

SEXUAL OFFENSES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses certain sexual crimes committed against children.

Highlighted Provisions:

This bill:

- defines terms;
- merges the crimes of rape of a child, object rape of a child, and sodomy on a child into a single crime named "rape of a child";
- clarifies that in order to be found guilty of rape of a child the perpetrator must penetrate the genitals, anus, or mouth of a child with a body part, object, or substance in certain circumstances; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

30-5a-103, as last amended by Laws of Utah 2022, Chapters 185, 335 and 430

53-13-110.5, as last amended by Laws of Utah 2022, Chapter 430

53-24-102, as enacted by Laws of Utah 2023, Chapter 158

76-1-101.5, as last amended by Laws of Utah 2023, Chapter 16

76-2-304.5, as last amended by Laws of Utah 2022, Chapter 181

76-3-203.5, as last amended by Laws of Utah 2023, Chapter 111

76-3-203.6, as last amended by Laws of Utah 2022, Chapter 181

76-3-406, as last amended by Laws of Utah 2023, Chapter 184

76-4-102, as last amended by Laws of Utah 2013, Chapter 93

76-4-204, as last amended by Laws of Utah 2008, Chapter 179

33 **76-4-401**, as last amended by Laws of Utah 2023, Chapter 457
 34 **76-5-202**, as last amended by Laws of Utah 2022, Chapter 181
 35 **76-5-203**, as last amended by Laws of Utah 2022, Chapter 181
 36 **76-5-310**, as last amended by Laws of Utah 2022, Chapter 181
 37 **76-5-310.1**, as enacted by Laws of Utah 2022, Chapter 181
 38 **76-5-401.3**, as last amended by Laws of Utah 2023, Chapters 123, 161
 39 **76-5-402.1**, as last amended by Laws of Utah 2022, Chapter 181
 40 **76-5-404.1**, as last amended by Laws of Utah 2022, Chapter 181
 41 **76-5-406.3**, as last amended by Laws of Utah 2022, Chapter 181
 42 **76-5-406.5**, as last amended by Laws of Utah 2022, Chapter 181
 43 **76-5-412**, as last amended by Laws of Utah 2023, Chapters 322, 330
 44 **76-5-413**, as last amended by Laws of Utah 2022, Chapters 181, 255
 45 **76-5-413.2**, as enacted by Laws of Utah 2022, Chapter 181
 46 **76-9-702.1**, as last amended by Laws of Utah 2023, Chapter 123
 47 **76-10-1302**, as last amended by Laws of Utah 2023, Chapter 111
 48 **77-27-7**, as last amended by Laws of Utah 2022, Chapter 430
 49 **77-27-9**, as last amended by Laws of Utah 2022, Chapter 430
 50 **77-27-10**, as last amended by Laws of Utah 2022, Chapter 430
 51 **77-41-102 (Superseded 07/01/24)**, as last amended by Laws of Utah 2023, Chapter 123
 52 **77-41-102 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 123,
 53 128
 54 **77-41-106**, as last amended by Laws of Utah 2023, Chapters 123, 457
 55 **78B-6-117**, as last amended by Laws of Utah 2022, Chapters 185, 430

56 REPEALS:

57 **76-5-402.3**, as last amended by Laws of Utah 2022, Chapter 181
 58 **76-5-403.1**, as last amended by Laws of Utah 2022, Chapter 181

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

61 Section 1. Section **30-5a-103** is amended to read:

62 **30-5a-103. Custody and visitation for individuals other than a parent.**

63 (1) (a) In accordance with Section 80-2a-201, it is the public policy of this state that a

parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's children.

(b) There is a rebuttable presumption that a parent's decisions are in the child's best interests.

(2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to an individual other than a parent who, by clear and convincing evidence, establishes that:

(a) the individual has intentionally assumed the role and obligations of a parent;

(b) the individual and the child have formed a substantial emotional bond and created a parent-child type relationship;

(c) the individual substantially contributed emotionally or financially to the child's well being;

(d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;

(e) the continuation of the relationship between the individual and the child is in the child's best interest;

(f) the loss or cessation of the relationship between the individual and the child would substantially harm the child; and

(g) the parent:

(i) is absent; or

(ii) is found by a court to have abused or neglected the child.

(3) A proceeding under this chapter may be commenced by filing a verified petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district court in the county where the child:

(a) currently resides; or

(b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.

(4) A proceeding under this chapter may be filed in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or visitation with a child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the

petition including the criteria set forth in Subsection (2) and residency information as set forth in Section 78B-13-209.

(6) A proceeding under this chapter may not be filed against a parent who is actively serving outside the state in any branch of the military.

(7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the rules of civil procedure on all of the following:

(a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

(b) any individual who has court-ordered custody or visitation rights;

(c) the child's guardian;

(d) the guardian ad litem, if one has been appointed;

(e) an individual or agency that has physical custody of the child or that claims to have custody or visitation rights; and

(f) any other individual or agency that has previously appeared in any action regarding custody of or visitation with the child.

(8) The court may order a custody evaluation to be conducted in any action brought under this chapter.

(9) The court may enter temporary orders in an action brought under this chapter pending the entry of final orders.

(10) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the parent of the child and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:

(a) child abuse~~[, as described in Sections]~~ under Section 76-5-109~~;~~;

(b) aggravated child abuse under Section 76-5-109.2~~;~~;

(c) child abandonment under Section 76-5-109.3~~[, and]~~;

(d) commission of domestic violence in the presence of a child under Section 76-5-114;

~~(b)~~ (e) child abuse homicide~~[, as described in]~~ under Section 76-5-208;

~~(c)~~ (f) child kidnapping~~[, as described in]~~ under Section 76-5-301.1;

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

~~(e)~~ (h) sexual abuse of a minor~~[, as described in]~~ under Section 76-5-401.1;

126 ~~[(f)]~~ (i) rape of a child~~[, as described in]~~ under Section 76-5-402.1;
127 ~~[(g)]~~ ~~object rape of a child, as described in Section 76-5-402.3;~~
128 ~~[(h)]~~ ~~sodomy on a child, as described in Section 76-5-403.1;~~
129 ~~[(i)]~~ (j) sexual abuse of a child~~[, as described in]~~ under Section 76-5-404.1~~[, or];~~
130 (k) aggravated sexual abuse of a child~~[, as described in]~~ under Section 76-5-404.3;
131 ~~[(j)]~~ (l) sexual exploitation of a minor~~[, as described in]~~ under Section 76-5b-201;
132 ~~[(k)]~~ (m) aggravated sexual exploitation of a minor~~[, as described in]~~ under Section

133 76-5b-201.1; or

134 ~~[(l)]~~ (n) an offense in another state that, if committed in this state, would constitute an
135 offense described in this Subsection (10).

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

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

141 (i) the individual is a relative, as defined in Section 80-3-102, of the child;

142 (ii) at least 10 years have elapsed from the day on which the individual is successfully
143 released from prison, jail, parole, or probation related to a disqualifying offense;

144 (iii) during the 10 years before the day on which the individual files a petition with the
145 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
146 an offense greater than an infraction or traffic violation that would likely impact the health,
147 safety, or well-being of the child;

148 (iv) the individual can provide evidence of successful treatment or rehabilitation
149 directly related to the disqualifying offense;

150 (v) the court determines that the risk related to the disqualifying offense is unlikely to
151 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
152 time in the future when considering all of the following:

153 (A) the child's age;

154 (B) the child's gender;

155 (C) the child's development;

156 (D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years old or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the individual can provide evidence of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the child are met;

(vii) (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the individual with the disqualifying offense and the child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:

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

(B) a guardian ad litem shall be assigned.

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

Section 2. Section **53-13-110.5** is amended to read:

53-13-110.5. Retention of records of interviews of minors.

If a peace officer, or the officer's employing agency, records an interview of a minor during an investigation of a violation of rape of a child under Section 76-5-402.1, ~~[76-5-402.3, 76-5-403.1,]~~ sexual abuse of a child under Section 76-5-404.1, or aggravated sexual abuse of a child under Section 76-5-404.3, the agency shall retain a copy of the recording for 18 years after the day on which the last recording of the interview is made, unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.

Section 3. Section **53-24-102** is amended to read:

53-24-102. Sexual assault offense reporting requirements for law enforcement agencies.

(1) As used in this section:

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

(b) "Sexual assault offense" means:

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

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

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

~~[(iv) object rape of a child, Section 76-5-402.3;]~~

~~[(v) (iv) forcible sodomy[;] under Section 76-5-403;~~

~~[(vi) sodomy on a child, Section 76-5-403.1;]~~

~~[(vii) (v) forcible sexual abuse[;] under Section 76-5-404;~~

~~[(viii) (vi) sexual abuse of a child[;] under Section 76-5-404.1;~~

~~[(ix) (vii) aggravated sexual abuse of a child[;] under Section 76-5-404.3;~~

~~[(x) (viii) aggravated sexual assault[;] under Section 76-5-405; or~~

~~[(xi) (ix) sexual battery[;] under Section 76-9-702.1.~~

(2) (a) Beginning January 1, 2025, a law enforcement agency shall annually, on or before April 30, submit a report to the commission for the previous calendar year containing the number of each type of sexual assault offense that:

(i) was reported to the law enforcement agency;

(ii) was investigated by a detective; and

(iii) was referred to a prosecutor for prosecution.

(b) A law enforcement agency shall:

(i) compile the report described in Subsection (2)(a) for each calendar year in the standardized format developed by the commission under Subsection (3); and

(ii) publicly post the information reported in Subsection (2)(a) on the law enforcement agency's website.

(3) The commission shall:

(a) develop a standardized format for reporting the data described in Subsection (2);

(b) compile the data submitted under Subsection (2); and

(c) annually on or before August 1, publish a report of the data described in Subsection (2) on the commission's website.

Section 4. Section **76-1-101.5** is amended to read:

76-1-101.5. Definitions.

Unless otherwise provided, as used in this title:

(1) "Act" means a voluntary bodily movement and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.

(3) "Affinity" means a relationship by marriage.

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

(5) "Conduct" means an act or omission.

(6) "Consanguinity" means a relationship by blood to the first or second degree, including an individual's parent, grandparent, sibling, child, aunt, uncle, niece, or nephew.

(7) "Dangerous weapon" means:

(a) any item capable of causing death or serious bodily injury; or

(b) a facsimile or representation of the item, if:

(i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or

(ii) the actor represents to the victim verbally or in any other manner that the actor is in control of such an item.

(8) "Grievous sexual offense" means:

(a) rape[;] under Section 76-5-402;

250 (b) rape of a child[;] under Section 76-5-402.1;
251 (c) object rape[;] under Section 76-5-402.2;
252 [~~(d)~~ object rape of a child, Section 76-5-402.3;]
253 [~~(e)~~ (d) forcible sodomy[;] under Subsection 76-5-403(2);
254 [~~(f)~~ sodomy on a child, Section 76-5-403.1;]
255 [~~(g)~~ (e) aggravated sexual abuse of a child[;] under Section 76-5-404.3;
256 [~~(h)~~ (f) aggravated sexual assault[;] under Section 76-5-405;
257 [~~(i)~~ (g) [any] a felony attempt to commit an offense described in Subsections (8)(a)
258 through [~~(h)~~] (f); or
259 [~~(j)~~ (h) an offense in another state, territory, or district of the United States that, if
260 committed in [~~Utah~~] this state, would constitute an offense described in Subsections (8)(a)
261 through [~~(i)~~] (g).
262 (9) "Offense" means a violation of [any] a penal statute of this state.
263 (10) "Omission" means a failure to act when there is a legal duty to act and the actor is
264 capable of acting.
265 (11) "Person" means an individual, public or private corporation, government,
266 partnership, or unincorporated association.
267 (12) "Possess" means to have physical possession of or to exercise dominion or control
268 over tangible property.
269 (13) "Public entity" means:
270 (a) the state, or an agency, bureau, office, department, division, board, commission,
271 institution, laboratory, or other instrumentality of the state;
272 (b) a political subdivision of the state, including a county, municipality, interlocal
273 entity, special district, special service district, school district, or school board;
274 (c) an agency, bureau, office, department, division, board, commission, institution,
275 laboratory, or other instrumentality of a political subdivision of the state; or
276 (d) another entity that:
277 (i) performs a public function; and
278 (ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.
279 (14) (a) "Public money" or "public funds" means money, funds, or accounts, regardless
280 of the source from which they are derived, that:

(i) are owned, held, or administered by an entity described in Subsections (13)(a) through (c); or

(ii) are in the possession of an entity described in Subsection (13)(d)(i) for the purpose of performing a public function.

(b) "Public money" or "public funds" includes money, funds, or accounts described in Subsection (14)(a) after the money, funds, or accounts are transferred by a public entity to an independent contractor of the public entity.

(c) "Public money" or "public funds" remains public money or public funds while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

(15) "Public officer" means:

(a) an elected official of a public entity;

(b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;

(c) a judge of a court of record or not of record, including justice court judges; or

(d) a member of the Board of Pardons and Parole.

(16) (a) "Public servant" means:

(i) a public officer;

(ii) an appointed official, employee, consultant, or independent contractor of a public entity; or

(iii) a person hired or paid by a public entity to perform a government function.

(b) Public servant includes a person described in Subsection (16)(a) upon the person's election, appointment, contracting, or other selection, regardless of whether the person has begun to officially occupy the position of a public servant.

(17) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

(18) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

(19) "Writing" or "written" includes any handwriting, typewriting, printing, electronic

storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Section 5. Section **76-2-304.5** is amended to read:

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

(1) It is not a defense to the ~~[crime]~~ offense of child kidnapping~~[, a violation of]~~ under Section 76-5-301.1~~;~~, rape of a child~~[, a violation of]~~ under Section 76-5-402.1~~;~~ ~~object rape of a child, a violation of~~ Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1~~;~~, sexual abuse of a child~~[, a violation of]~~ under Section 76-5-404.1~~;~~, aggravated sexual abuse of a child~~[, a violation of]~~ under Section 76-5-404.3~~;~~, or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years old or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the ~~[crime]~~ offense of unlawful sexual activity with a minor~~;~~~~a violation of~~ under Section 76-5-401~~;~~~~1~~, sexual abuse of a minor~~;~~~~a violation of~~ under Section 76-5-401.1~~;~~~~1~~, or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years old or older at the time of the alleged offense or was unaware of the victim's true age.

(3) It is not a defense to the ~~[crime]~~ offense of aggravated human trafficking~~[, a violation of]~~ under Section 76-5-310, aggravated human smuggling~~[, a violation of]~~ under Section 76-5-310.1, or human trafficking of a child~~[, a violation of]~~ under Section 76-5-308.5, that the actor mistakenly believed the victim to be 18 years old or older at the time of the alleged offense or was unaware of the victim's true age.

(4) It is not a defense to the ~~[crime]~~ offense of unlawful sexual activity with a minor~~—a violation of~~ under Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years old or older at the time of the alleged offense or was unaware of the victim's true age.

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

(a) patronizing a prostitute[~~—a violation of~~] under Section 76-10-1303;

(b) aggravated exploitation of a prostitute[~~, a violation of~~] under Section 76-10-1306;

or

(c) sexual solicitation~~[a violation of]~~ under Section 76-10-1313.

Section 6. Section ~~76-3-203.5~~ is amended to read:

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

(1) As used in this section:

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

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

(c) "Violent felony" means:

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

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

(B) assault by prisoner~~;~~ under Section 76-5-102.5;

(C) disarming a police officer~~;~~ under Section 76-5-102.8;

(D) aggravated assault~~;~~ under Section 76-5-103;

(E) aggravated assault by prisoner~~;~~ under Section 76-5-103.5;

(F) mayhem~~;~~ under Section 76-5-105;

(G) stalking~~;~~ under Subsection 76-5-106.5(2);

(H) threat of terrorism~~;~~ under Section 76-5-107.3;

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

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

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

(L) abuse ~~[or exploitation]~~ of a vulnerable adult~~;~~ under Section 76-5-111~~;~~;

(M) aggravated abuse of a vulnerable adult under Section 76-5-111.2;

374 ~~(N)~~ (P) personal dignity exploitation of a vulnerable adult under Section 76-5-111.3~~[-or];~~
 375 (O) financial exploitation of a vulnerable adult under Section 76-5-111.4;
 376 ~~(M)~~ (P) endangerment of a child or vulnerable adult~~;~~ under Section 76-5-112.5;
 377 ~~(N)~~ (Q) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
 378 ~~(O)~~ (R) kidnapping~~;~~ under Section 76-5-301;
 379 (S) child kidnapping~~;~~ under Section 76-5-301.1;
 380 (T) ~~[and]~~ aggravated kidnapping under [Chapter 5, Part 3, Kidnapping, Trafficking,
 381 and Smuggling] Section 76-5-302;
 382 ~~(P)~~ (U) rape~~;~~ under Section 76-5-402;
 383 ~~(Q)~~ (V) rape of a child~~;~~ under Section 76-5-402.1;
 384 ~~(R)~~ (W) object rape~~;~~ under Section 76-5-402.2;
 385 ~~(S)~~ object rape of a child, Section 76-5-402.3;
 386 ~~(T)~~ (X) forcible sodomy~~;~~ under Section 76-5-403;
 387 ~~(U)~~ sodomy on a child, Section 76-5-403.1;
 388 ~~(V)~~ (Y) forcible sexual abuse~~;~~ under Section 76-5-404;
 389 ~~(W)~~ (Z) sexual abuse of a child~~;~~ under Section 76-5-404.1~~[-or];~~
 390 (AA) aggravated sexual abuse of a child~~;~~ under Section 76-5-404.3;
 391 ~~(X)~~ (BB) aggravated sexual assault~~;~~ under Section 76-5-405;
 392 ~~(Y)~~ (CC) sexual exploitation of a minor~~;~~ under Section 76-5b-201;
 393 ~~(Z)~~ (DD) aggravated sexual exploitation of a minor~~;~~ under Section 76-5b-201.1;
 394 ~~(AA)~~ (EE) sexual exploitation of a vulnerable adult~~;~~ under Section 76-5b-202;
 395 ~~(BB)~~ (FF) ~~[aggravated burglary and]~~ burglary of a dwelling under [Chapter 6, Part 2,
 396 Burglary and Criminal Trespass] Subsection 76-6-202(3)(b);
 397 (GG) aggravated burglary under Section 76-6-203;
 398 ~~(CC)~~ (HH) ~~[aggravated robbery and]~~ robbery under [Chapter 6, Part 3, Robbery]
 399 Section 76-3-301;
 400 (II) aggravated robbery under Section 76-6-302;
 401 ~~(DD)~~ (JJ) theft by extortion under [Section 76-6-406 under the circumstances
 402 described in] Subsection 76-6-406(1)(a)(i) or (ii);
 403 ~~(EE)~~ (KK) tampering with a witness under Subsection 76-8-508(1);
 404 ~~(FF)~~ (LL) retaliation against a witness, victim, or informant under Section

405 76-8-508.3;
 406 ~~[(GG)]~~ (MM) tampering with a juror under Subsection 76-8-508.5(2)(c);
 407 ~~[(HH)]~~ (NN) extortion to dismiss a criminal proceeding under Section 76-8-509 if by
 408 any threat or by use of force theft by extortion has been committed under ~~[Section 76-6-406~~
 409 ~~under the circumstances described in]~~ Subsection 76-6-406(1)(a)(i), (ii), or (ix);
 410 ~~[(HH)]~~ (OO) possession, use, or removal of explosive, chemical, or incendiary devices
 411 under Subsections 76-10-306(3) through (6);
 412 ~~[(JJ)]~~ (PP) unlawful delivery of explosive, chemical, or incendiary devices under
 413 Section 76-10-307;
 414 ~~[(KK)]~~ (QQ) purchase or possession of a dangerous weapon or handgun by a restricted
 415 person under Section 76-10-503;
 416 ~~[(LL)]~~ (RR) unlawful discharge of a firearm under Section 76-10-508;
 417 ~~[(MM)]~~ (SS) aggravated exploitation of prostitution under Subsection
 418 76-10-1306(1)(a);
 419 ~~[(NN)]~~ (TT) bus hijacking under Section 76-10-1504; and
 420 ~~[(OO)]~~ (UU) discharging firearms and hurling missiles under Section 76-10-1505; or
 421 (ii) ~~[any]~~ a felony violation of a criminal statute of ~~[any other state]~~ another state, the
 422 United States, or ~~[any]~~ a district, possession, or territory of the United States which would
 423 constitute a violent felony as defined in this Subsection (1) if committed in this state.
 424 (2) If ~~[a person]~~ an individual is convicted in this state of a violent felony by plea or by
 425 verdict and the trier of fact determines beyond a reasonable doubt that the ~~[person]~~ individual is
 426 a habitual violent offender ~~[under this section]~~, the penalty for a:
 427 (a) third degree felony is as if the conviction were for a first degree felony;
 428 (b) second degree felony is as if the conviction were for a first degree felony; or
 429 (c) first degree felony remains the penalty for a first degree penalty except:
 430 (i) the convicted person is not eligible for probation; and
 431 (ii) the Board of Pardons and Parole shall consider that the convicted ~~[person]~~
 432 individual is a habitual violent offender as an aggravating factor in determining the length of
 433 incarceration.
 434 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
 435 provide notice in the information or indictment that the ~~[defendant]~~ individual is subject to

punishment as a habitual violent offender under this section[. ~~Notice shall include~~], including:

(i) the case number[~~;~~];

(ii) court[~~;~~]; and

(iii) date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The [~~defendant~~] individual shall serve notice in writing upon the prosecutor if the [~~defendant~~] individual intends to deny that:

(A) the [~~defendant~~] individual is the [~~person~~] individual who was convicted or committed;

(B) the [~~defendant~~] individual was represented by counsel or had waived counsel; or

(C) the [~~defendant's~~] individual's plea was understandingly or voluntarily entered.

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

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

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

(ii) allegation against the [~~defendant~~] individual of being a habitual violent offender.

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

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

(ii) The trier of fact shall consider [~~any~~] evidence presented at trial and the prosecution and the [~~defendant~~] individual shall be afforded an opportunity to present [~~any~~] necessary additional evidence.

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

(d) (i) If [~~any~~] a previous conviction and commitment is based upon a plea of guilty or

no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970.

(ii) If the conviction and commitment in Subsection (4)(d) occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the ~~[defendant]~~ individual was then represented by counsel or had lawfully waived the right to have counsel present, and that the ~~[defendant's]~~ individual's plea was understandingly and voluntarily entered.

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

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

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

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

(a) the offense for which the ~~[person]~~ individual is being sentenced is:

(i) a grievous sexual offense;

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

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

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

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

Section 7. Section **76-3-203.6** is amended to read:

76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

498 (a) has not been paroled; or
499 (b) is in custody after arrest for a parole violation.

500 (2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence
501 for a capital felony or a first degree felony commits any offense listed in Subsection (5), the
502 offense is a first degree felony and the court shall sentence the defendant to life in prison
503 without parole.

504 (3) Notwithstanding Subsection (2), the court may sentence the defendant to an
505 indeterminate prison term of not less than 20 years and that may be for life if the court finds
506 that the interests of justice would best be served and states the specific circumstances justifying
507 the disposition on the record.

508 (4) Subsection (2) does not apply if the prisoner is younger than 18 years old at the
509 time the offense listed in Subsection (5) is committed and is sentenced on or after May 10,
510 2016.

511 (5) Offenses referred to in Subsection (2) are:

512 (a) aggravated assault by a prisoner[;] under Section 76-5-103.5;
513 (b) mayhem[;] under Section 76-5-105;
514 (c) attempted murder[;] under Section 76-5-203;
515 (d) kidnapping[;] under Section 76-5-301;
516 (e) child kidnapping[;] under Section 76-5-301.1;
517 (f) aggravated kidnapping[;] under Section 76-5-302;
518 (g) rape[;] under Section 76-5-402;
519 (h) rape of a child[;] under Section 76-5-402.1;
520 (i) object rape[;] under Section 76-5-402.2;
521 [~~(j)~~] ~~object rape of a child, Section 76-5-402.3;~~
522 [~~(k)~~] (j) forcible sodomy[;] under Section 76-5-403;
523 [~~(l)~~] ~~sodomy on a child, Section 76-5-403.1;~~
524 [~~(m)~~] (k) aggravated sexual abuse of a child[;] under Section 76-5-404.3;
525 [~~(n)~~] (l) aggravated sexual assault[;] under Section 76-5-405;
526 [~~(o)~~] (m) aggravated arson[;] under Section 76-6-103;
527 [~~(p)~~] (n) aggravated burglary[;] under Section 76-6-203; and
528 [~~(q)~~] (o) aggravated robbery[;] under Section 76-6-302.

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

(a) the offense for which the ~~[person]~~ individual is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping~~;~~ under Section 76-5-301.1; or

(iii) aggravated kidnapping~~;~~ under Section 76-5-302; and

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

Section 8. Section **76-3-406** is amended to read:

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

(1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, except as provided in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

(a) ~~[Section 76-5-202,]~~ aggravated murder under Section 76-5-202;

(b) ~~[Section 76-5-203,]~~ murder under Section 76-5-203;

(c) ~~[Section 76-5-301.1, child kidnaping]~~ child kidnapping under Section 76-5-301.1;

(d) ~~[Section 76-5-302, aggravated kidnaping]~~ aggravated kidnapping under Section 76-5-302;

(e) ~~[Section 76-5-402, rape,]~~ rape under Section 76-5-402, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);

(f) ~~[Section 76-5-402.1,]~~ rape of a child under Section 76-5-402.1;

(g) ~~[Section 76-5-402.2, object rape,]~~ object rape under Section 76-5-402.2, if the individual is sentenced under Subsection 76-5-402.2(3)(b), (3)(c), or (4);

~~[(h) Section 76-5-402.3, object rape of a child,]~~

~~[(i)]~~ (h) [Section 76-5-403,] forcible sodomy under Section 76-5-403, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);

~~[(j)] Section 76-5-403.1, sodomy on a child;~~

~~[(k)] (i)~~ ~~[Section 76-5-404,]~~ forcible sexual abuse~~;~~ under Section 76-5-404, if the individual is sentenced under Subsection 76-5-404(3)(b)(i) or (ii);

~~[(h)] (j)~~ ~~[Section 76-5-404.3,]~~ aggravated sexual abuse of a child under Section 76-5-404.3;

~~[(m)] (k)~~ ~~[Section 76-5-405,]~~ aggravated sexual assault under Section 76-5-405; or

~~[(n)] (l)~~ ~~[any]~~ an attempt to commit [a felony listed in Subsection (1)(f), (h), or (j)] rape of a child under Section 76-5-402.1.

(2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the ~~[defendant]~~ individual:

(a) was under 18 years old at the time of the offense; and

(b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Section 9. Section **76-4-102** is amended to read:

76-4-102. Attempt -- Classification of offenses.

(1) Criminal attempt to commit:

(a) (i) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(ii) except as provided in Subsection (2), an attempt to commit aggravated murder~~;~~ under Section 76-5-202, which results in serious bodily injury, is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life;

(b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony;

(c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

(i) murder~~;~~ under Subsection 76-5-203(2)(a);

(ii) child kidnapping~~;~~ under Section 76-5-301.1; or

(iii) except as provided in Subsection (1)(d), ~~[any of the felonies]~~ a felony described in Title 76, Chapter 5, Part 4, Sexual Offenses, that ~~[are first degree felonies]~~ is a first degree felony;

(d) except as provided in Subsection (3), ~~[any of the following offenses]~~ rape of a child under Section 76-5-402.1 is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for life[.];

~~[(i) rape of a child, Section 76-5-402.1;]~~

~~[(ii) object rape of a child, Section 76-5-402.3; or]~~

~~[(iii) sodomy on a child, Section 76-5-403.1;]~~

(e) a second degree felony is a third degree felony;

(f) a third degree felony is a class A misdemeanor;

(g) a class A misdemeanor is a class B misdemeanor;

(h) a class B misdemeanor is a class C misdemeanor; and

(i) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

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

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

(3) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser term than the term described in Subsection (1)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

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

(b) six years and which may be for life; or

(c) three years and which may be for life.

Section 10. Section **76-4-204** is amended to read:

76-4-204. Criminal solicitation -- Penalties.

(1) Criminal solicitation to commit:

(a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second

622 degree felony;

623 (c) any of the following offenses is a first degree felony punishable by imprisonment

624 for an indeterminate term of not fewer than three years and which may be for life:

625 (i) murder[;] under Subsection 76-5-203(2)(a);

626 (ii) child kidnapping[;] under Section 76-5-301.1; or

627 (iii) except as provided in Subsection (1)(d), [~~any of the felonies~~] a felony described in

628 Title 76, Chapter 5, Part 4, Sexual Offenses, that [~~are first degree felonies~~] is a first degree

629 felony;

630 (d) except as provided in Subsection (2), [~~any of the following offenses~~] rape of a child

631 under Section 76-5-402.1 is a first degree felony, punishable by a term of imprisonment of not

632 less than 15 years and which may be for life[;];

633 [~~(i) rape of a child, Section 76-5-402.1;~~]

634 [~~(ii) object rape of a child, Section 76-5-402.3; or~~]

635 [~~(iii) sodomy on a child, Section 76-5-403.1;~~]

636 (e) a second degree felony is a third degree felony; and

637 (f) a third degree felony is a class A misdemeanor.

638 (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser

639 term than the term described in Subsection (1)(d) is in the interests of justice and states the

640 reasons for this finding on the record, the court may impose a term of imprisonment of not less

641 than:

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

643 (b) six years and which may be for life; or

644 (c) three years and which may be for life.

645 Section 11. Section **76-4-401** is amended to read:

646 **76-4-401. Enticing a minor -- Elements -- Penalties.**

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

648 (i) "Minor" means an individual who is under 18 years old.

649 (ii) "Electronic communication" means the same as that term is defined in Section

650 76-9-201.

651 (iii) "Electronic communication device" means the same as that term is defined in

652 Section 76-9-201.

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

(2) An actor commits enticement of a minor if the actor knowingly:

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

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

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

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

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

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is employed by a law enforcement agency was involved in the detection or investigation of the offense.

(4) Enticement of a minor under Subsection (2) is punishable as follows:

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

(i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

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

(c) enticement to engage in sexual activity that would be a third degree felony for the actor is a class A misdemeanor;

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

the actor is a class B misdemeanor; and

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

(5) (a) When an actor who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

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

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

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) ~~[Section 76-4-401,]~~ enticing a minor under Section 76-4-401;

(ii) ~~[Section 76-5-301.1,]~~ child kidnapping under Section 76-5-301.1;

(iii) ~~[Section 76-5-402,]~~ rape under Section 76-5-402;

(iv) ~~[Section 76-5-402.1,]~~ rape of a child under Section 76-5-402.1;

(v) ~~[Section 76-5-402.2,]~~ object rape under Section 76-5-402.2;

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

~~[(vii)]~~ (vi) ~~[Section 76-5-403,]~~ forcible sodomy under Section 76-5-403;

~~[(viii) Section 76-5-403.1, sodomy on a child,]~~

~~[(ix)]~~ (vii) ~~[Section 76-5-404,]~~ forcible sexual abuse under Section 76-5-404;

~~[(x)]~~ (viii) ~~[Section 76-5-404.1, sexual abuse of a child and Section 76-5-404.3,]~~ sexual abuse of a child under Section 76-5-404.1;

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

~~[(xi)]~~ (x) ~~[Section 76-5-405,]~~ aggravated sexual assault under Section 76-5-405;

~~[(xii)]~~ (xi) ~~[Section 76-5-308.5,]~~ human trafficking of a child under Section 76-5-308.5;

~~[(xiii)]~~ (xii) ~~[any]~~ an offense in ~~[any other]~~ another state or federal jurisdiction that constitutes or would constitute a crime in Subsections (5)(b)(i) through ~~[(xii);]~~ (xi); or

~~[(xiv)]~~ (xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through ~~[(xiii)]~~ (xii).

Section 12. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder -- Penalties -- Affirmative defense and special mitigation -- Separate offense.

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

(i) "Correctional officer" means the same as that term is defined in Section 53-13-104.

(ii) "Emergency responder" means the same as that term is defined in Section 53-2b-102.

(iii) "Federal officer" means the same as that term is defined in Section 53-13-106.

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

(v) "Peace officer" means:

(A) a correctional officer, federal officer, law enforcement officer, or special function officer; or

(B) any other person who may exercise peace officer authority in accordance with Title 53, Chapter 13, Peace Officer Classifications.

(vi) "Special function officer" means the same as that term is defined in Section 53-13-105.

(vii) "Target a law enforcement officer" means an act:

(A) involving the unlawful use of force and violence against a law enforcement officer;

(B) that causes serious bodily injury or death; and

(C) that is in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.

(viii) "Weapon of mass destruction" means the same as that term is defined in Section 76-10-401.

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

(2) (a) An actor commits aggravated murder if the actor intentionally or knowingly causes the death of another individual under any of the following circumstances:

(i) the actor committed homicide while confined in a jail or other correctional institution;

(ii) (A) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more individuals other than the actor were killed; or

(B) the actor, during commission of the homicide, attempted to kill one or more other individuals in addition to the deceased individual;

(iii) the actor knowingly created a great risk of death to another individual other than the deceased individual and the actor;

(iv) the actor committed homicide incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated child abuse as described in Subsection 76-5-109.2(3)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(v) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as described in Subsection 76-9-704(2)(e);

(vi) the actor committed homicide for the purpose of avoiding or preventing an arrest of the actor or another individual by a peace officer acting under color of legal authority or for the purpose of effecting the actor's or another individual's escape from lawful custody;

(vii) the actor committed homicide for pecuniary gain;

(viii) the actor committed, engaged, or employed another person to commit the homicide subject to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(ix) the actor previously committed or was convicted of:

(A) aggravated murder under this section;

(B) attempted aggravated murder under this section;

(C) murder[;] under Section 76-5-203;

(D) attempted murder[;] under Section 76-5-203; or

(E) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(ix);

(x) the actor was previously convicted of:

(A) aggravated assault[;] under Section 76-5-103;

(B) mayhem[;] under Section 76-5-105;

- (C) kidnapping[;] under Section 76-5-301;
 (D) child kidnapping[;] under Section 76-5-301.1;
 (E) aggravated kidnapping[;] under Section 76-5-302;
 (F) rape[;] under Section 76-5-402;
 (G) rape of a child[;] under Section 76-5-402.1;
 (H) object rape[;] under Section 76-5-402.2;
~~[(H)] object rape of a child, under Section 76-5-402.3;~~
~~[(H)]~~ (I) forcible sodomy[;] under Section 76-5-403;
~~[(K)] sodomy on a child, under Section 76-5-403.1;~~
~~[(L)]~~ (J) aggravated sexual abuse of a child[;] under Section 76-5-404.3;
~~[(M)]~~ (K) aggravated sexual assault[;] under Section 76-5-405;
~~[(N)]~~ (L) aggravated arson[;] under Section 76-6-103;
~~[(O)]~~ (M) aggravated burglary[;] under Section 76-6-203;
~~[(P)]~~ (N) aggravated robbery[;] under Section 76-6-302;
~~[(Q)]~~ (O) felony discharge of a firearm[;] under Section 76-10-508.1; or
~~[(R)]~~ (P) an offense committed in another jurisdiction which if committed in this state
 would be a violation of a crime listed in this Subsection (2)(a)(x);
 (xi) the actor committed homicide for the purpose of:
 (A) preventing a witness from testifying;
 (B) preventing a person from providing evidence or participating in any legal
 proceedings or official investigation;
 (C) retaliating against a person for testifying, providing evidence, or participating in
 any legal proceedings or official investigation; or
 (D) disrupting or hindering any lawful governmental function or enforcement of laws;
 (xii) the deceased individual was a local, state, or federal public official, or a candidate
 for public office, and the homicide is based on, is caused by, or is related to that official
 position, act, capacity, or candidacy;
 (xiii) the deceased individual was on duty in a verified position or the homicide is
 based on, is caused by, or is related to the deceased individual's position, and the actor knew, or
 reasonably should have known, that the deceased individual holds or has held the position of:
 (A) a peace officer;

- 808 (B) an executive officer, prosecuting officer, jailer, or prison official;
- 809 (C) a firefighter, search and rescue personnel, emergency medical personnel,
- 810 ambulance personnel, or any other emergency responder;
- 811 (D) a judge or other court official, juror, probation officer, or parole officer; or
- 812 (E) a security officer contracted to secure, guard, or otherwise protect tangible personal
- 813 property, real property, or the life and well-being of human or animal life in the area of the
- 814 offense;
- 815 (xiv) the actor committed homicide:
- 816 (A) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 817 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 818 structure, or was mailed or delivered;
- 819 (B) by means of any weapon of mass destruction; or
- 820 (C) to target a law enforcement officer;
- 821 (xv) the actor committed homicide during the act of unlawfully assuming control of an
- 822 aircraft, train, or other public conveyance by use of threats or force with intent to:
- 823 (A) obtain any valuable consideration for the release of the public conveyance or any
- 824 passenger, crew member, or any other person aboard;
- 825 (B) direct the route or movement of the public conveyance; or
- 826 (C) otherwise exert control over the public conveyance;
- 827 (xvi) the actor committed homicide by means of the administration of a poison or of
- 828 any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 829 (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or
- 830 for ransom;
- 831 (xviii) the actor committed homicide in an especially heinous, atrocious, cruel, or
- 832 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
- 833 physical abuse, or serious bodily injury of the deceased individual before death;
- 834 (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body,
- 835 whether before or after death, in a manner demonstrating the actor's depravity of mind; or
- 836 (xx) the deceased individual, at the time of the death of the deceased individual:
- 837 (A) was younger than 14 years old; and
- 838 (B) was not an unborn child.

(b) An actor commits aggravated murder if the actor, with reckless indifference to human life, causes the death of another individual incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

- (i) aggravated child abuse, punishable as a felony of the second degree under Subsection 76-5-109.2(3)(a);
- (ii) child kidnapping[;] under Section 76-5-301.1;
- (iii) rape of a child[;] under Section 76-5-402.1; or
- ~~[(iv) object rape of a child, under Section 76-5-402.3;]~~
- ~~[(v) sodomy on a child, under Section 76-5-403.1; or]~~
- ~~[(vi)]~~ (iv) sexual abuse or aggravated sexual abuse of a child[;] under Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, a violation of Subsection (2) is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty.

(ii) The notice shall be served on the defendant or defense counsel and filed with the court.

(iii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(e) If the defendant was younger than 18 years old at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section,

are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:

(i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or

(ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.

(4) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the actor caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:

(i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or

(ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.

(5) (a) Any aggravating circumstance described in Subsection (2) that constitutes a separate offense does not merge with the crime of aggravated murder.

(b) An actor who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 13. Section **76-5-203** is amended to read:

76-5-203. Murder -- Penalties -- Affirmative defense and special mitigation -- Separate offenses.

- 901 (1) (a) As used in this section, "predicate offense" means:
- 902 (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- 903 (ii) aggravated child abuse~~[;]~~ under Subsection 76-5-109.2(3)(a), when the abused
- 904 individual is younger than 18 years old;
- 905 (iii) kidnapping under Section 76-5-301;
- 906 (iv) child kidnapping under Section 76-5-301.1;
- 907 (v) aggravated kidnapping under Section 76-5-302;
- 908 (vi) rape under Section 76-5-402;
- 909 (vii) rape of a child under Section 76-5-402.1;
- 910 (viii) object rape under Section 76-5-402.2;
- 911 ~~[(ix) object rape of a child under Section 76-5-402.3;]~~
- 912 ~~[(x)]~~ (ix) forcible sodomy under Section 76-5-403;
- 913 ~~[(xi) sodomy upon a child under Section 76-5-403.1;]~~
- 914 ~~[(xii)]~~ (x) forcible sexual abuse under Section 76-5-404;
- 915 ~~[(xiii)]~~ (xi) sexual abuse of a child under Section 76-5-404.1;
- 916 ~~[(xiv)]~~ (xii) aggravated sexual abuse of a child under Section 76-5-404.3;
- 917 ~~[(xv)]~~ (xiii) aggravated sexual assault under Section 76-5-405;
- 918 ~~[(xvi)]~~ (xiv) arson under Section 76-6-102;
- 919 ~~[(xvii)]~~ (xv) aggravated arson under Section 76-6-103;
- 920 ~~[(xviii)]~~ (xvi) burglary under Section 76-6-202;
- 921 ~~[(xix)]~~ (xvii) aggravated burglary under Section 76-6-203;
- 922 ~~[(xx)]~~ (xviii) robbery under Section 76-6-301;
- 923 ~~[(xxi)]~~ (xix) aggravated robbery under Section 76-6-302;
- 924 ~~[(xxii)]~~ (xx) escape or aggravated escape under Section 76-8-309; or
- 925 ~~[(xxiii)]~~ (xxi) a felony violation of Section 76-10-508 or 76-10-508.1 regarding
- 926 discharge of a firearm or dangerous weapon.
- 927 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 928 (2) An actor commits murder if:
- 929 (a) the actor intentionally or knowingly causes the death of another individual;
- 930 (b) intending to cause serious bodily injury to another individual, the actor commits an
- 931 act clearly dangerous to human life that causes the death of the other individual;

(c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct that creates a grave risk of death to another individual and thereby causes the death of the other individual;

(d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;

(ii) an individual other than a party described in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and

(iii) the actor acted with the intent required as an element of the predicate offense;

(e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:

(i) an assault against a peace officer under Section 76-5-102.4;

(ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against the peace officer; or

(iii) an assault against a military service member in uniform under Section 76-5-102.4;

or

(f) the actor commits a homicide that would be aggravated murder, but the offense is reduced in accordance with Subsection 76-5-202(4).

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

(ii) A defendant who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:

(i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or

(ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment of

conviction for attempted manslaughter.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another individual or attempted to cause the death of another individual under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:

(i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or

(ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.

(5) (a) Any predicate offense that constitutes a separate offense does not merge with the crime of murder.

(b) An actor who is convicted of murder, based on a predicate offense that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 14. Section **76-5-310** is amended to read:

76-5-310. Aggravated human trafficking -- Penalties.

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

(2) An actor commits aggravated human trafficking for labor or sexual exploitation if, in the course of committing an offense under Section 76-5-308 or 76-5-308.1, the offense:

(a) results in the death of a trafficked individual;

(b) results in serious bodily injury of a trafficked individual;

(c) involves:

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

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

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

994 ~~[(iv) object rape of a child under Section 76-5-402.3;]~~

995 ~~[(v)]~~ (iv) forcible sodomy under Section 76-5-403;

996 ~~[(vi) sodomy on a child under Section 76-5-403.1;]~~

997 ~~[(vii)]~~ (v) aggravated sexual abuse of a child under Section 76-5-404.3; or

998 ~~[(viii)]~~ (vi) aggravated sexual assault under Section 76-5-405;

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

1000 (e) involves an individual trafficked for longer than 30 consecutive days.

1001 (3) A violation of Subsection (2) is a first degree felony.

1002 (4) Aggravated human trafficking is a separate offense from any other crime committed
1003 in relationship to the commission of the offense.

1004 Section 15. Section **76-5-310.1** is amended to read:

1005 **76-5-310.1. Aggravated human smuggling -- Penalties.**

1006 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

1007 (2) An actor commits aggravated human smuggling if, in the course of committing an
1008 offense under Section 76-5-308.3, the offense:

1009 (a) results in the death of a smuggled individual;

1010 (b) results in serious bodily injury to a smuggled individual;

1011 (c) involves the smuggling of a child and the child is not accompanied by a family
1012 member who is 18 years old or older;

1013 (d) involves:

1014 (i) rape under Section 76-5-402;

1015 (ii) rape of a child under Section 76-5-402.1;

1016 (iii) object rape under Section 76-5-402.2;

1017 ~~[(iv) object rape of a child under Section 76-5-402.3;]~~

1018 ~~[(v)]~~ (iv) forcible sodomy under Section 76-5-403;

1019 ~~[(vi) sodomy on a child under Section 76-5-403.1;]~~

1020 ~~[(vii)]~~ (v) aggravated sexual abuse of a child under Section 76-5-404.1; or

1021 ~~[(viii)]~~ (vi) aggravated sexual assault under Section 76-5-405; or

1022 (e) involves the smuggling of 10 or more individuals.

1023 (3) A violation of Subsection (2) is a first degree felony.

1024 (4) Aggravated human smuggling is a separate offense from any other crime committed

1025 in relationship to the offense.

1026 Section 16. Section **76-5-401.3** is amended to read:

1027 **76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.**

1028 (1) (a) As used in this section, "adolescent" means an individual in the transitional
1029 phase of human physical and psychological growth and development between childhood and
1030 adulthood who is 12 years old or older, but younger than 18 years old.

1031 (b) Terms defined in Section 76-1-101.5 apply to this section.

1032 (2) Under circumstances not amounting to an offense listed in Subsection (4), an actor
1033 commits unlawful sexual activity if the actor:

1034 (a) is an adolescent; and

1035 (b) has sexual activity with another adolescent.

1036 (3) A violation of Subsection (2) is a:

1037 (a) third degree felony if an actor who is 17 years old engages in unlawful adolescent
1038 sexual activity with an adolescent who is 12 or 13 years old;

1039 (b) third degree felony if an actor who is 16 years old engages in unlawful adolescent
1040 sexual activity with an adolescent who is 12 years old;

1041 (c) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent
1042 sexual activity with an adolescent who is 13 years old;

1043 (d) class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful
1044 adolescent sexual activity with an adolescent who is 12 years old;

1045 (e) class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent
1046 sexual activity with an adolescent who is 14 years old;

1047 (f) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent
1048 sexual activity with an adolescent who is 13 years old;

1049 (g) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful
1050 adolescent sexual activity with an adolescent who is 12 or 13 years old; and

1051 (h) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent
1052 sexual activity with an adolescent who is 13 years old.

1053 (4) The offenses referred to in Subsection (2) are:

1054 (a) rape~~[, in violation of]~~ under Section 76-5-402;

1055 (b) rape of a child~~[, in violation of]~~ under Section 76-5-402.1;

(c) object rape~~[, in violation of]~~ under Section 76-5-402.2;
~~[(d) object rape of a child, in violation of Section 76-5-402.3;]~~
~~[(e) (d) forcible sodomy[, in violation of]~~ under Section 76-5-403;
~~[(f) sodomy on a child, in violation of Section 76-5-403.1;]~~
~~[(g) (e) sexual abuse of a child[, in violation of]~~ under Section 76-5-404;
~~[(h) (f) aggravated sexual assault[, in violation of]~~ under Section 76-5-405;
~~[(i) (g) incest[, in violation of]~~ under Section 76-7-102; or
~~[(j) (h) an attempt to commit [any] an~~ an offense listed in Subsections (4)(a) through
~~[(4)(i)] (4)(g).~~

(5) An offense under this section is not eligible for a nonjudicial adjustment under Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.

(6) Except for an offense that is transferred to a district court by the juvenile court in accordance with Section 80-6-504, the district court may enter any sentence or combination of sentences that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.

(7) An offense under this section is not subject to registration under Subsection 77-41-102(18).

Section 17. Section **76-5-402.1** is amended to read:

76-5-402.1. Rape of a child -- Penalties.

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

(i) "Child" means an individual who is younger than 14 years old.

(ii) (A) "Sexual intercourse" means any penetration, however slight, of:

(I) the genitals or anus of an individual by another individual using any body part, object, or substance; or

(II) the mouth of an individual by another individual's genitals.

(B) "Sexual intercourse" does not include the penetration of an individual's genitals or anus if the penetration is solely for legitimate medical diagnosis or medical treatment.

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

(2) ~~[(a)]~~ An actor commits rape of a child if the actor has sexual intercourse with ~~[an individual who is younger than 14 years old]~~ a child.

~~[(b) Any touching, however slight, is sufficient to constitute the relevant element of a~~

1087 ~~violation of Subsection (2)(a).]~~

1088 (3) A violation of Subsection (2) is a first degree felony punishable by a term of
1089 imprisonment of:

1090 (a) except as provided in Subsections (3)(b) and (5), not less than 25 years and which
1091 may be for life; or

1092 (b) life without parole, if the trier of fact finds that:

1093 (i) during the course of the commission of the rape of a child, the [defendant] actor
1094 caused serious bodily injury to the victim; or

1095 (ii) at the time of the commission of the rape of a child the [defendant] actor was
1096 previously convicted of a grievous sexual offense.

1097 (4) Subsection (3)(b) does not apply if the [defendant] actor was younger than 18 years
1098 old at the time of the offense.

1099 (5) (a) When imposing a sentence under Subsections (3)(a) and (5)(b), a court may
1100 impose a term of imprisonment under Subsection (5)(b) if:

1101 (i) [it] the violation is a first time offense for the [defendant] actor under this section;

1102 (ii) the [defendant] actor was younger than 21 years old at the time of the offense; and

1103 (iii) the court finds that a lesser term than the term described in Subsection (3)(a) is in
1104 the interests of justice under the facts and circumstances of the case, including the age of the
1105 victim, and states the reasons for this finding on the record.

1106 (b) If the conditions of Subsection (5)(a) are met, the court may impose a term of
1107 imprisonment of not less than:

1108 (i) 15 years and which may be for life;

1109 (ii) 10 years and which may be for life; or

1110 (iii) six years and which may be for life.

1111 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

1112 Section 18. Section ~~76-5-404.1~~ is amended to read:

1113 **76-5-404.1. Sexual abuse of a child -- Penalties -- Limitations.**

1114 (1) (a) As used in this section:

1115 (i) "Adult" means an individual 18 years old or older.

1116 (ii) "Child" means an individual younger than 14 years old.

1117 (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

- 1118 (iv) "Position of special trust" means:
- 1119 (A) an adoptive parent;
- 1120 (B) an athletic manager who is an adult;
- 1121 (C) an aunt;
- 1122 (D) a babysitter;
- 1123 (E) a coach;
- 1124 (F) a cohabitant of a parent if the cohabitant is an adult;
- 1125 (G) a counselor;
- 1126 (H) a doctor or physician;
- 1127 (I) an employer;
- 1128 (J) a foster parent;
- 1129 (K) a grandparent;
- 1130 (L) a legal guardian;
- 1131 (M) a natural parent;
- 1132 (N) a recreational leader who is an adult;
- 1133 (O) a religious leader;
- 1134 (P) a sibling or a stepsibling who is an adult;
- 1135 (Q) a scout leader who is an adult;
- 1136 (R) a stepparent;
- 1137 (S) a teacher or any other individual employed by or volunteering at a public or private
- 1138 elementary school or secondary school, and who is 18 years old or older;
- 1139 (T) an instructor, professor, or teaching assistant at a public or private institution of
- 1140 higher education;
- 1141 (U) an uncle;
- 1142 (V) a youth leader who is an adult; or
- 1143 (W) any individual in a position of authority, other than those individuals listed in
- 1144 Subsections (1)(a)(iv)(A) through (V), which enables the individual to exercise undue
- 1145 influence over the child.
- 1146 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1147 (2) (a) Under circumstances not amounting to ~~[an offense listed in Subsection (4)]~~ rape
- 1148 of a child under Section 76-5-402.1, or attempted rape of a child, an actor commits sexual

1149 abuse of a child if the actor:

1150 (i) (A) touches the anus, buttocks, pubic area, or genitalia of any child;

1151 (B) touches the breast of a female child; or

1152 (C) otherwise takes indecent liberties with a child; and

1153 (ii) the actor's conduct is with intent to:

1154 (A) cause substantial emotional or bodily pain to any individual; or

1155 (B) to arouse or gratify the sexual desire of any individual.

1156 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the

1157 relevant element of a violation of Subsection (2)(a).

1158 (3) A violation of Subsection (2) is a second degree felony.

1159 ~~[(4) The offenses referred to in Subsection (2)(a) are:]~~

1160 ~~[(a) rape of a child, in violation of Section 76-5-402.1;]~~

1161 ~~[(b) object rape of a child, in violation of Section 76-5-402.3;]~~

1162 ~~[(c) sodomy on a child, in violation of Section 76-5-403.1; or]~~

1163 ~~[(d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).]~~

1164 ~~[(5)]~~ (4) Imprisonment under this section is mandatory in accordance with Section

1165 76-3-406.

1166 Section 19. Section ~~76-5-406.3~~ is amended to read:

1167 **76-5-406.3. Applicability of sentencing provisions.**

1168 ~~[A person]~~ An actor convicted of a violation of child kidnapping under Section

1169 76-5-301.1, ~~[child kidnapping;]~~ aggravated kidnapping under Section 76-5-302, ~~[aggravated~~

1170 ~~kidnaping;]~~ rape of a child under Section 76-5-402.1, ~~[rape of a child; Section 76-5-402.3;~~

1171 ~~object rape of a child; Section 76-5-403.1, sodomy on a child;]~~ aggravated sexual abuse of a

1172 child under Section 76-5-404.3, ~~[aggravated sexual abuse of a child;]~~ or aggravated sexual

1173 assault under Section 76-5-405, ~~[aggravated sexual assault]~~ shall be sentenced as follows:

1174 (1) If the ~~[person]~~ actor is sentenced prior to April 29, 1996, ~~[he]~~ the actor shall be

1175 sentenced in accordance with the statutory provisions in effect prior to that date.

1176 (2) If the ~~[person]~~ actor commits the crime and is sentenced on or after April 29, 1996,

1177 ~~[he]~~ the actor shall be punished in accordance with the statutory provisions in effect after April

1178 29, 1996.

1179 (3) (a) If the ~~[person]~~ actor commits the crime prior to April 29, 1996, but is sentenced

on or after April 29, 1996, ~~[he]~~ the actor shall be given the option prior to sentencing to proceed either under the law which was in effect at the time the offense was committed or the law which was in effect at the time of sentencing.

(b) If the ~~[person]~~ actor refuses to select an option under Subsection (3)(a), the court shall sentence the ~~[person]~~ actor in accordance with the law in effect at the time of sentencing.

(c) The provisions of Subsections 77-27-9(2)(a) and (b) apply to the sentence of ~~[any person]~~ an actor who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

Section 20. Section ~~76-5-406.5~~ is amended to read:

~~76-5-406.5. Circumstances required for probation or suspension of sentence for certain sex offenses against a child.~~

(1) In a case involving a conviction for ~~[a violation of] rape of a child under Section 76-5-402.1, [rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; or any attempt to commit a felony under those sections]~~ attempted rape of a child, or ~~[a conviction for a violation of]~~ aggravated sexual abuse of a child under Section 76-5-404.3, [aggravated sexual abuse of a child,] the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:

(a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;

(b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;

(c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;

(d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;

(e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;

(f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;

(g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child victim before any other person;

(h) the defendant admits the offense of which he has been convicted and has been accepted for mental health treatment in a residential sexual abuse treatment center that has been approved by the Department of Corrections under Subsection (3);

(i) rehabilitation of the defendant through treatment is probable, based upon evidence provided by a treatment professional who has been approved by the Department of Corrections under Subsection (3) and who has accepted the defendant for treatment;

(j) prior to being sentenced, the defendant has undergone a complete psychological evaluation conducted by a professional approved by the Department of Corrections and:

(i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an immediate and present danger to the community if released on probation and placed in a residential sexual abuse treatment center; and

(ii) the court accepts the opinion of the professional;

(k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian of the child victim, the defendant shall, in addition to establishing all other conditions of this section, establish it is in the child victim's best interest that the defendant not be imprisoned, by presenting evidence provided by a treatment professional who:

(i) is treating the child victim and understands he will be treating the family as a whole; or

(ii) has assessed the child victim for purposes of treatment as ordered by the court based on a showing of good cause; and

(l) if probation is imposed, the defendant, as a condition of probation, may not reside in a home where children younger than 18 years old reside for at least one year beginning with the commencement of treatment, and may not again take up residency in a home where children

younger than 18 years old reside during the period of probation until allowed to do so by order of the court.

(2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of 10 years.

(3) (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.

(b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.

(4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:

(a) the nature, frequency, and duration of the conduct;

(b) the effects of the conduct on any child victim involved;

(c) the best interest of the public and any child victim; and

(d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.

(5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.

(6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.

(7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.

(8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in

Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

Section 21. Section **76-5-412** is amended to read:

76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.

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

(i) "Actor" means:

(A) a law enforcement officer, as defined in Section 53-13-103;

(B) a correctional officer, as defined in Section 53-13-104;

(C) a special function officer, as defined in Section 53-13-105; or

(D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:

(A) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 26B-5-302 or other medical facility;

(B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(C) under lawful or unlawful arrest, either with or without a warrant.

(iv) "Private provider or contractor" means a person that contracts or enters into a memorandum of understanding with a governmental or private entity to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

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

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and

1304 (ii) (A) the actor knows that the individual is a person in custody; or
1305 (B) a reasonable person in the actor's position should have known under the
1306 circumstances that the individual was a person in custody.

1307 (b) Acts referred to in Subsection (2)(a) are:
1308 (i) having sexual intercourse with a person in custody;
1309 (ii) engaging in a sexual act with a person in custody involving the genitals of one
1310 individual and the mouth or anus of another individual; or
1311 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
1312 person in custody by any foreign object, substance, instrument, or device, including a part of
1313 the human body; and
1314 (B) intending to cause substantial emotional or bodily pain to any individual.

1315 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
1316 relevant element of a violation of Subsection (2)(a).

1317 (3) (a) A violation of Subsection (2) is a third degree felony.
1318 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18
1319 years old, a violation of Subsection (2) is a second degree felony.

1320 (c) If the act committed under Subsection (3) amounts to an offense subject to a greater
1321 penalty under another provision of state law than is provided under this Subsection (3), this
1322 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

1323 (4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i)
1324 are:

1325 (a) [~~Section 76-5-401,~~] unlawful sexual activity with a minor under Section 76-5-401;
1326 (b) [~~Section 76-5-402,~~] rape under Section 76-5-402;
1327 (c) [~~Section 76-5-402.1,~~] rape of a child under Section 76-5-402.1;
1328 (d) [~~Section 76-5-402.2,~~] object rape under Section 76-5-402.2;
1329 [~~(e) Section 76-5-402.3, object rape of a child,~~]
1330 [~~(f) (e) [Section 76-5-403,~~] forcible sodomy under Section 76-5-403;
1331 [~~(g) Section 76-5-403.1, sodomy on a child,~~]
1332 [~~(h) (f) [Section 76-5-404,~~] forcible sexual abuse under Section 76-5-404;
1333 [~~(i) (g) [Section 76-5-404.1,~~] sexual abuse of a child under Section 76-5-404.1, or
1334 [~~Section 76-5-404.3,~~] aggravated sexual abuse of a child under Section 76-5-404.3; or

1335 ~~[(f)]~~ (h) ~~[Section 76-5-405,]~~ aggravated sexual assault under Section 76-5-405.

1336 (5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of
1337 custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years
1338 old, that the actor:

1339 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
1340 the alleged offense; or

1341 (ii) was unaware of the true age of the person in custody.

1342 (b) Consent of the person in custody is not a defense to any violation or attempted
1343 violation of Subsection (2).

1344 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
1345 result of compulsion, as the defense is described in Subsection 76-2-302(1).

1346 Section 22. Section **76-5-413** is amended to read:

1347 **76-5-413. Custodial sexual relations with youth receiving state services --**
1348 **Penalties -- Defenses and limitations.**

1349 (1) (a) As used in this section:

1350 (i) "Actor" means:

1351 (A) an individual employed by the Department of Health and Human Services created
1352 in Section 26B-1-201, or an employee of a private provider or contractor; or

1353 (B) an individual employed by the juvenile court of the state, or an employee of a
1354 private provider or contractor.

1355 (ii) "Department" means the Department of Health and Human Services created in
1356 Section 26B-1-201.

1357 (iii) "Juvenile court" means the juvenile court of the state created in Section
1358 78A-6-102.

1359 (iv) "Private provider or contractor" means a person that contracts with the:

1360 (A) department to provide services or functions that are part of the operation of the
1361 department; or

1362 (B) juvenile court to provide services or functions that are part of the operation of the
1363 juvenile court.

1364 (v) "Youth receiving state services" means an individual:

1365 (A) younger than 18 years old, except as provided under Subsection (1)(a)(v)(B), who

1366 is:

1367 (I) in the custody of the department under Section 80-6-703; or

1368 (II) receiving services from any division of the department if any portion of the costs of
1369 these services is covered by public money; or

1370 (B) younger than 21 years old:

1371 (I) who is in the custody of the Division of Juvenile Justice Services, or the Division of
1372 Child and Family Services; or

1373 (II) whose case is under the jurisdiction of the juvenile court.

1374 (b) Terms defined in Section 76-1-101.5 apply to this section.

1375 (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an
1376 actor commits custodial sexual relations with a youth receiving state services if:

1377 (i) the actor commits any of the acts described in Subsection (2)(b); and

1378 (ii) (A) the actor knows that the individual is a youth receiving state services; or

1379 (B) a reasonable person in the actor's position should have known under the
1380 circumstances that the individual was a youth receiving state services.

1381 (b) Acts referred to in Subsection (2)(a)(i) are:

1382 (i) having sexual intercourse with a youth receiving state services;

1383 (ii) engaging in any sexual act with a youth receiving state services involving the
1384 genitals of one individual and the mouth or anus of another individual; or

1385 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
1386 youth receiving state services by any foreign object, substance, instrument, or device, including
1387 a part of the human body; and

1388 (B) with the intent to cause substantial emotional or bodily pain to any individual or
1389 with the intent to arouse or gratify the sexual desire of any individual.

1390 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
1391 relevant element of a violation of Subsection (2)(a).

1392 (3) (a) A violation of Subsection (2) is a third degree felony.

1393 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
1394 than 18 years old, a violation of Subsection (2) is a second degree felony.

1395 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
1396 penalty under another provision of state law than is provided under this Subsection (3), this

1397 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

1398 (4) The offenses referred to in Subsection (2) are:

1399 (a) unlawful sexual activity with a minor~~[, in violation of]~~ under Section 76-5-401;

1400 (b) rape~~[, in violation of]~~ under Section 76-5-402;

1401 (c) rape of a child~~[, in violation of]~~ under Section 76-5-402.1;

1402 (d) object rape~~[, in violation of]~~ under Section 76-5-402.2;

1403 ~~[(e) object rape of a child, in violation of Section 76-5-402.3;]~~

1404 ~~[(f)]~~ (e) forcible sodomy~~[, in violation of]~~ under Section 76-5-403;

1405 ~~[(g) sodomy on a child, in violation of Section 76-5-403.1;]~~

1406 ~~[(h)]~~ (f) forcible sexual abuse~~[, in violation of]~~ under Section 76-5-404;

1407 ~~[(i)]~~ (g) sexual abuse of a child~~[, in violation of]~~ under Section 76-5-404.1;

1408 ~~[(j)]~~ (h) aggravated sexual abuse of a child~~[, in violation of]~~ under Section 76-5-404.3;

1409 ~~[(k)]~~ (i) aggravated sexual assault~~[, in violation of]~~ under Section 76-5-405; or

1410 ~~[(l)]~~ (j) an attempt to commit an offense listed in Subsections (4)(a) through ~~[(4)(k)]~~.

1411 (4)(i).

1412 (5) (a) It is not a defense to the commission of, or an attempt to commit, the offense

1413 described in Subsection (2) if the youth receiving state services is younger than 18 years old,

1414 that the actor:

1415 (i) mistakenly believed the youth receiving state services to be 18 years old or older at

1416 the time of the alleged offense; or

1417 (ii) was unaware of the true age of the youth receiving state services.

1418 (b) Consent of the youth receiving state services is not a defense to any violation or

1419 attempted violation of Subsection (2).

1420 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the

1421 result of compulsion, as the defense is described in Subsection 76-2-302(1).

1422 Section 23. Section **76-5-413.2** is amended to read:

1423 **76-5-413.2. Custodial sexual misconduct with a youth receiving state services --**

1424 **Penalties -- Defenses and limitations.**

1425 (1) (a) As used in this section:

1426 (i) "Actor" means the same as that term is defined in Section 76-5-413.

1427 (ii) "Department" means the same as that term is defined in Section 76-5-413.

1428 (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

1429 (iv) "Juvenile court" means the same as that term is defined in Section 76-5-413.

1430 (v) "Private provider or contractor" means the same as that term is defined in Section
1431 76-5-413.

1432 (vi) "Youth receiving state services" means the same as that term is defined in Section
1433 76-5-413.

1434 (b) Terms defined in Section 76-1-101.5 apply to this section.

1435 (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an
1436 actor commits custodial sexual misconduct with a youth receiving state services if:

1437 (i) the actor commits any of the acts described in Subsection (2)(b); and

1438 (ii) (A) the actor knows that the individual is a youth receiving state services; or

1439 (B) a reasonable person in the actor's position should have known under the
1440 circumstances that the individual was a youth receiving state services.

1441 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with
1442 the intent to cause substantial emotional or bodily pain to any individual or with the intent to
1443 arouse or gratify the sexual desire of any individual:

1444 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth
1445 receiving state services;

1446 (ii) touching the breast of a female youth receiving state services; or

1447 (iii) otherwise taking indecent liberties with a youth receiving state services.

1448 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
1449 relevant element of a violation of Subsection (2)(a).

1450 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

1451 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
1452 than 18 years old, a violation of Subsection (2) is a third degree felony.

1453 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
1454 penalty under another provision of state law than is provided under this Subsection (3), this
1455 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

1456 (4) The offenses referred to in Subsection (2) are:

1457 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

1458 (b) rape, in violation of Section 76-5-402;

1459 (c) rape of a child, in violation of Section 76-5-402.1;
 1460 (d) object rape, in violation of Section 76-5-402.2;
 1461 ~~[(e) object rape of a child, in violation of Section 76-5-402.3;]~~
 1462 ~~[(f)]~~ (e) forcible sodomy, in violation of Section 76-5-403;
 1463 ~~[(g) sodomy on a child, in violation of Section 76-5-403.1;]~~
 1464 ~~[(h)]~~ (f) forcible sexual abuse, in violation of Section 76-5-404;
 1465 ~~[(i)]~~ (g) sexual abuse of a child, in violation of Section 76-5-404.1;
 1466 ~~[(j)]~~ (h) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;
 1467 ~~[(k)]~~ (i) aggravated sexual assault, in violation of Section 76-5-405; or
 1468 ~~[(l)]~~ (j) an attempt to commit an offense listed in Subsections (4)(a) through ~~[(4)(k)]~~
 1469 (4)(i).

1470 (5) (a) It is not a defense to the commission of, or an attempt to commit, the offense
 1471 described in Subsection (2) if the youth receiving state services is younger than 18 years old,
 1472 that the actor:

1473 (i) mistakenly believed the youth receiving state services to be 18 years old or older at
 1474 the time of the alleged offense; or
 1475 (ii) was unaware of the true age of the youth receiving state services.

1476 (b) Consent of the youth receiving state services is not a defense to any violation or
 1477 attempted violation of Subsection (2).

1478 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
 1479 result of compulsion, as the defense is described in Subsection 76-2-302(1).

1480 Section 24. Section **76-9-702.1** is amended to read:

1481 **76-9-702.1. Sexual battery.**

1482 (1) ~~[A person]~~ An actor is guilty of sexual battery if the ~~[person]~~ actor, under
 1483 circumstances not amounting to an offense under Subsection (2), intentionally touches, whether
 1484 or not through clothing, the anus, buttocks, or any part of the genitals of another ~~[person]~~
 1485 individual, or the breast of a female ~~[person]~~ individual, and the actor's conduct is under
 1486 circumstances the actor knows or should know will likely cause affront or alarm to the ~~[person]~~
 1487 individual touched.

1488 (2) Offenses referred to in Subsection (1) are:

1489 (a) rape~~;~~ under Section 76-5-402;

1490 (b) rape of a child[;] under Section 76-5-402.1;
 1491 (c) object rape[;] under Section 76-5-402.2;
 1492 [~~(d)~~ object rape of a child, Section 76-5-402.3;]
 1493 [~~(e)~~] (d) forcible sodomy[;] under Subsection 76-5-403(2);
 1494 [~~(f)~~ sodomy on a child, Section 76-5-403.1;]
 1495 [~~(g)~~] (e) forcible sexual abuse[;] under Section 76-5-404;
 1496 [~~(h)~~] (f) sexual abuse of a child[;] under Section 76-5-404.1;
 1497 [~~(i)~~] (g) aggravated sexual abuse of a child[;] under Section 76-5-404.3;
 1498 [~~(j)~~] (h) aggravated sexual assault[;] under Section 76-5-405; and
 1499 [~~(k)~~] (i) an attempt to commit any offense under this Subsection (2).
 1500 (3) Sexual battery is a class A misdemeanor.
 1501 (4) (a) For purposes of Subsection 77-41-102(18) only, a plea of guilty or nolo
 1502 contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a,
 1503 Pleas in Abeyance, is the equivalent of a conviction.
 1504 (b) This Subsection (4) also applies if the charge under this section has been
 1505 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
 1506 Section 25. Section **76-10-1302** is amended to read:
 1507 **76-10-1302. Prostitution.**
 1508 (1) An actor, except for a child under Section 76-10-1315, is guilty of prostitution if
 1509 the actor engages in sexual activity with another individual for a fee, or the functional
 1510 equivalent of a fee.
 1511 (2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, a violation of
 1512 Subsection (1) is a class B misdemeanor.
 1513 (b) Except as provided in Section 76-10-1309, an actor who is convicted a second time,
 1514 and on all subsequent convictions, of a subsequent offense of prostitution under this section or
 1515 under a local ordinance adopted under Section 76-10-1307, is guilty of a class A misdemeanor.
 1516 (3) A prosecutor may not prosecute an actor for a violation of Subsection (1) if the
 1517 actor engages in a violation of Subsection (1) at or near the time the actor witnesses or is a
 1518 victim of any of the following offenses, or an attempt to commit any of the following offenses,
 1519 and the actor reports the offense or attempt to law enforcement in good faith:
 1520 (a) assault[;] under Section 76-5-102;

- 1521 (b) aggravated assault[;] under Section 76-5-103;
- 1522 (c) mayhem[;] under Section 76-5-105;
- 1523 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
- 1524 homicide, or homicide by assault under Chapter 5, Part 2, Criminal Homicide;
- 1525 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
- 1526 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
- 1527 trafficking of a child under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 1528 (f) rape[;] under Section 76-5-402;
- 1529 (g) rape of a child[;] under Section 76-5-402.1;
- 1530 (h) object rape[;] under Section 76-5-402.2;
- 1531 ~~[(i) object rape of a child, Section 76-5-402.3;]~~
- 1532 ~~[(j)]~~ (i) forcible sodomy[;] under Section 76-5-403;
- 1533 ~~[(k) sodomy on a child, Section 76-5-403.1;]~~
- 1534 ~~[(l)]~~ (j) forcible sexual abuse[;] under Section 76-5-404;
- 1535 ~~[(m)]~~ (k) sexual abuse of a child[;] under Section 76-5-404.1[;];
- 1536 (l) ~~[(o)]~~ aggravated sexual abuse of a child[;] under Section 76-5-404.3;
- 1537 ~~[(n)]~~ (m) aggravated sexual assault[;] under Section 76-5-405;
- 1538 ~~[(o)]~~ (n) sexual exploitation of a minor[;] under Section 76-5b-201;
- 1539 ~~[(p)]~~ (o) aggravated sexual exploitation of a minor[;] under Section 76-5b-201.1;
- 1540 ~~[(q)]~~ (p) sexual exploitation of a vulnerable adult[;] under Section 76-5b-202;
- 1541 ~~[(r)]~~ (q) aggravated burglary or burglary of a dwelling under Chapter 6, Part 2,
- 1542 Burglary and Criminal Trespass;
- 1543 ~~[(s)]~~ (r) aggravated robbery or robbery under Chapter 6, Part 3, Robbery; or
- 1544 ~~[(t)]~~ (s) theft by extortion under Section 76-6-406 under the circumstances described in
- 1545 Subsection 76-6-406(1)(a)(i) or (ii).

1546 Section 26. Section ~~77-27-7~~ is amended to read:

1547 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**

1548 **Mental competency.**

1549 (1) The Board of Pardons and Parole shall determine within six months after the date

1550 of an offender's commitment to the custody of the Department of Corrections, for serving a

1551 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the

offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) (a) Before reaching a final decision to release ~~[any]~~ an offender under this chapter, the chair shall cause the offender to appear before the board, ~~[its]~~ the board's panel, or ~~[any]~~ an appointed hearing officer, who shall personally interview the offender to consider the offender's fitness for release and verify as far as possible information furnished from other sources.

(b) ~~[Any]~~ An offender may waive a personal appearance before the board under Subsection (2)(a).

(c) ~~[Any]~~ An offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board under Subsection (2)(a). ~~[The offender shall be promptly notified in writing of the board's decision.]~~

(d) The board shall promptly notify the offender, in writing, of the board's decision.

(3) (a) In the case of an offender convicted of ~~[violating]~~ or attempting ~~[to violate any of the provisions of]~~ to commit child kidnapping under Section 76-5-301.1, aggravated kidnapping under Subsection 76-5-302(2)(b)(vi), rape under Section 76-5-402, rape of a child under Section 76-5-402.1, object rape under Section 76-5-402.2, [76-5-402.3,] forcible sodomy under Section 76-5-403, [76-5-403.1,] forcible sexual abuse under Section 76-5-404, sexual abuse of a child under Section 76-5-404.1, aggravated sexual abuse of a child under Section 76-5-404.3, or aggravated sexual assault under Section 76-5-405, the chair may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) A parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or convicted of attempting to violate child kidnapping under Section 76-5-301.1, aggravated kidnapping under Subsection 76-5-302(2)(b)(vi), rape under Section 76-5-402, rape of a child

1583 under Section 76-5-402.1, object rape under Section 76-5-402.2, [76-5-402.3,] forcible sodomy
1584 under Section 76-5-403, [76-5-403.1,] sexual abuse of a child under Section 76-5-404.1,
1585 aggravated sexual abuse of a child under Section 76-5-404.3, or aggravated sexual assault
1586 under Section 76-5-405, and released on parole before January 1, 2019.

1587 (5) In ~~[any]~~ a case where an offender's mental competency is questioned by the board,
1588 the chair may appoint one or more alienists to examine the offender and report in writing to the
1589 board, specifically addressing the issue of competency.

1590 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1591 board shall make rules governing:

- 1592 (a) the hearing process;
- 1593 (b) alienist examination; and
- 1594 (c) parolee petitions for termination of parole.

1595 Section 27. Section **77-27-9** is amended to read:

1596 **77-27-9. Parole proceedings.**

1597 (1) (a) The Board of Pardons and Parole may parole any offender or terminate the
1598 sentence of any offender committed to a penal or correctional facility under the jurisdiction of
1599 the Department of Corrections except as provided in Subsection (2).

1600 (b) The board may not release any offender before the minimum term has been served
1601 unless the board finds mitigating circumstances which justify the release and unless the board
1602 has granted a full hearing, in open session, after previous notice of the time and location of the
1603 hearing, and recorded the proceedings and decisions of the board.

1604 (c) The board may not parole any offender or terminate the sentence of any offender
1605 unless the board has granted a full hearing, in open session, after previous notice of the time
1606 and location of the hearing, and recorded the proceedings and decisions of the board.

1607 (d) The release of an offender shall be at the initiative of the board, which shall
1608 consider each case as the offender becomes eligible. However, a prisoner may submit the
1609 prisoner's own application, subject to the rules of the board promulgated in accordance with
1610 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1611 (2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree
1612 felony involving child kidnapping~~[, a violation of]~~ under Section 76-5-301.1~~;~~, aggravated
1613 kidnapping~~[, a violation of]~~ under Section 76-5-302~~;~~, rape of a child~~[, a violation of]~~ under

Section 76-5-402.1[; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1;], aggravated sexual abuse of a child[; a violation of] under Section 76-5-404.3[;], aggravated sexual assault[; a violation of] under Section 76-5-405[;], or a prior offense as described in Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole until the offender has fully completed serving the minimum mandatory sentence imposed by the court. [This Subsection (2)(a) supersedes any other provision of law.]

(b) The board may not parole any offender or commute or terminate the sentence of any offender before the offender has served the minimum term for the offense, if the offender was sentenced prior to April 29, 1996, and if:

(i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape, aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Individual; and

(ii) the victim of the offense was under 18 years old at the time the offense was committed.

(c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the board may parole [any] an offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

(d) The board may not pardon or parole [any] an offender or commute or terminate the sentence of any offender who is sentenced to life in prison without parole except as provided in Subsection (7).

(e) On or after April 27, 1992, the board may commute a sentence of death only to a sentence of life in prison without parole.

(f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come before the Board of Pardons and Parole on or after April 27, 1992.

(g) The board may not parole [any] an offender convicted of a homicide unless:

(i) the remains of the victim have been recovered; or

(ii) the offender can demonstrate by a preponderance of the evidence that the offender has cooperated in good faith in efforts to locate the remains.

(h) Subsection (2)(g) applies to [any] an offender convicted of a homicide after February 25, 2021, or [any] an offender who was incarcerated in a correctional facility on or

1645 after February 25, 2021, for a homicide offense.

1646 (i) Subsection (2)(a) supersedes any other provision of law.

1647 (3) The board may rescind:

1648 (a) an inmate's prison release date prior to the inmate being released from custody; or

1649 (b) an offender's termination date from parole prior to the offender being terminated
1650 from parole.

1651 (4) (a) The board may issue subpoenas to compel the attendance of witnesses and the
1652 production of evidence, to administer oaths, and to take testimony for the purpose of any
1653 investigation by the board or ~~any of~~ the board's members or by a designated hearing examiner
1654 in the performance of the board's duties.

1655 (b) A person who willfully disobeys a properly served subpoena issued by the board is
1656 guilty of a class B misdemeanor.

1657 (5) (a) The board may adopt rules consistent with law for the board's government,
1658 meetings and hearings, the conduct of proceedings before the board, the parole and pardon of
1659 offenders, the commutation and termination of sentences, and the general conditions under
1660 which parole may be granted and revoked.

1661 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings
1662 held under this chapter, as provided in Section 77-27-9.5.

1663 (c) The rules may allow the board to establish reasonable and equitable time limits on
1664 the presentations by all participants in hearings held under this chapter.

1665 (6) The board does not provide counseling or therapy for victims as a part of their
1666 participation in ~~any~~ a hearing under this chapter.

1667 (7) The board may parole a person sentenced to life in prison without parole if the
1668 board finds by clear and convincing evidence that the person is permanently incapable of being
1669 a threat to the safety of society.

1670 Section 28. Section **77-27-10** is amended to read:

1671 **77-27-10. Conditions of parole -- Inmate agreement to warrant -- Rulemaking --**
1672 **Intensive early release parole program.**

1673 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
1674 issue to the parolee a certificate setting forth the conditions of parole, including the graduated
1675 and evidence-based responses to a violation of a condition of parole established by the

Sentencing Commission in accordance with Section 64-13-21, which the offender shall accept and agree to as evidenced by the offender's signature affixed to the agreement.

(b) The parole agreement shall require that the inmate agree in writing that the board may issue a warrant and conduct a parole revocation hearing if:

(i) the board determines after the grant of parole that the inmate willfully provided to the board false or inaccurate information that the board finds was significant in the board's determination to grant parole; or

(ii) (A) the inmate has engaged in criminal conduct prior to the granting of parole; and
(B) the board did not have information regarding the conduct at the time parole was granted.

(c) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) (a) If an offender convicted of violating or attempting to violate child kidnapping under Section 76-5-301.1, aggravated kidnapping under Section 76-5-302, rape under Section 76-5-402, rape of a child under Section 76-5-402.1, object rape under Section 76-5-402.2, [76-5-402.3,] forcible sodomy under Section 76-5-403, [76-5-403.1,] forcible sexual abuse under Section 76-5-404, sexual abuse of a child under Section 76-5-404.1, aggravated sexual abuse of a child under Section 76-5-404.3, or aggravated sexual assault under Section 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(b) The board shall develop standards and conditions of parole under this Subsection (2) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) This Subsection (2) does not apply to intensive early release parole.

(3) (a) In addition to the conditions set out in Subsection (1), the board may place offenders in an intensive early release parole program. The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if the offender:

(i) has not been convicted of a sexual offense; or

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

- 1707 (i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
1708 Rulemaking Act, for operation of the program;
- 1709 (ii) adopt and implement internal management policies for operation of the program;
1710 (iii) determine whether or not to refer an offender into this program within 120 days
1711 from the date the offender is committed to prison by the sentencing court; and
1712 (iv) make the final recommendation to the board regarding the placement of an
1713 offender into the program.
- 1714 (d) The department may not consider credit for time served in a county jail awaiting
1715 trial or sentencing when calculating the 120-day period.
- 1716 (e) The prosecuting attorney or sentencing court may refer an offender for
1717 consideration by the department for participation in the program.
- 1718 (f) The board shall determine whether or not to place an offender into this program
1719 within 30 days of receiving the department's recommendation.
- 1720 (4) This program shall be implemented by the department within the existing budget.
- 1721 (5) During the time the offender is on parole, the department shall collect from the
1722 offender the monthly supervision fee authorized by Section 64-13-21.
- 1723 (6) When a parolee commits a violation of the parole agreement, the department may:
- 1724 (a) respond in accordance with the graduated and evidence-based responses established
1725 in accordance with Section 64-13-21; or
- 1726 (b) when the graduated and evidence-based responses established in accordance with
1727 Section 64-13-21 indicate, refer the parolee to the Board of Pardons and Parole for revocation
1728 of parole.
- 1729 Section 29. Section **77-41-102 (Superseded 07/01/24)** is amended to read:
1730 **77-41-102 (Superseded 07/01/24). Definitions.**
- 1731 As used in this chapter:
- 1732 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
1733 Safety established in section 53-10-201.
- 1734 (2) "Business day" means a day on which state offices are open for regular business.
- 1735 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
1736 Identification showing that the offender has met the requirements of Section 77-41-112.
- 1737 (4) (a) "Convicted" means a plea or conviction of:

- 1738 (i) guilty;
- 1739 (ii) guilty with a mental condition; or
- 1740 (iii) no contest.
- 1741 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in
- 1742 abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.
- 1743 (c) "Convicted" does not include:
- 1744 (i) a withdrawn or dismissed plea in abeyance;
- 1745 (ii) a diversion agreement; or
- 1746 (iii) an adjudication of a minor for an offense under Section 80-6-701.
- 1747 (5) "Department" means the Department of Corrections.
- 1748 (6) "Division" means the Division of Juvenile Justice Services.
- 1749 (7) "Employed" or "carries on a vocation" includes employment that is full time or part
- 1750 time, whether financially compensated, volunteered, or for the purpose of government or
- 1751 educational benefit.
- 1752 (8) "Indian Country" means:
- 1753 (a) all land within the limits of any Indian reservation under the jurisdiction of the
- 1754 United States government, regardless of the issuance of any patent, and includes rights-of-way
- 1755 running through the reservation;
- 1756 (b) all dependent Indian communities within the borders of the United States whether
- 1757 within the original or subsequently acquired territory, and whether or not within the limits of a
- 1758 state; and
- 1759 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
- 1760 not been extinguished, including rights-of-way running through the allotments.
- 1761 (9) "Jurisdiction" means any state, Indian Country, United States Territory, or any
- 1762 property under the jurisdiction of the United States military, Canada, the United Kingdom,
- 1763 Australia, or New Zealand.
- 1764 (10) "Kidnap offender" means any individual, other than a natural parent of the victim:
- 1765 (a) who has been convicted in this state of a violation of:
- 1766 (i) ~~[Subsection 76-5-301(2)(c) or (d),]~~ kidnapping under Subsection 76-5-301(2)(c) or
- 1767 (d);
- 1768 (ii) ~~[Section 76-5-301.1,]~~ child kidnapping under Section 76-5-301.1;

1769 (iii) [~~Section 76-5-302;~~] aggravated kidnapping under Section 76-5-302;

1770 (iv) [~~Section 76-5-308;~~] human trafficking for labor under Section 76-5-308;

1771 (v) [~~Section 76-5-308.3;~~] human smuggling under Section 76-5-308.3;

1772 [~~(vi) Section 76-5-308, human smuggling, when the individual smuggled is under 18~~

1773 ~~years old;~~]

1774 [~~(vii)~~] (vi) [~~Section 76-5-308.5;~~] human trafficking of a child for labor under Section

1775 76-5-308.5;

1776 [~~(viii)~~] (vii) [~~Section 76-5-310;~~] aggravated human trafficking under Section 76-5-310;

1777 [~~(ix)~~] (viii) [~~Section 76-5-310.1;~~] aggravated human smuggling under Section

1778 76-5-310.1;

1779 [~~(x)~~] (ix) [~~Section 76-5-311;~~] human trafficking of a vulnerable adult for labor under

1780 Section 76-5-311; or

1781 [~~(xi)~~] (x) attempting, soliciting, or conspiring to commit [~~any~~] a felony offense listed in

1782 Subsections (10)(a)(i) through [~~(x)~~] (ix);

1783 (b) (i) who has been convicted of [~~any~~] a crime, or an attempt, solicitation, or

1784 conspiracy to commit a crime in another jurisdiction, including [~~any~~] another state, federal, or

1785 military court that is substantially equivalent to the offenses listed in Subsection (10)(a); and

1786 (ii) who is:

1787 (A) a Utah resident; or

1788 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of

1789 10 or more days, regardless of whether or not the offender intends to permanently reside in this

1790 state;

1791 (c) (i) (A) who is required to register as a kidnap offender in [~~any other~~] another

1792 jurisdiction of original conviction;

1793 (B) who is required to register as a kidnap offender by [~~any~~] another state, federal, or

1794 military court; or

1795 (C) who would be required to register as a kidnap offender if residing in the

1796 jurisdiction of the conviction regardless of the date of the conviction or [~~any~~] previous

1797 registration requirements; and

1798 (ii) in any 12-month period, who is in this state for a total of 10 or more days,

1799 regardless of whether or not the offender intends to permanently reside in this state;

1800 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
1801 (B) who is a student in this state; and
1802 (ii) (A) who was convicted of one or more offenses listed in Subsection (10), or ~~[any]~~ a
1803 substantially equivalent offense in another jurisdiction; or
1804 (B) as a result of the conviction, who is required to register in the individual's state of
1805 residence;
1806 (e) who is found not guilty by reason of insanity in this state or in ~~[any other]~~ another
1807 jurisdiction of one or more offenses listed in Subsection (10); or
1808 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1809 Subsection (10)(a); and
1810 (ii) who has been committed to the division for secure care, as defined in Section
1811 80-1-102, for that offense if:
1812 (A) the individual remains in the division's custody until 30 days before the individual's
1813 21st birthday;
1814 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
1815 under Section 80-6-605 and the individual remains in the division's custody until 30 days
1816 before the individual's 25th birthday; or
1817 (C) the individual is moved from the division's custody to the custody of the
1818 department before expiration of the division's jurisdiction over the individual.
1819 (11) "Natural parent" means a minor's biological or adoptive parent, and includes the
1820 minor's noncustodial parent.
1821 (12) "Offender" means a kidnap offender as defined in Subsection (10) or a sex
1822 offender as defined in Subsection (18).
1823 (13) "Online identifier" or "Internet identifier":
1824 (a) means ~~[any]~~ an electronic mail, a chat, an instant messenger, a social networking, or
1825 similar name used for Internet communication; and
1826 (b) does not include date of birth, social security number, PIN number, or Internet
1827 passwords.
1828 (14) "Primary residence" means the location where the offender regularly resides, even
1829 if the offender intends to move to another location or return to another location at ~~[any]~~ a future
1830 date.

- 1831 (15) "Register" means to comply with the requirements of this chapter and
1832 administrative rules of the department made under this chapter.
- 1833 (16) "Registration website" means the Sex and Kidnap Offender Notification and
1834 Registration website described in Section 77-41-110 and the information on the website.
- 1835 (17) "Secondary residence" means ~~[any]~~ real property that the offender owns or has a
1836 financial interest in, or ~~[any]~~ a location where, in ~~[any]~~ a 12-month period, the offender stays
1837 overnight a total of 10 or more nights when not staying at the offender's primary residence.
- 1838 (18) "Sex offender" means ~~[any]~~ an individual:
- 1839 (a) convicted in this state of:
- 1840 (i) a felony or class A misdemeanor violation of enticing a minor under Section
1841 76-4-401~~[-enticing a minor]~~;
- 1842 (ii) ~~[Section 76-5b-202,]~~ sexual exploitation of a vulnerable adult under Section
1843 76-5b-202;
- 1844 (iii) ~~[Section 76-5-308.1,]~~ human trafficking for sexual exploitation under Section
1845 76-5-308.1;
- 1846 (iv) ~~[Section 76-5-308.5,]~~ human trafficking of a child for sexual exploitation under
1847 Section 76-5-308.5;
- 1848 (v) ~~[Section 76-5-310,]~~ aggravated human trafficking for sexual exploitation under
1849 Section 76-5-310;
- 1850 (vi) ~~[Section 76-5-311,]~~ human trafficking of a vulnerable adult for sexual exploitation
1851 under Section 76-5-311;
- 1852 (vii) ~~[Section 76-5-401,]~~ unlawful sexual activity with a minor under Section 76-5-401,
1853 except as provided in Subsection 76-5-401(3)(b) or (c);
- 1854 (viii) ~~[Section 76-5-401.1,]~~ sexual abuse of a minor under Section 76-5-401.1, except
1855 as provided in Subsection 76-5-401.1(3);
- 1856 (ix) ~~[Section 76-5-401.2,]~~ unlawful sexual conduct with a 16 or 17 year old under
1857 Section 76-5-401.2;
- 1858 (x) ~~[Section 76-5-402,]~~ rape under Section 76-5-402;
- 1859 (xi) ~~[Section 76-5-402.1,]~~ rape of a child under Section 76-5-402.1;
- 1860 (xii) ~~[Section 76-5-402.2,]~~ object rape under Section 76-5-402.2;
- 1861 ~~[(xiii) Section 76-5-402.3, object rape of a child,]~~

1862 [(xiv)] (xiii) a felony violation of forcible sodomy under Section 76-5-403[, ~~forcible~~
1863 ~~sodomy~~];
1864 [(xv) ~~Section 76-5-403.1, sodomy on a child~~];
1865 [(xvi)] (xiv) [~~Section 76-5-404~~,] forcible sexual abuse under Section 76-5-404;
1866 [(xvii)] (xv) [~~Section 76-5-404.1~~,] sexual abuse of a child[, under Section 76-5-404.1;
1867 (xvi) [~~or Section 76-5-404.3~~], aggravated sexual abuse of a child under Section
1868 76-5-404.3;
1869 [(xviii)] (xvii) [~~Section 76-5-405~~,] aggravated sexual assault under Section 76-5-405;
1870 [(xix)] (xviii) [~~Section 76-5-412~~,] custodial sexual relations under Section 76-5-412,
1871 when the individual in custody is younger than 18 years old, if the offense is committed on or
1872 after May 10, 2011;
1873 [(xx)] (xix) [~~Section 76-5b-201~~,] sexual exploitation of a minor under Section
1874 76-5b-201;
1875 [(xxi)] (xx) [~~Section 76-5b-201.1~~,] aggravated sexual exploitation of a minor under
1876 Section 76-5b-201.1;
1877 [(xxii)] (xxi) [~~Section 76-5b-204~~,] sexual extortion or aggravated sexual extortion
1878 under Section 76-5b-204;
1879 [(xxiii)] (xxii) [~~Section 76-7-102~~,] incest under Section 76-7-102;
1880 [(xxiv)] (xxiii) [~~Section 76-9-702~~,] lewdness under Section 76-9-702, if the individual
1881 has been convicted of the offense four or more times;
1882 [(xxv)] (xxiv) [~~Section 76-9-702.1~~,] sexual battery under Section 76-9-702.1, if the
1883 individual has been convicted of the offense four or more times;
1884 [(xxvi)] (xxv) any combination of convictions of [~~Section 76-9-702, lewdness, and of~~
1885 lewdness under Section 76-9-702 and sexual battery under Section 76-9-702.1, [~~sexual~~
1886 ~~battery~~,] that total four or more convictions;
1887 [(xxvii)] (xxvi) [~~Section 76-9-702.5~~,] lewdness involving a child under Section
1888 76-9-702.5;
1889 [(xxviii)] (xxvii) a felony or class A misdemeanor violation of voyeurism under
1890 Section 76-9-702.7[, ~~voyeurism~~];
1891 [(xxix)] (xxviii) [~~Section 76-10-1306~~,] aggravated exploitation of prostitution under
1892 Section 76-10-1306; or

1893 [~~(xxx)~~] (xxix) attempting, soliciting, or conspiring to commit any felony offense listed
1894 in this Subsection (18)(a);

1895 (b) (i) who has been convicted of [~~any~~] a crime, or an attempt, solicitation, or
1896 conspiracy to commit a crime in another jurisdiction, including [~~any~~] another state, federal, or
1897 military court that is substantially equivalent to the offenses listed in Subsection (18)(a); and

1898 (ii) who is:

1899 (A) a Utah resident; or

1900 (B) not a Utah resident, but who, in [~~any~~] a 12-month period, is in this state for a total
1901 of 10 or more days, regardless of whether the offender intends to permanently reside in this
1902 state;

1903 (c) (i) (A) who is required to register as a sex offender in [~~any other~~] another
1904 jurisdiction of original conviction;

1905 (B) who is required to register as a sex offender by [~~any~~] another state, federal, or
1906 military court; or

1907 (C) who would be required to register as a sex offender if residing in the jurisdiction of
1908 the original conviction regardless of the date of the conviction or [~~any~~] previous registration
1909 requirements; and

1910 (ii) who, in [~~any~~] a 12-month period, is in the state for a total of 10 or more days,
1911 regardless of whether or not the offender intends to permanently reside in this state;

1912 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
1913 (B) who is a student in this state; and

1914 (ii) (A) who was convicted of one or more offenses listed in Subsection (18)(a), or
1915 [~~any~~] a substantially equivalent offense in [~~any~~] another jurisdiction; or

1916 (B) who is, as a result of the conviction, required to register in the individual's
1917 jurisdiction of residence;

1918 (e) who is found not guilty by reason of insanity in this state, or in [~~any other~~] another
1919 jurisdiction of one or more offenses listed in Subsection (18)(a); or

1920 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1921 Subsection (18)(a); and

1922 (ii) who has been committed to the division for secure care, as defined in Section
1923 80-1-102, for that offense if:

1924 (A) the individual remains in the division's custody until 30 days before the individual's
1925 21st birthday;

1926 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
1927 under Section 80-6-605 and the individual remains in the division's custody until 30 days
1928 before the individual's 25th birthday; or

1929 (C) the individual is moved from the division's custody to the custody of the
1930 department before expiration of the division's jurisdiction over the individual.

1931 (19) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
1932 Driving Under the Influence and Reckless Driving.

1933 (20) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
1934 any jurisdiction.

1935 Section 30. Section **77-41-102 (Effective 07/01/24)** is amended to read:

1936 **77-41-102 (Effective 07/01/24). Definitions.**

1937 As used in this chapter:

1938 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
1939 Safety established in section 53-10-201.

1940 (2) "Business day" means a day on which state offices are open for regular business.

1941 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
1942 Identification showing that the offender has met the requirements of Section 77-41-112.

1943 (4) (a) "Convicted" means a plea or conviction of:

1944 (i) guilty;

1945 (ii) guilty with a mental illness; or

1946 (iii) no contest.

1947 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in
1948 abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.

1949 (c) "Convicted" does not include:

1950 (i) a withdrawn or dismissed plea in abeyance;

1951 (ii) a diversion agreement; or

1952 (iii) an adjudication of a minor for an offense under Section 80-6-701.

1953 (5) "Department" means the Department of Public Safety.

1954 (6) "Division" means the Division of Juvenile Justice Services.

1955 (7) "Employed" or "carries on a vocation" includes employment that is full time or part
 1956 time, whether financially compensated, volunteered, or for the purpose of government or
 1957 educational benefit.

1958 (8) "Indian Country" means:

1959 (a) all land within the limits of any Indian reservation under the jurisdiction of the
 1960 United States government, regardless of the issuance of any patent, and includes rights-of-way
 1961 running through the reservation;

1962 (b) all dependent Indian communities within the borders of the United States whether
 1963 within the original or subsequently acquired territory, and whether or not within the limits of a
 1964 state; and

1965 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
 1966 not been extinguished, including rights-of-way running through the allotments.

1967 (9) "Jurisdiction" means any state, Indian Country, United States Territory, or any
 1968 property under the jurisdiction of the United States military, Canada, the United Kingdom,
 1969 Australia, or New Zealand.

1970 (10) "Kidnap offender" means any individual, other than a natural parent of the victim:

1971 (a) who has been convicted in this state of a violation of:

1972 (i) [~~Subsection 76-5-301(2)(c) or (d),~~] kidnapping under Subsection 76-5-301(2)(c) or
 1973 (d);

1974 (ii) [~~Section 76-5-301.1;~~] child kidnapping under Section 76-5-301.1;

1975 (iii) [~~Section 76-5-302;~~] aggravated kidnapping under Section 76-5-302;

1976 (iv) [~~Section 76-5-308;~~] human trafficking for labor under Section 76-5-308;

1977 (v) [~~Section 76-5-308.3;~~] human smuggling under Section 76-5-308.3;

1978 [~~(vi) Section 76-5-308, human smuggling, when the individual smuggled is under 18~~
 1979 ~~years old;~~]

1980 [~~(vii)~~] (vi) [~~Section 76-5-308.5;~~] human trafficking of a child for labor under Section
 1981 76-5-308.5;

1982 [~~(viii)~~] (vii) [~~Section 76-5-310;~~] aggravated human trafficking under Section 76-5-310;

1983 [~~(ix)~~] (viii) [~~Section 76-5-310.1;~~] aggravated human smuggling under Section
 1984 76-5-310.1;

1985 [~~(x)~~] (ix) [~~Section 76-5-311;~~] human trafficking of a vulnerable adult for labor under

1986 Section 76-5-311; or
1987 [~~(xi)~~] (x) attempting, soliciting, or conspiring to commit [~~any~~] a felony offense listed in
1988 Subsections (10)(a)(i) through [~~(x)~~] (ix);
1989 (b) (i) who has been convicted of [~~any~~] a crime, or an attempt, solicitation, or
1990 conspiracy to commit a crime in another jurisdiction, including [~~any~~] another state, federal, or
1991 military court that is substantially equivalent to the offenses listed in Subsection (10)(a); and
1992 (ii) who is:
1993 (A) a Utah resident; or
1994 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
1995 10 or more days, regardless of whether or not the offender intends to permanently reside in this
1996 state;
1997 (c) (i) (A) who is required to register as a kidnap offender in [~~any other~~] another
1998 jurisdiction of original conviction;
1999 (B) who is required to register as a kidnap offender by [~~any~~] another state, federal, or
2000 military court; or
2001 (C) who would be required to register as a kidnap offender if residing in the
2002 jurisdiction of the conviction regardless of the date of the conviction or [~~any~~] previous
2003 registration requirements; and
2004 (ii) in any 12-month period, who is in this state for a total of 10 or more days,
2005 regardless of whether or not the offender intends to permanently reside in this state;
2006 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
2007 (B) who is a student in this state; and
2008 (ii) (A) who was convicted of one or more offenses listed in Subsection (10), or [~~any~~] a
2009 substantially equivalent offense in another jurisdiction; or
2010 (B) as a result of the conviction, who is required to register in the individual's state of
2011 residence;
2012 (e) who is found not guilty by reason of insanity in this state or in [~~any other~~] another
2013 jurisdiction of one or more offenses listed in Subsection (10); or
2014 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
2015 Subsection (10)(a); and
2016 (ii) who has been committed to the division for secure care, as defined in Section

2017 80-1-102, for that offense if:

2018 (A) the individual remains in the division's custody until 30 days before the individual's
2019 21st birthday;

2020 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
2021 under Section 80-6-605 and the individual remains in the division's custody until 30 days
2022 before the individual's 25th birthday; or

2023 (C) the individual is moved from the division's custody to the custody of the
2024 department before expiration of the division's jurisdiction over the individual.

2025 (11) "Natural parent" means a minor's biological or adoptive parent, and includes the
2026 minor's noncustodial parent.

2027 (12) "Offender" means a kidnap offender as defined in Subsection (10) or a sex
2028 offender as defined in Subsection (18).

2029 (13) "Online identifier" or "Internet identifier":
2030

2031 (a) means ~~[any]~~ an electronic mail, a chat, an instant messenger, a social networking, or
2032 similar name used for Internet communication; and

2033 (b) does not include date of birth, social security number, PIN number, or Internet
2034 passwords.

2035 (14) "Primary residence" means the location where the offender regularly resides, even
2036 if the offender intends to move to another location or return to another location at ~~[any]~~ a future
2037 date.

2038 (15) "Register" means to comply with the requirements of this chapter and
2039 administrative rules of the department made under this chapter.

2040 (16) "Registration website" means the Sex and Kidnap Offender Notification and
2041 Registration website described in Section 77-41-110 and the information on the website.

2042 (17) "Secondary residence" means ~~[any]~~ real property that the offender owns or has a
2043 financial interest in, or ~~[any]~~ a location where, in ~~[any]~~ a 12-month period, the offender stays
2044 overnight a total of 10 or more nights when not staying at the offender's primary residence.

2045 (18) "Sex offender" means ~~[any]~~ an individual:

2046 (a) convicted in this state of:

2047 (i) a felony or class A misdemeanor violation of enticing a minor under Section
2048 76-4-401~~[, enticing a minor]~~;

2048 (ii) [~~Section 76-5b-202,~~] sexual exploitation of a vulnerable adult under Section
 2049 76-5b-202;
 2050 (iii) [~~Section 76-5-308.1,~~] human trafficking for sexual exploitation under Section
 2051 76-5-308.1;
 2052 (iv) [~~Section 76-5-308.5,~~] human trafficking of a child for sexual exploitation under
 2053 Section 76-5-308.5;
 2054 (v) [~~Section 76-5-310,~~] aggravated human trafficking for sexual exploitation under
 2055 Section 76-5-310;
 2056 (vi) [~~Section 76-5-311,~~] human trafficking of a vulnerable adult for sexual exploitation
 2057 under Section 76-5-311;
 2058 (vii) [~~Section 76-5-401,~~] unlawful sexual activity with a minor under Section 76-5-401,
 2059 except as provided in Subsection 76-5-401(3)(b) or (c);
 2060 (viii) [~~Section 76-5-401.1,~~] sexual abuse of a minor under Section 76-5-401.1, except
 2061 as provided in Subsection 76-5-401.1(3);
 2062 (ix) [~~Section 76-5-401.2,~~] unlawful sexual conduct with a 16 or 17 year old under
 2063 Section 76-5-401.2;
 2064 (x) [~~Section 76-5-402,~~] rape under Section 76-5-402;
 2065 (xi) [~~Section 76-5-402.1,~~] rape of a child under Section 76-5-402.1;
 2066 (xii) [~~Section 76-5-402.2,~~] object rape under Section 76-5-402.2;
 2067 [~~(xiii) Section 76-5-402.3, object rape of a child;~~]
 2068 [~~(xiv)~~] (xiii) a felony violation of forcible sodomy under Section 76-5-403[~~, forcible~~
 2069 ~~sodomy~~];
 2070 [~~(xv) Section 76-5-403.1, sodomy on a child;~~]
 2071 [~~(xvi)~~] (xiv) [~~Section 76-5-404,~~] forcible sexual abuse under Section 76-5-404;
 2072 [~~(xvii)~~] (xv) [~~Section 76-5-404.1,~~] sexual abuse of a child[~~;~~] under Section 76-5-404.1;
 2073 (xvi) [~~or Section 76-5-404.3,~~] aggravated sexual abuse of a child under Section
 2074 76-5-404.3;
 2075 [~~(xviii)~~] (xvii) [~~Section 76-5-405,~~] aggravated sexual assault under Section 76-5-405;
 2076 [~~(xix)~~] (xviii) [~~Section 76-5-412,~~] custodial sexual relations under Section 76-5-412,
 2077 when the individual in custody is younger than 18 years old, if the offense is committed on or
 2078 after May 10, 2011;

2079 ~~[(xx)]~~ (xix) ~~[Section 76-5b-201,]~~ sexual exploitation of a minor under Section
2080 76-5b-201;

2081 ~~[(xxi)]~~ (xx) ~~[Section 76-5b-201.1,]~~ aggravated sexual exploitation of a minor under
2082 Section 76-5b-201.1;

2083 ~~[(xxii)]~~ (xxi) ~~[Section 76-5b-204,]~~ sexual extortion or aggravated sexual extortion
2084 under Section 76-5b-204;

2085 ~~[(xxiii)]~~ (xxii) ~~[Section 76-7-102,]~~ incest under Section 76-7-102;

2086 ~~[(xxiv)]~~ (xxiii) ~~[Section 76-9-702,]~~ lewdness under Section 76-9-702, if the individual
2087 has been convicted of the offense four or more times;

2088 ~~[(xxv)]~~ (xxiv) ~~[Section 76-9-702.1,]~~ sexual battery under Section 76-9-702.1, if the
2089 individual has been convicted of the offense four or more times;

2090 ~~[(xxvi)]~~ (xxv) any combination of convictions of ~~[Section 76-9-702, lewdness, and of]~~
2091 lewdness under Section 76-9-702 and sexual battery under Section 76-9-702.1, ~~[sexual~~
2092 ~~battery,]~~ that total four or more convictions;

2093 ~~[(xxvii)]~~ (xxvi) ~~[Section 76-9-702.5,]~~ lewdness involving a child under Section
2094 76-9-702.5;

2095 ~~[(xxviii)]~~ (xxvii) a felony or class A misdemeanor violation of voyeurism under
2096 Section 76-9-702.7[~~, voyeurism~~];

2097 ~~[(xxix)]~~ (xxviii) ~~[Section 76-10-1306,]~~ aggravated exploitation of prostitution under
2098 Section 76-10-1306; or

2099 ~~[(xxx)]~~ (xxix) attempting, soliciting, or conspiring to commit any felony offense listed
2100 in this Subsection (18)(a);

2101 (b) (i) who has been convicted of ~~[any]~~ a crime, or an attempt, solicitation, or
2102 conspiracy to commit a crime in another jurisdiction, including ~~[any]~~ another state, federal, or
2103 military court that is substantially equivalent to the offenses listed in Subsection (18)(a); and

2104 (ii) who is:

2105 (A) a Utah resident; or

2106 (B) not a Utah resident, but who, in ~~[any]~~ a 12-month period, is in this state for a total
2107 of 10 or more days, regardless of whether the offender intends to permanently reside in this
2108 state;

2109 (c) (i) (A) who is required to register as a sex offender in ~~[any other]~~ another

2110 jurisdiction of original conviction;

2111 (B) who is required to register as a sex offender by [~~any~~] another state, federal, or
2112 military court; or

2113 (C) who would be required to register as a sex offender if residing in the jurisdiction of
2114 the original conviction regardless of the date of the conviction or [~~any~~] previous registration
2115 requirements; and

2116 (ii) who, in [~~any~~] a 12-month period, is in the state for a total of 10 or more days,
2117 regardless of whether or not the offender intends to permanently reside in this state;

2118 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
2119 (B) who is a student in this state; and

2120 (ii) (A) who was convicted of one or more offenses listed in Subsection (18)(a), or
2121 [~~any~~] a substantially equivalent offense in [~~any~~] another jurisdiction; or

2122 (B) who is, as a result of the conviction, required to register in the individual's
2123 jurisdiction of residence;

2124 (e) who is found not guilty by reason of insanity in this state, or in [~~any other~~] another
2125 jurisdiction of one or more offenses listed in Subsection (18)(a); or

2126 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
2127 Subsection (18)(a); and

2128 (ii) who has been committed to the division for secure care, as defined in Section
2129 80-1-102, for that offense if:

2130 (A) the individual remains in the division's custody until 30 days before the individual's
2131 21st birthday;

2132 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
2133 under Section 80-6-605 and the individual remains in the division's custody until 30 days
2134 before the individual's 25th birthday; or

2135 (C) the individual is moved from the division's custody to the custody of the
2136 department before expiration of the division's jurisdiction over the individual.

2137 (19) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
2138 Driving Under the Influence and Reckless Driving.

2139 (20) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
2140 any jurisdiction[-]

2141 Section 31. Section ~~77-41-106~~ is amended to read:

2142 **77-41-106. Offenses requiring lifetime registration.**

2143 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

2144 (1) any offense listed in Subsection 77-41-102(10) or (18) if, at the time of the
2145 conviction, the offender has previously been convicted of an offense listed in Subsection
2146 77-41-102(10) or (18) or has previously been required to register as a sex offender for an
2147 offense committed as a juvenile;

2148 (2) a conviction for any of the following offenses, including attempting, soliciting, or
2149 conspiring to commit any felony of:

2150 (a) [~~Section 76-5-301.1,~~] child kidnapping under Section 76-5-301.1, except if the
2151 offender is a natural parent of the victim;

2152 (b) [~~Section 76-5-402,~~] rape under Section 76-5-402;

2153 (c) [~~Section 76-5-402.1,~~] rape of a child under Section 76-5-402.1;

2154 (d) [~~Section 76-5-402.2,~~] object rape under Section 76-5-402.2;

2155 [~~(e) Section 76-5-402.3, object rape of a child;~~]

2156 [~~(f) Section 76-5-403.1, sodomy on a child;~~]

2157 [~~(g)~~] (e) [~~Section 76-5-404.3,~~] aggravated sexual abuse of a child under Section
2158 76-5-404.3; or

2159 [~~(h)~~] (f) [~~Section 76-5-405,~~] aggravated sexual assault under Section 76-5-405;

2160 (3) [~~Section 76-5-308.1,~~] human trafficking for sexual exploitation under Section
2161 76-5-308.1;

2162 (4) [~~Section 76-5-308.5,~~] human trafficking of a child for sexual exploitation under
2163 Section 76-5-308.5;

2164 (5) [~~Section 76-5-310,~~] aggravated human trafficking for sexual exploitation under
2165 Section 76-5-310;

2166 (6) [~~Section 76-5-311,~~] human trafficking of a vulnerable adult for sexual exploitation
2167 under Section 76-5-311;

2168 (7) [~~Section 76-4-401,~~] a felony violation of enticing a minor under Section 76-4-401;

2169 (8) [~~Section 76-5-302,~~] aggravated kidnapping under Section 76-5-302, except if the
2170 offender is a natural parent of the victim;

2171 (9) [~~Section 76-5-403,~~] forcible sodomy under Section 76-5-403;

(10) [~~Section 76-5-404.1,~~] sexual abuse of a child under Section 76-5-404.1;

(11) [~~Section 76-5b-201,~~] sexual exploitation of a minor under Section 76-5b-201;

(12) [~~Section 76-5b-201.1,~~] aggravated sexual exploitation of a minor under Section 76-5b-201.1;

(13) [~~Subsection 76-5b-204(2)(b),~~] aggravated sexual extortion under Subsection 76-5b-204(2)(b); or

(14) [~~Section 76-10-1306,~~] aggravated exploitation of prostitution under Section 76-10-1306, on or after May 10, 2011.

Section 32. Section **78B-6-117** is amended to read:

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult individual, in accordance with this section and this part.

(2) A child may be adopted by:

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

(b) subject to Subsections (3) and (4), a single adult.

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

(4) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a married couple, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with an individual who has already developed a substantial relationship with the child;

(d) the child is placed with an individual who:

2203 (i) is selected by a parent or former parent of the child, if the parent or former parent
 2204 consented to the adoption of the child; and

2205 (ii) the parent or former parent described in Subsection (4)(d)(i):

2206 (A) knew the individual with whom the child is placed before the parent consented to
 2207 the adoption; or

2208 (B) became aware of the individual with whom the child is placed through a source
 2209 other than the division or the child-placing agency that assists with the adoption of the child; or

2210 (e) it is in the best interests of the child to place the child with a single adult.

2211 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
 2212 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
 2213 to a felony or attempted felony involving conduct that constitutes any of the following:

2214 (a) child abuse~~[, as described in]~~ under Section 76-5-109;

2215 (b) child abuse homicide~~[, as described in]~~ under Section 76-5-208;

2216 (c) child kidnapping~~[, as described in]~~ under Section 76-5-301.1;

2217 (d) human trafficking of a child~~[, as described in]~~ under Section 76-5-308.5;

2218 (e) sexual abuse of a minor~~[, as described in]~~ under Section 76-5-401.1;

2219 (f) rape of a child~~[, as described in]~~ under Section 76-5-402.1;

2220 ~~[(g) object rape of a child, as described in Section 76-5-402.3;]~~

2221 ~~[(h) sodomy on a child, as described in Section 76-5-403.1;]~~

2222 ~~[(t)]~~ (g) sexual abuse of a child~~[, as described in]~~ under Section 76-5-404.1~~[;]~~;

2223 (h) ~~[or]~~ aggravated sexual abuse of a child~~[, as described in]~~ under Section 76-5-404.3;

2224 ~~[(t)]~~ (i) sexual exploitation of a minor~~[, as described in]~~ under Section 76-5b-201;

2225 ~~[(k)]~~ (j) aggravated sexual exploitation of a minor~~[, as described in]~~ under Section
 2226 76-5b-201.1;

2227 ~~[(t)]~~ (k) aggravated child abuse~~[, as described in]~~ under Section 76-5-109.2;

2228 ~~[(m)]~~ (l) child abandonment~~[, as described in]~~ under Section 76-5-109.3;

2229 ~~[(n)]~~ (m) commission of domestic violence in the presence of a child~~[, as described in]~~
 2230 under Section 76-5-114; or

2231 ~~[(o)]~~ (n) an offense in another state that, if committed in this state, would constitute an
 2232 offense described in this Subsection (5).

2233 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense

listed in Subsection (5) that prevents a court from considering an individual for adoption of a child except as provided in this Subsection (6).

(b) An individual described in Subsection (5) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:

(i) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(ii) during the 10 years before the day on which the individual files a petition with the court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

(iii) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years old or older;

(F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the individual can provide evidence of all of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

2265 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102
2266 and there is not another relative without a disqualifying offense filing an adoption petition.

2267 (c) The individual with the disqualifying offense bears the burden of proof regarding
2268 why adoption with that individual is in the best interest of the child over another responsible
2269 relative or equally situated individual who does not have a disqualifying offense.

2270 (d) If there is an alternative responsible relative who does not have a disqualifying
2271 offense filing an adoption petition, the following applies:

2272 (i) preference for adoption shall be given to a relative who does not have a
2273 disqualifying offense; and

2274 (ii) before the court may grant adoption to the individual who has the disqualifying
2275 offense over another responsible, willing, and able relative:

2276 (A) an impartial custody evaluation shall be completed; and

2277 (B) a guardian ad litem shall be assigned.

2278 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a
2279 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

2280 Section 33. **Repealer.**

2281 This bill repeals:

2282 Section **76-5-402.3, Object rape of a child -- Penalty.**

2283 Section **76-5-403.1, Sodomy on a child -- Penalties.**

2284 Section 34. **Effective date.**

2285 This bill takes effect on May 1, 2024.