 (3) Violation of this section is a third degree felony if:

330 (a) the person does not return the motor vehicle to the owner or lawful custodian within  
331 24 hours after the exercise of unlawful control; or

332 (b) regardless of the mental state or conduct of the person committing the offense:

333 (i) the motor vehicle is damaged in an amount of \$500 or more;

334 (ii) the motor vehicle is used to commit a felony; or

335 (iii) the motor vehicle is damaged in any amount to facilitate entry into it or its  
336 operation.

337 (4) It is not a defense to Subsection (3)(a) that someone other than the person, or an  
338 agent of the person, returned the motor vehicle within 24 hours.

339 (5) A violation of this section is a lesser included offense of theft under Section  
340 76-6-404, when the theft is of an operable motor vehicle under Subsection [~~76-6-412(1)(a)(ii)~~]  
341 76-6-404(3)(a)(ii).

342 Section 9. Section **58-9-607** is amended to read:

343 **58-9-607. Authorization to cremate -- Penalties for removal of items from human**  
344 **remains.**

345 (1) Except as otherwise provided in this section and Section 58-9-619, a funeral service  
346 establishment may not cremate human remains until it has received:

347 (a) a cremation authorization form signed by an authorizing agent;

348 (b) a completed and executed burial transit permit or similar document, as provided by  
349 state law, indicating that human remains are to be cremated; and

350 (c) any other documentation required by the state, county, or municipality.

351 (2) (a) The cremation authorization form shall contain, at a minimum, the following  
352 information:

353 (i) the identity of the human remains and the time and date of death, including a signed  
354 declaration of visual identification of the deceased or refusal to visually identify the deceased;

355 (ii) the name of the funeral director and funeral service establishment that obtained the  
356 cremation authorization;

357 (iii) notification as to whether the death occurred from a disease declared by the  
358 department of health to be infectious, contagious, communicable, or dangerous to the public  
359 health;

360 (iv) the name of the authorizing agent and the relationship between the authorizing  
361 agent and the decedent;

362 (v) a representation that the authorizing agent has the right to authorize the cremation  
363 of the decedent and that the authorizing agent is not aware of any living person with a superior  
364 or equal priority right to that of the authorizing agent, except that if there is another living  
365 person with a superior or equal priority right, the form shall contain a representation that the  
366 authorizing agent has:

367 (A) made reasonable efforts to contact that person;

368 (B) been unable to do so; and

369 (C) no reason to believe that the person would object to the cremation of the decedent;

370 (vi) authorization for the funeral service establishment to cremate the human remains;

371 (vii) a representation that the human remains do not contain a pacemaker or other  
372 material or implant that may be potentially hazardous or cause damage to the cremation

373 chamber or the person performing the cremation;

374 (viii) the name of the person authorized to receive the cremated remains from the  
375 funeral service establishment;

376 (ix) the manner in which the final disposition of the cremated remains is to take place,  
377 if known;

378 (x) a listing of each item of value to be delivered to the funeral service establishment  
379 along with the human remains, and instructions as to how each item should be handled;

380 (xi) the signature of the authorizing agent, attesting to the accuracy of all  
381 representations contained on the authorization form;

382 (xii) if the cremation authorization form is being executed on a preneed basis, the form  
383 shall contain the disclosure required for preneed programs under this chapter; and

384 (xiii) except for a preneed cremation authorization, the signature of the funeral director  
385 of the funeral service establishment that obtained the cremation authorization.

386 (b) (i) The individual described in Subsection (2)(a)(xiii) shall execute the funeral  
387 authorization form as a witness and is not responsible for any of the representations made by  
388 the authorizing agent.

389 (ii) The funeral director or the funeral service establishment shall warrant to the  
390 crematory that the human remains delivered to the funeral service establishment have been  
391 positively identified as the decedent listed on the cremation authorization form by the  
392 authorizing agent or a designated representative of the authorizing agent.

393 (iii) The authorizing agent or the agent's designee may make the identification referred  
394 to in Subsection (2)(b)(ii) in person or by photograph.

395 (3) (a) Except as provided in Section 58-9-619, a funeral service establishment may not  
396 accept unidentified human remains for cremation.

397 (b) If a funeral service establishment takes custody of a cremation container subsequent  
398 to the human remains being placed within the container, it can rely on the identification made  
399 before the remains were placed in the container.

400 (c) The funeral service establishment shall place appropriate identification on the  
401 exterior of the cremation container based on the prior identification.

402 (4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos  
403 from human remains:

404 (i) with purpose to deprive another over control of the property is guilty of an offense  
405 and subject to the punishments provided in Section [~~76-6-412~~] 76-6-404;

406 (ii) with purpose to exercise unauthorized control and with intent to temporarily  
407 deprive another of control over the property is guilty of an offense and subject to the  
408 punishments provided in Section 76-6-404.5; and

409 (iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without  
410 specific written permission of the individual who has the right to control those remains is guilty  
411 of a class B misdemeanor.

412 (b) The fact that residue or any unavoidable dental gold or dental silver or other  
413 precious metals remain in a cremation chamber or other equipment or a container used in a  
414 prior cremation is not a violation of Subsection (4)(a).

415 Section 10. Section **58-9-613** is amended to read:

416 **58-9-613. Authorization for alkaline hydrolysis -- Penalties for removal of items**  
417 **from human remains.**

418 (1) Except as otherwise provided in this section, a funeral service establishment may  
419 not perform alkaline hydrolysis on human remains until the funeral service establishment has  
420 received:

- 421 (a) an alkaline hydrolysis authorization form signed by an authorizing agent;
- 422 (b) a completed and executed burial transit permit or similar document, as provided by  
423 state law, indicating that disposition of the human remains is to be by alkaline hydrolysis; and
- 424 (c) any other documentation required by the state, county, or municipality.

425 (2) (a) The alkaline hydrolysis authorization form shall contain, at a minimum, the  
426 following information:

427 (i) the identity of the human remains and the time and date of death, including a signed  
428 declaration of visual identification of the deceased or refusal to visually identify the deceased;

429 (ii) the name of the funeral director and funeral service establishment that obtained the  
430 alkaline hydrolysis authorization;

431 (iii) notification as to whether the death occurred from a disease declared by the  
432 Department of Health to be infectious, contagious, communicable, or dangerous to the public  
433 health;

434 (iv) the name of the authorizing agent and the relationship between the authorizing

435 agent and the decedent;

436 (v) a representation that the authorizing agent has the right to authorize the disposition  
437 of the decedent by alkaline hydrolysis and that the authorizing agent is not aware of any living  
438 person with a superior or equal priority right to that of the authorizing agent, except that if  
439 there is another living person with a superior or equal priority right, the alkaline hydrolysis  
440 authorization form shall contain a representation that the authorizing agent has:

441 (A) made reasonable efforts to contact that person;

442 (B) been unable to do so; and

443 (C) no reason to believe that the person would object to the disposition of the decedent  
444 by alkaline hydrolysis;

445 (vi) authorization for the funeral service establishment to use alkaline hydrolysis for  
446 the disposition of the human remains;

447 (vii) the name of the person authorized to receive the human remains from the funeral  
448 service establishment;

449 (viii) the manner in which the final disposition of the human remains is to take place, if  
450 known;

451 (ix) a listing of each item of value to be delivered to the funeral service establishment  
452 along with the human remains, and instructions as to how each item should be handled;

453 (x) the signature of the authorizing agent, attesting to the accuracy of all  
454 representations contained on the alkaline hydrolysis authorization form;

455 (xi) if the alkaline hydrolysis authorization form is being executed on a preneed basis,  
456 the disclosure required for preneed programs under this chapter; and

457 (xii) except for a preneed alkaline hydrolysis authorization, the signature of the funeral  
458 director of the funeral service establishment that obtained the alkaline hydrolysis authorization.

459 (b) (i) The person referred to in Subsection (2)(a)(xii) shall execute the alkaline  
460 hydrolysis authorization form as a witness and is not responsible for any of the representations  
461 made by the authorizing agent.

462 (ii) The funeral director or the funeral service establishment shall warrant that the  
463 human remains delivered to the funeral service establishment have been positively identified by  
464 the authorizing agent or a designated representative of the authorizing agent as the decedent  
465 listed on the alkaline hydrolysis authorization form.

466 (iii) The authorizing agent or the agent's designee may make the identification referred  
467 to in Subsection (2)(b)(ii) in person or by photograph.

468 (3) (a) A funeral service establishment may not accept unidentified human remains for  
469 alkaline hydrolysis.

470 (b) If a funeral service establishment takes custody of an alkaline hydrolysis container  
471 subsequent to the human remains being placed within the container, the funeral service  
472 establishment can rely on the identification made before the remains were placed in the  
473 container.

474 (c) The funeral service establishment shall place appropriate identification on the  
475 exterior of the alkaline hydrolysis container based on the prior identification.

476 (4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos  
477 from human remains:

478 (i) with purpose to deprive another over control of the property is guilty of an offense  
479 and subject to the punishments provided in Section [~~76-6-412~~] 76-6-404;

480 (ii) with purpose to exercise unauthorized control and with intent to temporarily  
481 deprive another of control over the property is guilty of an offense and subject to the  
482 punishments provided in Section 76-6-404.5; and

483 (iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without  
484 specific written permission of the individual who has the right to control those remains is guilty  
485 of a class B misdemeanor.

486 (b) The fact that residue or any unavoidable dental gold or dental silver or other  
487 precious metals remain in alkaline hydrolysis equipment or a container used in a prior alkaline  
488 hydrolysis process is not a violation of Subsection (4)(a).

489 Section 11. Section ~~58-55-503~~ is amended to read:

490 **58-55-503. Penalty for unlawful conduct -- Citations.**

491 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),  
492 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), (21), (22), (23), (24), (25), (26),  
493 (27), or (28), or Subsection 58-55-504(2), or who fails to comply with a citation issued under  
494 this section after it is final, is guilty of a class A misdemeanor.

495 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an  
496 individual and does not include a sole proprietorship, joint venture, corporation, limited



497 liability company, association, or organization of any type.

498 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be  
499 awarded and may not accept a contract for the performance of the work.

500 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an  
501 infraction unless the violator did so with the intent to deprive the person to whom money is to  
502 be paid of the money received, in which case the violator is guilty of theft[, as classified in  
503 ~~Section 76-6-412~~] under Section 76-6-404.

504 (3) Grounds for immediate suspension of a licensee's license by the division and the  
505 commission include:

506 (a) the issuance of a citation for violation of Subsection 58-55-308(2), Section  
507 58-55-501, or Subsection 58-55-504(2); and

508 (b) the failure by a licensee to make application to, report to, or notify the division with  
509 respect to any matter for which application, notification, or reporting is required under this  
510 chapter or rules adopted under this chapter, including:

511 (i) applying to the division for a new license to engage in a new specialty classification  
512 or to do business under a new form of organization or business structure;

513 (ii) filing a current financial statement with the division; and

514 (iii) notifying the division concerning loss of insurance coverage or change in qualifier.

515 (4) (a) (i) If upon inspection or investigation, the division concludes that a person has  
516 violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),  
517 (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), Subsection  
518 58-55-502(4)(a) or (11), Subsection 58-55-504(2), or any rule or order issued with respect to  
519 these subsections, and that disciplinary action is appropriate, the director or the director's  
520 designee from within the division shall promptly issue a citation to the person according to this  
521 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person  
522 to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4,  
523 Administrative Procedures Act.

524 (ii) A person who is in violation of the provisions of Subsection 58-55-308(2),  
525 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24),  
526 (25), (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a  
527 stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be

528 assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered  
529 to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3),  
530 (9), (10), (12), (16)(e), (18), (20), (21), (24), (25), (26), (27), or (28), or Subsection  
531 58-55-504(2).

532 (iii) Except for a cease and desist order, the licensure sanctions cited in Section  
533 58-55-401 may not be assessed through a citation.

534 (b) (i) A citation shall be in writing and describe with particularity the nature of the  
535 violation, including a reference to the provision of the chapter, rule, or order alleged to have  
536 been violated.

537 (ii) A citation shall clearly state that the recipient must notify the division in writing  
538 within 20 calendar days of service of the citation if the recipient wishes to contest the citation  
539 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

540 (iii) A citation shall clearly explain the consequences of failure to timely contest the  
541 citation or to make payment of any fines assessed by the citation within the time specified in  
542 the citation.

543 (c) A citation issued under this section, or a copy of a citation, may be served upon a  
544 person upon whom a summons may be served:

545 (i) in accordance with the Utah Rules of Civil Procedure;

546 (ii) personally or upon the person's agent by a division investigator or by a person  
547 specially designated by the director; or

548 (iii) by mail.

549 (d) (i) If within 20 calendar days after the day on which a citation is served, the person  
550 to whom the citation was issued fails to request a hearing to contest the citation, the citation  
551 becomes the final order of the division and is not subject to further agency review.

552 (ii) The period to contest a citation may be extended by the division for cause.

553 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation  
554 the license of a licensee who fails to comply with a citation after the citation becomes final.

555 (f) The failure of an applicant for licensure to comply with a citation after the citation  
556 becomes final is a ground for denial of license.

557 (g) A citation may not be issued under this section after the expiration of one year  
558 following the date on which the violation that is the subject of the citation is reported to the

559 division.

560 (h) (i) Except as provided in Subsections (4)(h)(ii) and (5), the director or the director's  
561 designee shall assess a fine in accordance with the following:

562 (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

563 (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

564 and

565 (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to  
566 \$2,000 for each day of continued offense.

567 (ii) Except as provided in Subsection (5), if a person violates Subsection

568 58-55-501(16)(e) or (28), the director or the director's designee shall assess a fine in

569 accordance with the following:

570 (A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

571 (B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000;

572 and

573 (C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to  
574 \$4,000 for each day of continued offense.

575 (i) (i) For purposes of issuing a final order under this section and assessing a fine under  
576 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

577 (A) the division previously issued a final order determining that a person committed a  
578 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),  
579 (3), (9), (10), (12), (14), (16)(e), (18), (23), (24), (25), (26), (27), or (28), or Subsection  
580 58-55-504(2); or

581 (B) (I) the division initiated an action for a first or second offense;

582 (II) a final order has not been issued by the division in the action initiated under  
583 Subsection (4)(i)(i)(B)(I);

584 (III) the division determines during an investigation that occurred after the initiation of  
585 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent  
586 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),  
587 (10), (12), (14), (16)(e), (18), (19), (23), (24), (25), (26), (27), (28), or Subsection  
588 58-55-504(2); and

589 (IV) after determining that the person committed a second or subsequent offense under

590 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under  
591 Subsection (4)(i)(i)(B)(I).

592 (ii) In issuing a final order for a second or subsequent offense under Subsection  
593 (4)(i)(i), the division shall comply with the requirements of this section.

594 (j) In addition to any other licensure sanction or fine imposed under this section, the  
595 division shall revoke the license of a licensee that violates Subsection 58-55-501(23) or (24)  
596 two or more times within a 12-month period, unless, with respect to a violation of Subsection  
597 58-55-501(23), the licensee can demonstrate that the licensee successfully verified the federal  
598 legal working status of the individual who was the subject of the violation using a status  
599 verification system, as defined in Section 13-47-102.

600 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(23) or (24)  
601 for each individual is considered a separate violation.

602 (5) If a person violates Section 58-55-501, the division may not treat the violation as a  
603 subsequent violation of a previous violation if the violation occurs five years or more after the  
604 day on which the person committed the previous violation.

605 (6) If, after an investigation, the division determines that a person has committed  
606 multiple of the same type of violation of Section 58-55-501, the division may treat each  
607 violation as a separate violation of Section 58-55-501 and apply a penalty under this section to  
608 each violation.

609 (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited  
610 into the Commerce Service Account created by Section 13-1-2.

611 (b) A penalty that is not paid may be collected by the director by either referring the  
612 matter to a collection agency or bringing an action in the district court of the county in which  
613 the person against whom the penalty is imposed resides or in the county where the office of the  
614 director is located.

615 (c) A county attorney or the attorney general of the state shall provide legal assistance  
616 and advice to the director in an action to collect a penalty.

617 (d) In an action brought to collect a penalty, the court shall award reasonable attorney  
618 fees and costs to the prevailing party.

619 Section 12. Section **63M-7-404** is amended to read:

620 **63M-7-404. Purpose -- Duties.**

- 621 (1) The purpose of the commission is to develop guidelines and propose  
622 recommendations to the Legislature, the governor, and the Judicial Council regarding:
- 623 (a) the sentencing and release of juvenile and adult offenders in order to:
- 624 (i) respond to public comment;
- 625 (ii) relate sentencing practices and correctional resources;
- 626 (iii) increase equity in criminal sentencing;
- 627 (iv) better define responsibility in criminal sentencing; and
- 628 (v) enhance the discretion of sentencing judges while preserving the role of the Board  
629 of Pardons and Parole and the Youth Parole Authority;
- 630 (b) the length of supervision of adult offenders on probation or parole in order to:
- 631 (i) increase equity in criminal supervision lengths;
- 632 (ii) respond to public comment;
- 633 (iii) relate the length of supervision to an offender's progress;
- 634 (iv) take into account an offender's risk of offending again;
- 635 (v) relate the length of supervision to the amount of time an offender has remained  
636 under supervision in the community; and
- 637 (vi) enhance the discretion of the sentencing judges while preserving the role of the  
638 Board of Pardons and Parole;
- 639 (c) appropriate, evidence-based probation and parole supervision policies and services  
640 that assist individuals in successfully completing supervision and reduce incarceration rates  
641 from community supervision programs while ensuring public safety, including:
- 642 (i) treatment and intervention completion determinations based on individualized case  
643 action plans;
- 644 (ii) measured and consistent processes for addressing violations of conditions of  
645 supervision;
- 646 (iii) processes that include using positive reinforcement to recognize an individual's  
647 progress in supervision;
- 648 (iv) engaging with social services agencies and other stakeholders who provide  
649 services that meet offender needs; and
- 650 (v) identifying community violations that may not warrant revocation of probation or  
651 parole.

652 (2) (a) The commission shall modify the sentencing guidelines and supervision length  
653 guidelines for adult offenders to implement the recommendations of the Commission on  
654 Criminal and Juvenile Justice for reducing recidivism.

655 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting  
656 the public and ensuring efficient use of state funds.

657 (3) (a) The commission shall modify the criminal history score in the sentencing  
658 guidelines for adult offenders to implement the recommendations of the Commission on  
659 Criminal and Juvenile Justice for reducing recidivism.

660 (b) The modifications to the criminal history score under Subsection (3)(a) shall  
661 include factors in an offender's criminal history that are relevant to the accurate determination  
662 of an individual's risk of offending again.

663 (4) (a) The commission shall establish sentencing guidelines for periods of  
664 incarceration for individuals who are on probation and:

665 (i) who have violated one or more conditions of probation; and

666 (ii) whose probation has been revoked by the court.

667 (b) For a situation described in Subsection (4)(a), the guidelines shall recommend that  
668 a court consider:

669 (i) the seriousness of any violation of the condition of probation;

670 (ii) the probationer's conduct while on probation; and

671 (iii) the probationer's criminal history.

672 (5) (a) The commission shall establish sentencing guidelines for periods of  
673 incarceration for individuals who are on parole and:

674 (i) who have violated a condition of parole; and

675 (ii) whose parole has been revoked by the Board of Pardons and Parole.

676 (b) For a situation described in Subsection (5)(a), the guidelines shall recommend that  
677 the Board of Pardons and Parole consider:

678 (i) the seriousness of any violation of the condition of parole;

679 (ii) the individual's conduct while on parole; and

680 (iii) the individual's criminal history.

681 (6) The commission shall establish graduated and evidence-based processes to  
682 facilitate the prompt and effective response to an individual's progress in or violation of the

683 terms of probation or parole by the adult probation and parole section of the Department of  
684 Corrections, or other supervision services provider, to implement the recommendations of the  
685 Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration,  
686 including:

687 (a) responses to be used when an individual violates a condition of probation or parole;  
688 (b) responses to recognize positive behavior and progress related to an individual's case  
689 action plan;

690 (c) when a violation of a condition of probation or parole should be reported to the  
691 court or the Board of Pardons and Parole; and

692 (d) a range of sanctions that may not exceed a period of incarceration of more than:

693 (i) three consecutive days; and

694 (ii) a total of five days in a period of 30 days.

695 (7) The commission shall establish graduated incentives to facilitate a prompt and  
696 effective response by the adult probation and parole section of the Department of Corrections  
697 to an offender's:

698 (a) compliance with the terms of probation or parole; and

699 (b) positive conduct that exceeds those terms.

700 (8) (a) The commission shall establish guidelines, including sanctions and incentives,  
701 to appropriately respond to negative and positive behavior of juveniles who are:

702 (i) nonjudicially adjusted;

703 (ii) placed on diversion;

704 (iii) placed on probation;

705 (iv) placed on community supervision;

706 (v) placed in an out-of-home placement; or

707 (vi) placed in a secure care facility.

708 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

709 (i) the seriousness of the negative and positive behavior;

710 (ii) the juvenile's conduct post-adjudication; and

711 (iii) the delinquency history of the juvenile.

712 (c) The guidelines shall include:

713 (i) responses that are swift and certain;

- 714 (ii) a continuum of community-based options for juveniles living at home;  
715 (iii) responses that target the individual's criminogenic risk and needs; and  
716 (iv) incentives for compliance, including earned discharge credits.
- 717 (9) The commission shall establish and maintain supervision length guidelines in  
718 accordance with this section.
- 719 (10) (a) The commission shall create sentencing guidelines and supervision length  
720 guidelines for the following financial and property offenses for which a pecuniary loss to a  
721 victim may exceed \$50,000:
- 722 (i) securities fraud, Sections 61-1-1 and 61-1-21;  
723 (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment  
724 adviser representative, Sections 61-1-3 and 61-1-21;  
725 (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;  
726 (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,  
727 Assault and Related Offenses;  
728 (v) arson, Section 76-6-102;  
729 (vi) burglary, Section 76-6-202;  
730 (vii) theft~~[, Section 76-6-412]~~ under Title 76, Chapter 6, Part 4, Theft;  
731 (viii) forgery, Section 76-6-501;  
732 (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;  
733 (x) ~~[fraudulent insurance act]~~ insurance fraud, Section 76-6-521;  
734 (xi) computer crimes, Section 76-6-703;  
735 (xii) mortgage fraud, Sections 76-6-1203 and 76-6-1204;  
736 (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;  
737 (xiv) communications fraud, Section 76-10-1801;  
738 (xv) money laundering, Section 76-10-1904; and  
739 (xvi) other offenses in the discretion of the commission.
- 740 (b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix  
741 with proportionate escalating sanctions based on the amount of a victim's loss.
- 742 (c) On or before August 1, 2022, the commission shall publish for public comment the  
743 guidelines described in Subsection (10)(a).
- 744 (11) (a) Before January 1, 2023, the commission shall study the offenses of sexual



745 exploitation of a minor and aggravated sexual exploitation of a minor under Sections  
746 76-5b-201 and 76-5b-201.1.

747 (b) The commission shall update sentencing and release guidelines and juvenile  
748 disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection  
749 (11)(a), including the application of aggravating and mitigating factors specific to the offense.

750 Section 13. Section **73-2-27** is amended to read:

751 **73-2-27. Criminal penalties.**

752 (1) This section applies to offenses committed under:

753 (a) Section 73-1-14;

754 (b) Section 73-1-15;

755 (c) Section 73-2-20;

756 (d) Section 73-3-3;

757 (e) Section 73-3-26;

758 (f) Section 73-3-29;

759 (g) Section 73-5-9;

760 (h) Section 76-10-201;

761 (i) Section 76-10-202; and

762 (j) Section 76-10-203.

763 (2) Under circumstances not amounting to an offense with a greater penalty under  
764 Subsection [~~76-6-106(2)(b)(ii)~~] 76-6-106(2)(a)(ii) or Section 76-6-404, violation of a provision  
765 listed in Subsection (1) is punishable:

766 (a) as a felony of the third degree if:

767 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater;

768 and

769 (ii) the person violating the provision has previously been convicted of violating the  
770 same provision;

771 (b) as a class A misdemeanor if:

772 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

773 (ii) the person violating the provision has previously been convicted of violating the  
774 same provision; or

775 (c) as a class B misdemeanor if Subsection (2)(a) or (b) does not apply.

776 Section 14. Section **76-3-203.3** is amended to read:

777 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

778 As used in this section:

779 (1) "Primary offense" means those offenses provided in Subsection (4).

780 (2) (a) A person who commits any primary offense with the intent to intimidate or  
781 terrorize another person or with reason to believe that his action would intimidate or terrorize  
782 that person is subject to Subsection (2)(b).

783 (b) (i) A class C misdemeanor primary offense is a class B misdemeanor; and

784 (ii) a class B misdemeanor primary offense is a class A misdemeanor.

785 (3) "Intimidate or terrorize" means an act which causes the person to fear for his  
786 physical safety or damages the property of that person or another. The act must be  
787 accompanied with the intent to cause or has the effect of causing a person to reasonably fear to  
788 freely exercise or enjoy any right secured by the Constitution or laws of the state or by the  
789 Constitution or laws of the United States.

790 (4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:

791 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106,  
792 76-5-107, and 76-5-108;

793 (b) any misdemeanor property destruction offense under Sections 76-6-102 and  
794 76-6-104, and Subsection [~~76-6-106(2)(b)~~] 76-6-106(2)(a);

795 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

796 (d) any misdemeanor theft offense under Section 76-6-412;

797 (e) any offense of obstructing government operations under Sections 76-8-301,  
798 76-8-302, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;

799 (f) any offense of interfering or intending to interfere with activities of colleges and  
800 universities under Title 76, Chapter 8, Part 7, Colleges and Universities;

801 (g) any misdemeanor offense against public order and decency as defined in Title 76,  
802 Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

803 (h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Electronic  
804 Communication and Telephone Abuse;

805 (i) any cruelty to animals offense under Section 76-9-301;

806 (j) any weapons offense under Section 76-10-506; or

807 (k) a violation of Section 76-9-102, if the violation occurs at an official meeting.

808 (5) This section does not affect or limit any individual's constitutional right to the  
809 lawful expression of free speech or other recognized rights secured by the Constitution or laws  
810 of the state or by the Constitution or laws of the United States.

811 Section 15. Section **76-3-203.5** is amended to read:

812 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

813 (1) As used in this section:

814 (a) "Felony" means any violation of a criminal statute of the state, any other state, the  
815 United States, or any district, possession, or territory of the United States for which the  
816 maximum punishment the offender may be subjected to exceeds one year in prison.

817 (b) "Habitual violent offender" means a person convicted within the state of any violent  
818 felony and who on at least two previous occasions has been convicted of a violent felony and  
819 committed to either prison in Utah or an equivalent correctional institution of another state or  
820 of the United States either at initial sentencing or after revocation of probation.

821 (c) "Violent felony" means:

822 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit  
823 any of the following offenses punishable as a felony:

824 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,  
825 Chapter 6, Part 1, Property Destruction;

826 (B) assault by prisoner, Section 76-5-102.5;

827 (C) disarming a police officer, Section 76-5-102.8;

828 (D) aggravated assault, Section 76-5-103;

829 (E) aggravated assault by prisoner, Section 76-5-103.5;

830 (F) mayhem, Section 76-5-105;

831 (G) stalking, Subsection 76-5-106.5(2);

832 (H) threat of terrorism, Section 76-5-107.3;

833 (I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);

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

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

836 (L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2,  
837 76-5-111.3, or 76-5-111.4;

- 838 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 839 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- 840 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,
- 841 Kidnapping, Trafficking, and Smuggling;
- 842 (P) rape, Section 76-5-402;
- 843 (Q) rape of a child, Section 76-5-402.1;
- 844 (R) object rape, Section 76-5-402.2;
- 845 (S) object rape of a child, Section 76-5-402.3;
- 846 (T) forcible sodomy, Section 76-5-403;
- 847 (U) sodomy on a child, Section 76-5-403.1;
- 848 (V) forcible sexual abuse, Section 76-5-404;
- 849 (W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child,
- 850 Section 76-5-404.3;
- 851 (X) aggravated sexual assault, Section 76-5-405;
- 852 (Y) sexual exploitation of a minor, Section 76-5b-201;
- 853 (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 854 (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 855 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary
- 856 and Criminal Trespass;
- 857 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- 858 (DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 859 (EE) tampering with a witness under Subsection 76-8-508(1);
- 860 (FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 861 (GG) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 862 (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any
- 863 threat or by use of force theft by extortion has been committed pursuant to Subsections
- 864 76-6-406(2)(a), (b), and (i);
- 865 (II) possession, use, or removal of explosive, chemical, or incendiary devices under
- 866 Subsections 76-10-306(3) through (6);
- 867 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 868 76-10-307;

869 (KK) purchase or possession of a dangerous weapon or handgun by a restricted person  
870 under Section 76-10-503;

871 (LL) unlawful discharge of a firearm under Section 76-10-508;

872 (MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

873 (NN) bus hijacking under Section 76-10-1504; and

874 (OO) discharging firearms and hurling missiles under Section 76-10-1505; or

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

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

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

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

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

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

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

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

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

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

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

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

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

898 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
899 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,

900 of the:

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

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

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

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

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

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

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

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

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

927 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
928 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual  
929 Offenses, to determine if the convicted person is a habitual violent offender.

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

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

932 (i) a grievous sexual offense;

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

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

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

936 (b) applying the sentencing enhancement provided for in this section would result in a

937 lower maximum penalty than the penalty provided for under the section that describes the

938 offense for which the person is being sentenced.

939 Section 16. Section **77-18-105** is amended to read:

940 **77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**

941 **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench**

942 **supervision for payments on criminal accounts receivable.**

943 (1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in

944 abeyance agreement, the court may hold the plea in abeyance:

945 (a) in accordance with Chapter 2a, Pleas in Abeyance; and

946 (b) under the terms of the plea in abeyance agreement.

947 (2) If a defendant is convicted, the court:

948 (a) shall impose a sentence in accordance with Section 76-3-201; and

949 (b) subject to Subsection (5), may suspend the execution of the sentence and place the

950 defendant:

951 (i) on probation under the supervision of the department;

952 (ii) on probation under the supervision of an agency of a local government or a private

953 organization; or

954 (iii) on court probation under the jurisdiction of the sentencing court.

955 (3) (a) The legal custody of all probationers under the supervision of the department is

956 with the department.

957 (b) The legal custody of all probationers under the jurisdiction of the sentencing court

958 is vested as ordered by the court.

959 (c) The court has continuing jurisdiction over all probationers.

960 (4) (a) Court probation may include an administrative level of services, including

961 notification to the sentencing court of scheduled periodic reviews of the probationer's

962 compliance with conditions.

963 (b) Supervised probation services provided by the department, an agency of a local  
964 government, or a private organization shall specifically address the defendant's risk of  
965 reoffending as identified by a screening or an assessment.

966 (5) (a) Before ordering supervised probation, the court shall consider the supervision  
967 costs to the defendant for each entity that can supervise the defendant.

968 (b) (i) A court may order an agency of a local government to supervise the probation  
969 for an individual convicted of any crime if:

970 (A) the agency has the capacity to supervise the individual; and

971 (B) the individual's supervision needs will be met by the agency.

972 (ii) A court may only order:

973 (A) the department to supervise the probation for an individual convicted of a class A  
974 misdemeanor or any felony; or

975 (B) a private organization to supervise the probation for an individual convicted of a  
976 class A, B, or C misdemeanor or an infraction.

977 (c) A court may not order a specific private organization to supervise an individual  
978 unless there is only one private organization that can provide the specific supervision services  
979 required to meet the individual's supervision needs.

980 (6) (a) If a defendant is placed on probation, the court may order the defendant as a  
981 condition of the defendant's probation:

982 (i) to provide for the support of persons for whose support the defendant is legally  
983 liable;

984 (ii) to participate in available treatment programs, including any treatment program in  
985 which the defendant is currently participating if the program is acceptable to the court;

986 (iii) be voluntarily admitted to the custody of the Division of Substance Abuse and  
987 Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

988 (iv) if the defendant is on probation for a felony offense, to serve a period of time as an  
989 initial condition of probation that does not exceed one year in a county jail designated by the  
990 department, after considering any recommendation by the court as to which jail the court finds  
991 most appropriate;

992 (v) to serve a term of home confinement in accordance with Section 77-18-107;



- 993 (vi) to participate in compensatory service programs, including the compensatory  
994 service program described in Section ~~[76-6-107.1]~~ 76-3-410;
- 995 (vii) to pay for the costs of investigation, probation, or treatment services;
- 996 (viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime  
997 Victims Restitution Act; or
- 998 (ix) to comply with other terms and conditions the court considers appropriate to  
999 ensure public safety or increase a defendant's likelihood of success on probation.
- 1000 (b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a  
1001 defendant to include a period of time that is served in a county jail immediately before the  
1002 termination of probation as long as that period of time does not exceed one year.
- 1003 (ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation  
1004 violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply  
1005 to the period of time that the court orders the defendant to serve in a county jail under this  
1006 Subsection (6)(b)(ii).
- 1007 (7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on  
1008 probation after December 31, 2018:
- 1009 (i) may not exceed the individual's maximum sentence;
- 1010 (ii) shall be for a period of time that is in accordance with the supervision length  
1011 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the  
1012 extent the guidelines are consistent with the requirements of the law; and
- 1013 (iii) shall be terminated in accordance with the supervision length guidelines  
1014 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the  
1015 guidelines are consistent with the requirements of the law.
- 1016 (b) Probation of an individual placed on probation after December 31, 2018, whose  
1017 maximum sentence is one year or less, may not exceed 36 months.
- 1018 (c) Probation of an individual placed on probation on or after October 1, 2015, but  
1019 before January 1, 2019, may be terminated at any time at the discretion of the court or upon  
1020 completion without violation of 36 months probation in felony or class A misdemeanor cases,  
1021 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance  
1022 with Section 64-13-21 regarding earned credits.
- 1023 (d) This Subsection (7) does not apply to the probation of an individual convicted of an

1024 offense for criminal nonsupport under Section 76-7-201.

1025 (8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal  
1026 accounts receivable for the defendant upon termination of the probation period for the  
1027 defendant under Subsection (7), the court may require the defendant to continue to make  
1028 payments towards the criminal accounts receivable in accordance with the payment schedule  
1029 established by the court under Section 77-32b-103.

1030 (b) A court may not require the defendant to make payments as described in Subsection  
1031 (8)(a) beyond the expiration of the defendant's sentence.

1032 (c) If the court requires a defendant to continue to pay in accordance with the payment  
1033 schedule for the criminal accounts receivable under this Subsection (8) and the defendant  
1034 defaults on the criminal accounts receivable, the court shall proceed with an order for a civil  
1035 judgment of restitution and a civil accounts receivable for the defendant as described in Section  
1036 77-18-114.

1037 (d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's  
1038 own motion, the court may require a defendant to show cause as to why the defendant's failure  
1039 to pay in accordance with the payment schedule should not be treated as contempt of court.

1040 (ii) A court may hold a defendant in contempt for failure to make payments for a  
1041 criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

1042 (e) This Subsection (8) does not apply to the probation of an individual convicted of an  
1043 offense for criminal nonsupport under Section 76-7-201.

1044 (9) When making any decision regarding probation, the court shall consider  
1045 information provided by the Department of Corrections regarding a defendant's individual case  
1046 action plan, including any progress the defendant has made in satisfying the case action plan's  
1047 completion requirements.

1048 Section 17. Section **77-23a-8** is amended to read:

1049 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

1050 (1) The attorney general of the state, any assistant attorney general specially designated  
1051 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy  
1052 district attorney specially designated by the county attorney or by the district attorney, may  
1053 authorize an application to a judge of competent jurisdiction for an order for an interception of  
1054 wire, electronic, or oral communications by any law enforcement agency of the state, the

1055 federal government or of any political subdivision of the state that is responsible for  
1056 investigating the type of offense for which the application is made.

1057 (2) The judge may grant the order in conformity with the required procedures when the  
1058 interception sought may provide or has provided evidence of the commission of:

1059 (a) any act:

1060 (i) prohibited by the criminal provisions of:

1061 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

1062 (B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

1063 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

1064 (ii) punishable by a term of imprisonment of more than one year;

1065 (b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
1066 Securities Act, and punishable by a term of imprisonment of more than one year;

1067 (c) an offense:

1068 (i) of:

1069 (A) attempt, Section 76-4-101;

1070 (B) conspiracy, Section 76-4-201;

1071 (C) solicitation, Section 76-4-203; and

1072 (ii) punishable by a term of imprisonment of more than one year;

1073 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of  
1074 more than one year, Section 76-5-107.3;

1075 (e) (i) aggravated murder, Section 76-5-202;

1076 (ii) murder, Section 76-5-203; or

1077 (iii) manslaughter, Section 76-5-205;

1078 (f) (i) kidnapping, Section 76-5-301;

1079 (ii) child kidnapping, Section 76-5-301.1;

1080 (iii) aggravated kidnapping, Section 76-5-302;

1081 (iv) human trafficking, Section 76-5-308, 76-5-308.1, or 76-5-308.5, or human  
1082 smuggling, Section 76-5-308.3; or

1083 (v) aggravated human trafficking, Section 76-5-310, or aggravated human smuggling,  
1084 Section 76-5-310.1;

1085 (g) (i) arson, Section 76-6-102; or

- 1086 (ii) aggravated arson, Section 76-6-103;
- 1087 (h) (i) burglary, Section 76-6-202; or
- 1088 (ii) aggravated burglary, Section 76-6-203;
- 1089 (i) (i) robbery, Section 76-6-301; or
- 1090 (ii) aggravated robbery, Section 76-6-302;
- 1091 (j) an offense:
- 1092 (i) of:
- 1093 (A) theft, Section 76-6-404;
- 1094 (B) theft by deception, Section 76-6-405; or
- 1095 (C) theft by extortion, Section 76-6-406; and
- 1096 (ii) punishable by a maximum term of imprisonment of more than one year;
- 1097 (k) an offense of receiving stolen property that is punishable by a maximum term of
- 1098 imprisonment of more than one year, Section 76-6-408;
- 1099 (l) a financial card transaction offense punishable by a maximum term of imprisonment
- 1100 of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
- 1101 (m) bribery of a labor official, Section 76-6-509;
- 1102 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 1103 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
- 1104 more than one year, Section 76-6-518;
- 1105 (p) criminal usury, Section 76-6-520;
- 1106 (q) [~~a fraudulent insurance act offense~~] insurance fraud punishable by a maximum term
- 1107 of imprisonment of more than one year, Section 76-6-521;
- 1108 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by
- 1109 a maximum term of imprisonment of more than one year, Section 76-6-703;
- 1110 (s) bribery to influence official or political actions, Section 76-8-103;
- 1111 (t) misusing public money or public property, Section 76-8-402;
- 1112 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1113 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1114 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 1115 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1116 (y) obstruction of justice, Section 76-8-306;

- 1117 (z) destruction of property to interfere with preparation for defense or war, Section  
1118 76-8-802;
- 1119 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 1120 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 1121 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 1122 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 1123 (ee) riot punishable by a maximum term of imprisonment of more than one year,  
1124 Section 76-9-101;
- 1125 (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a  
1126 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 1127 (gg) possession, use, or removal of an explosive, chemical, or incendiary device and  
1128 parts, Section 76-10-306;
- 1129 (hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary  
1130 device, Section 76-10-307;
- 1131 (ii) exploiting prostitution, Section 76-10-1305;
- 1132 (jj) aggravated exploitation of prostitution, Section 76-10-1306;
- 1133 (kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;
- 1134 (ll) discharging firearms and hurling missiles, Section 76-10-1505;
- 1135 (mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and  
1136 the offenses listed under the definition of unlawful activity in the act, including the offenses not  
1137 punishable by a maximum term of imprisonment of more than one year when those offenses  
1138 are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;
- 1139 (nn) communications fraud, Section 76-10-1801;
- 1140 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or
- 1141 (pp) reporting by a person engaged in a trade or business when the offense is  
1142 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.
- 1143 Section 18. Section **77-36-1.1** is amended to read:
- 1144 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**  
1145 **offenses.**
- 1146 (1) As used in this section:
- 1147 (a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.

- 1148 (ii) "Convicted" includes:
- 1149 (A) a plea of guilty or guilty and mentally ill;
- 1150 (B) a plea of no contest; and
- 1151 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas
- 1152 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in
- 1153 accordance with the plea in abeyance agreement.
- 1154 (iii) "Convicted" does not include an adjudication in juvenile court.
- 1155 ~~[(b) "Criminal mischief offense" means commission or attempt to commit an offense~~
- 1156 ~~under Section 76-6-106 by one cohabitant against another.]~~
- 1157 ~~[(c)]~~ (b) "Offense against the person" means commission or attempt to commit an
- 1158 offense under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal
- 1159 Homicide, Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7,
- 1160 Genital Mutilation, by one cohabitant against another.
- 1161 (c) "Property damage offense" means the commission or attempt to commit an offense
- 1162 under Section 76-6-106.1 by one cohabitant against another.
- 1163 (d) "Qualifying domestic violence offense" means:
- 1164 (i) a domestic violence offense in Utah; or
- 1165 (ii) an offense in any other state, or in any district, possession, or territory of the United
- 1166 States, that would be a domestic violence offense under Utah law.
- 1167 (2) An individual who is convicted of a domestic violence offense is guilty of a class B
- 1168 misdemeanor if:
- 1169 (a) the domestic violence offense described in this Subsection (2) is designated by law
- 1170 as a class C misdemeanor; and
- 1171 (b) the individual commits or is convicted of the domestic violence offense described
- 1172 in this Subsection (2):
- 1173 (i) within 10 years after the day on which the individual is convicted of a qualifying
- 1174 domestic violence offense that is not a criminal mischief offense; or
- 1175 (ii) within five years after the day on which the individual is convicted of a criminal
- 1176 mischief offense.
- 1177 (3) An individual who is convicted of a domestic violence offense is guilty of a class A
- 1178 misdemeanor if:

1179 (a) the domestic violence offense described in this Subsection (3) is designated by law  
1180 as a class B misdemeanor; and

1181 (b) the individual commits or is convicted of the domestic violence offense described  
1182 in this Subsection (3):

1183 (i) within 10 years after the day on which the individual is convicted of a qualifying  
1184 domestic violence offense that is not a criminal mischief offense; or

1185 (ii) within five years after the day on which the individual is convicted of a criminal  
1186 mischief offense.

1187 (4) An individual who is convicted of a domestic violence offense is guilty of a third  
1188 degree felony if:

1189 (a) the domestic violence offense described in this Subsection (4) is designated by law  
1190 as a class B misdemeanor offense against the person and the individual:

1191 (i) (A) commits or is convicted of the domestic violence offense described in this  
1192 Subsection (4) within 10 years after the day on which the individual is convicted of a  
1193 qualifying domestic violence offense that is not a criminal mischief offense; and

1194 (B) is convicted of another qualifying domestic violence offense that is not a criminal  
1195 mischief offense after the day on which the individual is convicted of the qualifying domestic  
1196 violence offense described in Subsection (4)(a)(i)(A) and before the day on which the  
1197 individual is convicted of the domestic violence offense described in this Subsection (4);

1198 (ii) (A) commits or is convicted of the domestic violence offense described in this  
1199 Subsection (4) within five years after the day on which the individual is convicted of a criminal  
1200 mischief offense; and

1201 (B) is convicted of another criminal mischief offense after the day on which the  
1202 individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A)  
1203 and before the day on which the individual is convicted of the domestic violence offense  
1204 described in this Subsection (4); or

1205 (iii) commits or is convicted of the domestic violence offense described in this  
1206 Subsection (4) within 10 years after the day on which the individual is convicted of a  
1207 qualifying domestic violence offense that is not a criminal mischief offense and within five  
1208 years after the day on which the individual is convicted of a criminal mischief offense; and

1209 (b) (i) the domestic violence offense described in this Subsection (4) is designated by

1210 law as a class A misdemeanor; and

1211 (ii) the individual commits or is convicted of the domestic violence offense described  
1212 in this Subsection (4):

1213 (A) within 10 years after the day on which the individual is convicted of a qualifying  
1214 domestic violence offense that is not a criminal mischief offense; or

1215 (B) within five years after the day on which the individual is convicted of a criminal  
1216 mischief offense.

1217 Section 19. Section **77-42-105** is amended to read:

1218 **77-42-105. Registerable offenses.**

1219 A person shall be required to register with the Office of the Attorney General for a  
1220 conviction of any of the following offenses as a second degree felony:

1221 (1) Section 61-1-1 or Section 61-1-2, securities fraud;

1222 (2) Section 76-6-405, theft by deception;

1223 (3) Section 76-6-513, unlawful dealing of property by fiduciary;

1224 (4) Section 76-6-521, [~~fraudulent~~] insurancefraud;

1225 (5) Section 76-6-1203, mortgage fraud;

1226 (6) Section 76-10-1801, communications fraud;

1227 (7) Section 76-10-1903, money laundering; and

1228 (8) Section 76-10-1603, pattern of unlawful activity, if at least one of the unlawful  
1229 activities used to establish the pattern of unlawful activity is an offense listed in Subsections  
1230 (1) through (7).

1231 Section 20. Section **78B-3-108** is amended to read:

1232 **78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by**  
1233 **adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice**  
1234 **required for penalty demand.**

1235 (1) As used in this section:

1236 (a) "Merchandise" has the same meaning as provided in Section 76-6-601.

1237 (b) "Merchant" has the same meaning as provided in Section 76-6-601.

1238 (c) "Minor" has the same meaning as provided in Section 76-6-601.

1239 (d) "Premises" has the same meaning as "retail mercantile establishment" found in

1240 Section 76-6-601.



1241 (2) (a) A merchant may request an individual on the merchant's premises to place or  
1242 keep in full view any merchandise the individual may have removed, or which the merchant  
1243 has reason to believe the individual may have removed, from its place of display or elsewhere,  
1244 whether for examination, purchase, or for any other reasonable purpose.

1245 (b) The merchant may not be criminally or civilly liable for having made the request.

1246 (3) (a) A merchant who has reason to believe that an individual has committed any of  
1247 the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) and that  
1248 the merchant can recover the merchandise by taking the individual into custody and detaining  
1249 the individual may, for the purpose of attempting to recover the merchandise or for the purpose  
1250 of informing a peace officer of the circumstances of the detention, take the individual into  
1251 custody and detain the individual in a reasonable manner and for a reasonable length of time.

1252 (b) Neither the merchant nor the merchant's employee may be criminally or civilly  
1253 liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type  
1254 of claim or action unless the custody and detention are unreasonable under all the  
1255 circumstances.

1256 (4) (a) A merchant may prohibit an individual who has committed any of the offenses  
1257 listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii) from reentering the premises on which  
1258 the individual has committed the offense.

1259 (b) The merchant shall give written notice of this prohibition to the individual under  
1260 Subsection (4)(a). The notice may be served by:

1261 (i) delivering a copy to the individual personally;

1262 (ii) sending a copy through registered or certified mail addressed to the individual at  
1263 the individual's residence or usual place of business;

1264 (iii) leaving a copy with an individual of suitable age and discretion at either location  
1265 under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or  
1266 place of business if the individual is absent from the residence or usual place of business; or

1267 (iv) affixing a copy in a conspicuous place at the individual's residence or place of  
1268 business.

1269 (c) The individual serving the notice may authenticate service with the individual's  
1270 signature, the method of service, and legibly documenting the date and time of service.

1271 (5) An adult who commits any of the offenses listed in Subsection [~~76-6-412(1)(b)~~]

1272 76-6-404(3)(b)(iii)(A), (B), or (C) is also liable in a civil action for:

1273 (a) actual damages;

1274 (b) a penalty to the merchant in the amount of the retail price of the merchandise not to  
1275 exceed \$1,000; and

1276 (c) an additional penalty as determined by the court of not less than \$100 nor more than  
1277 \$500, plus court costs and reasonable attorney fees.

1278 (6) A minor who commits any of the offenses listed in Subsection [~~76-6-412(1)(b)~~]

1279 76-6-404(3)(b)(iii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and  
1280 severally liable in a civil action to the merchant for:

1281 (a) actual damages;

1282 (b) a penalty to be remitted to the merchant in the amount of the retail price of the  
1283 merchandise not to exceed \$500 plus an additional penalty as determined by the court of not  
1284 less than \$50 nor more than \$500; and

1285 (c) court costs and reasonable attorney fees.

1286 (7) A parent or guardian is not liable for damages under this section if the parent or  
1287 guardian made a reasonable effort to restrain the wrongful taking and reported it to the  
1288 merchant involved or to the law enforcement agency having primary jurisdiction once the  
1289 parent or guardian knew of the minor's unlawful act. A report is not required under this section  
1290 if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of  
1291 the merchant involved.

1292 (8) A conviction in a criminal action for any of the offenses listed in Subsection  
1293 [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) is not a condition precedent to a civil  
1294 action authorized under Subsection (5) or (6).

1295 (9) (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall  
1296 give written notice to the individual or individuals from whom the penalty is sought. The  
1297 notice shall state:

1298 "IMPORTANT NOTICE: The payment of any penalty demanded of you does not  
1299 prevent criminal prosecution under a related criminal provision."

1300 (b) This notice shall be boldly and conspicuously displayed, in at least the same size  
1301 type as is used in the demand, and shall be sent with the demand for payment of the penalty  
1302 described in Subsection (5) or (6).

1303 (10) The provision of Section 78B-8-201 requiring that compensatory or general  
1304 damages be awarded in order to award punitive damages does not prohibit an award of a  
1305 penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant  
1306 either prior to or as part of a civil action.

1307 Section 21. Section **78B-9-104** is amended to read:

1308 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

1309 (1) Unless precluded by Section 78B-9-106 or 78B-9-107, an individual who has been  
1310 convicted and sentenced for a criminal offense may file an action in the district court of  
1311 original jurisdiction for postconviction relief to vacate or modify the conviction or sentence  
1312 upon the following grounds:

1313 (a) the conviction was obtained or the sentence was imposed in violation of the United  
1314 States Constitution or Utah Constitution;

1315 (b) the conviction was obtained or the sentence was imposed under a statute that is in  
1316 violation of the United States Constitution or Utah Constitution, or the conduct for which the  
1317 petitioner was prosecuted is constitutionally protected;

1318 (c) the sentence was imposed or probation was revoked in violation of the controlling  
1319 statutory provisions;

1320 (d) the petitioner had ineffective assistance of counsel in violation of the United States  
1321 Constitution or Utah Constitution;

1322 (e) newly discovered material evidence exists that requires the court to vacate the  
1323 conviction or sentence, because:

1324 (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of  
1325 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or  
1326 postconviction proceeding, and the evidence could not have been discovered through the  
1327 exercise of reasonable diligence;

1328 (ii) the material evidence is not merely cumulative of evidence that was known;

1329 (iii) the material evidence is not merely impeachment evidence; and

1330 (iv) viewed with all the other evidence, the newly discovered material evidence  
1331 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the  
1332 offense or subject to the sentence received;

1333 (f) the petitioner can prove that:

1334 (i) biological evidence, as that term is defined in Section 53-20-101, relevant to the  
1335 petitioner's conviction was not preserved in accordance with Title 53, Chapter 20, Forensic  
1336 Biological Evidence Preservation;

1337 (ii) (A) the biological evidence described in Subsection (1)(f)(i) was not tested  
1338 previously; or

1339 (B) if the biological evidence described in Subsection (1)(f)(i) was tested previously,  
1340 there is a material change in circumstance, including a scientific or technological advance, that  
1341 would make it plausible that a test of the biological evidence described in Subsection (1)(f)(i)  
1342 would produce a favorable test result for the petitioner; and

1343 (iii) a favorable result described in Subsection (1)(f)(ii), which is presumed for  
1344 purposes of the petitioner's action under this section, when viewed with all the other evidence,  
1345 demonstrates a reasonable probability of a more favorable outcome at trial for the petitioner;

1346 (g) the petitioner can prove entitlement to relief under a rule announced by the United  
1347 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction  
1348 and sentence became final on direct appeal, and that:

1349 (i) the rule was dictated by precedent existing at the time the petitioner's conviction or  
1350 sentence became final; or

1351 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for  
1352 which the petitioner was convicted; or

1353 (h) the petitioner committed any of the following offenses while subject to force, fraud,  
1354 or coercion, as defined in Section 76-5-308:

1355 (i) Section 58-37-8, possession of a controlled substance;

1356 (ii) Section 76-10-1304, aiding prostitution;

1357 (iii) Section 76-6-206, criminal trespass;

1358 (iv) Section 76-6-413, theft;

1359 (v) Section 76-6-502, possession of forged writing or device for writing;

1360 (vi) [~~Sections 76-6-602 through 76-6-608~~] any offense in Title 76, Chapter 6, Part 6,  
1361 retail theft;

1362 (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification  
1363 document;

1364 (viii) Section 76-9-702, lewdness;

1365 (ix) Section 76-10-1302, prostitution; or

1366 (x) Section 76-10-1313, sexual solicitation.

1367 (2) The court may not grant relief from a conviction or sentence unless in light of the  
1368 facts proved in the postconviction proceeding, viewed with the evidence and facts introduced at  
1369 trial or during sentencing:

1370 (a) the petitioner establishes that there would be a reasonable likelihood of a more  
1371 favorable outcome; or

1372 (b) if the petitioner challenges the conviction or the sentence on grounds that the  
1373 prosecutor knowingly failed to correct false testimony at trial or at sentencing, the petitioner  
1374 establishes that the false testimony, in any reasonable likelihood, could have affected the  
1375 judgment of the fact finder.

1376 (3) (a) The court may not grant relief from a conviction based on a claim that the  
1377 petitioner is innocent of the crime for which convicted except as provided in Part 3,  
1378 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

1379 (b) Claims under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction  
1380 Determination of Factual Innocence, of this chapter may not be filed as part of a petition under  
1381 this part, but shall be filed separately and in conformity with the provisions of Part 3,  
1382 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

1383 Section 22. Section **80-6-610** is amended to read:

1384 **80-6-610. Property damage caused by a minor -- Liability of parent or guardian.**

1385 (1) A parent or guardian with legal custody of a minor is liable for damages sustained  
1386 to property not to exceed \$2,000 when:

1387 (a) the minor intentionally damages, defaces, destroys, or takes the property of another;

1388 (b) the minor recklessly or willfully shoots or propels a missile, or other object at or  
1389 against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether  
1390 moving or standing; or

1391 (c) the minor intentionally and unlawfully tampers with the property of another and  
1392 thereby recklessly endangers human life or recklessly causes or threatens a substantial  
1393 interruption or impairment of any public utility service.

1394 (2) A parent or guardian with legal custody of a minor is liable for damages sustained  
1395 to property not to exceed \$5,000 when the minor is adjudicated for an offense under Subsection

1396 (1):

1397 (a) for the benefit of, at the direction of, or in association with any criminal street gang  
1398 as defined in Section 76-9-802; or

1399 (b) to gain recognition, acceptance, membership, or increased status with a criminal  
1400 street gang.

1401 (3) A juvenile court may make an order for restitution under Subsection (1) or (2) to be  
1402 paid by the minor's parent or guardian if the minor is adjudicated for an offense.

1403 (4) As used in this section, property damage described under Subsection (1)(a) or (c),  
1404 or Subsection (2), includes graffiti, as defined in Section ~~[76-6-107]~~ 76-6-101.

1405 (5) A court may waive part or all of the liability for damages under this section by the  
1406 minor's parent or guardian if, after the minor is adjudicated, the court finds, upon the record:

1407 (a) good cause; or

1408 (b) the parent or guardian:

1409 (i) made a reasonable effort to restrain the wrongful conduct; and

1410 (ii) reported the conduct to the property owner involved or the law enforcement agency  
1411 having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

1412 (6) A report is not required under Subsection (5)(b) from a parent or guardian if the  
1413 minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the  
1414 property owner involved.

1415 (7) A conviction for criminal mischief under Section 76-6-106, property damage or  
1416 destruction under Section 76-6-106.1, criminal trespass under Section 76-6-206, or an  
1417 adjudication under Section 80-6-701 is not a condition precedent to a civil action authorized  
1418 under Subsection (1) or (2).

1419 (8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or  
1420 guardian made a reasonable effort to supervise and direct the minor, or, in the event the parent  
1421 or guardian knew in advance of the possible taking, injury, or destruction by the minor, made a  
1422 reasonable effort to restrain the minor.

1423 Section 23. Section **80-6-709** is amended to read:

1424 **80-6-709. Payment of fines, fees, restitution, or other costs -- Community or**  
1425 **compensatory service -- Property damage -- Unpaid balances.**

1426 (1) (a) If a minor is adjudicated for an offense under Section 80-6-701, the juvenile

1427 court may order a minor to:

1428 (i) pay a fine, fee, or other cost;

1429 (ii) pay restitution in accordance with Section 80-6-710; or

1430 (iii) complete community or compensatory service hours.

1431 (b) (i) If the juvenile court orders the minor to pay restitution under Subsection (1)(a), a  
1432 juvenile probation officer may permit the minor to complete a work program in lieu of paying  
1433 part or all of the restitution by the juvenile court.

1434 (ii) If the juvenile court orders the minor to complete community or compensatory  
1435 service hours, a juvenile probation officer may permit the minor to complete a work program to  
1436 help the minor complete the community or compensatory service hours.

1437 (c) The juvenile court may, through a juvenile probation officer, encourage the  
1438 development of nonresidential employment or a work program to enable a minor to fulfill the  
1439 minor's obligations under Subsection (1)(a).

1440 (d) Notwithstanding this section, a juvenile court may not place a minor on a ranch,  
1441 forestry camp, or other residential work program for care or work.

1442 (2) If the juvenile court orders a minor to pay a fine, fee, restitution, or other cost, or to  
1443 complete community or compensatory service hours, the juvenile court shall consider the  
1444 dispositions collectively to ensure that an order:

1445 (a) is reasonable;

1446 (b) prioritizes restitution; and

1447 (c) except for restitution as provided in Subsection 80-6-710(5)(c), takes into account  
1448 the minor's ability to pay the fine, fee, or other cost within the presumptive period under  
1449 Section 80-6-712 or Section 80-6-802 if the minor is ordered to secure care.

1450 (3) (a) If the juvenile court orders a minor to pay a fine, fee, or other cost, or complete  
1451 community or compensatory service hours, the cumulative order shall be limited per criminal  
1452 episode as follows:

1453 (i) for a minor under 16 years old at the time of adjudication, the juvenile court may  
1454 impose up to \$190 or up to 24 hours of community or compensatory service; and

1455 (ii) for a minor 16 years old or older at the time of adjudication, the juvenile court may  
1456 impose up to \$280 or up to 36 hours of community or compensatory service.

1457 (b) The cumulative order under Subsection (3)(a) does not include restitution.

1458 (4) (a) If the juvenile court converts a fine, fee, or restitution amount to compensatory  
1459 service hours, the rate of conversion shall be no less than the minimum wage.

1460 (b) If the juvenile court orders a minor to complete community service, the  
1461 presumptive service order shall include between five and 10 hours of service.

1462 (c) If a minor completes an approved substance use disorder prevention or treatment  
1463 program or other court-ordered condition, the minor may be credited with compensatory  
1464 service hours for the completion of the program or condition by the juvenile court.

1465 (5) (a) If a minor commits an offense involving the use of graffiti under Section  
1466 76-6-106, 76-6-106.1, or 76-6-206, the juvenile court may order the minor to clean up graffiti  
1467 created by the minor or any other individual at a time and place within the jurisdiction of the  
1468 juvenile court.

1469 (b) The minor may complete the order of the juvenile court under Subsection (5)(a) in  
1470 the presence and under the direct supervision of the minor's parent, guardian, or custodian.

1471 (c) The minor's parent, guardian, or custodian shall report completion of the order to  
1472 the juvenile court.

1473 (d) The juvenile court may also require the minor to perform other alternative forms of  
1474 restitution or repair to the damaged property in accordance with Section 80-6-710.

1475 (6) (a) Except as provided in Subsection (6)(b), the juvenile court may issue orders  
1476 necessary for the collection of restitution and fines ordered under this section, including  
1477 garnishments, wage withholdings, and executions.

1478 (b) The juvenile court may not issue an order under Subsection (6)(a) if the juvenile  
1479 court orders a disposition that changes custody of a minor, including detention, secure care, or  
1480 any other secure or nonsecure residential placement.

1481 (7) Any information necessary to collect unpaid fines, fees, assessments, or restitution  
1482 may be forwarded to employers, financial institutions, law enforcement, constables, the Office  
1483 of Recovery Services, or other agencies for purposes of enforcing an order under this section.

1484 (8) (a) If, before the entry of any order terminating the juvenile court's continuing  
1485 jurisdiction over a minor's case, there remains an unpaid balance for any fine, fee, or restitution  
1486 ordered by the juvenile court, the juvenile court shall:

1487 (i) record all pertinent information for the unpaid balance in the minor's file; and

1488 (ii) if there is an unpaid amount of restitution, record the amount of unpaid restitution



1489 as a civil judgment and list the victim, or the estate of the victim, as the judgment creditor in  
1490 the civil judgment.

1491 (b) The juvenile court may not transfer responsibility to collect unpaid fines, fees,  
1492 surcharges, and restitution for a minor's case to the Office of State Debt Collection created in  
1493 Section 63A-3-502.