

Child Abuse and Torture Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill concerns child abuse and torture.

Highlighted Provisions:

This bill:

- ▶ creates a new criminal offense for child torture and provides penalties;
- ▶ adds the offense of child torture to the list of offenses for which imprisonment is mandatory;
- ▶ amends existing definitions relating to the offenses of child abuse and aggravated criminal child abuse;
- ▶ modifies child abandonment, abuse or neglect of a child with a disability, and other statutes that rely on certain definitions concerning criminal child abuse;
- ▶ includes the offense of child torture in statutes that reference child abuse or aggravated child abuse, including statutes concerning background checks, murder and aggravated murder, child abuse homicide, bigamy, jail release agreements and orders, and adoption, parent-time, and custody statutes;
- ▶ adds the offense of child torture to the definition of "violent felony";
- ▶ includes the offense of child torture as a registrable offense on the Sex, Kidnap, and Child Abuse Offender Registry;
- ▶ modifies the definition of "severe type of child abuse or neglect" in the juvenile code to refer to the amended definition of serious injury in the criminal child abuse statute; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-2-120, as last amended by Laws of Utah 2024, Chapter 234

32 **53G-6-204**, as last amended by Laws of Utah 2024, Chapters 113, 386
 33 **76-2-401**, as last amended by Laws of Utah 2022, Chapter 181
 34 **76-3-203.5**, as last amended by Laws of Utah 2024, Chapters 96, 179
 35 **76-3-406**, as last amended by Laws of Utah 2024, Chapter 96
 36 **76-5-109**, as last amended by Laws of Utah 2022, Chapters 181, 335
 37 **76-5-109.2**, as enacted by Laws of Utah 2022, Chapter 181
 38 **76-5-109.3**, as last amended by Laws of Utah 2024, Chapter 225
 39 **76-5-110**, as last amended by Laws of Utah 2022, Chapter 181
 40 **76-5-202**, as last amended by Laws of Utah 2022, Chapter 181
 41 **76-5-203**, as last amended by Laws of Utah 2024, Chapters 96, 187
 42 **76-5-208**, as last amended by Laws of Utah 2023, Chapter 111
 43 **76-7-101**, as last amended by Laws of Utah 2022, Chapter 181
 44 **77-41-102**, as last amended by Laws of Utah 2024, Chapter 234
 45 **78B-6-117**, as last amended by Laws of Utah 2022, Chapters 185, 430
 46 **78B-7-801**, as last amended by Laws of Utah 2023, Chapter 114
 47 **80-1-102**, as last amended by Laws of Utah 2024, Chapter 256
 48 **81-9-202**, as renumbered and amended by Laws of Utah 2024, Chapter 366
 49 **81-9-207**, as renumbered and amended by Laws of Utah 2024, Chapter 366
 50 **81-9-208**, as renumbered and amended by Laws of Utah 2024, Chapter 366
 51 **81-9-402**, as renumbered and amended by Laws of Utah 2024, Chapter 366

52 ENACTS:

53 **76-5-109.4**, Utah Code Annotated 1953

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

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

57 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

58 (1) As used in this section:

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

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

61 including:

62 (A) an adoptive parent or prospective adoptive parent, including an applicant for
 63 an adoption in accordance with Section 78B-6-128;

64 (B) a foster parent or prospective foster parent;

65 (C) an individual who provides respite care to a foster parent or an adoptive parent

- 66 on more than one occasion;
- 67 (D) an individual who transports a child for a youth transportation company;
- 68 (E) an individual who provides certified peer support, as defined in Section
69 26B-5-610;
- 70 (F) an individual who provides peer supports, has a disability or a family member
71 with a disability, or is in recovery from a mental illness or a substance use
72 disorder;
- 73 (G) an individual who has lived experience with the services provided by the
74 department, and uses that lived experience to provide support, guidance, or
75 services to promote resiliency and recovery;
- 76 (H) an individual who is identified as a mental health professional, licensed under
77 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in
78 the practice of mental health therapy, as defined in Section 58-60-102;
- 79 (I) an individual, other than the child or vulnerable adult receiving the service,
80 who is 12 years old or older and resides in a home, that is licensed or certified
81 by the division;
- 82 (J) an individual who is 12 years old or older and is associated with a certification,
83 contract, or licensee with the department under this part and has or will likely
84 have direct access;
- 85 (K) a foster home licensee that submits an application for an annual background
86 screening as required by Subsection 26B-2-105(4)(d)(iii); or
- 87 (L) a short-term relief care provider.
- 88 (ii) "Applicant" does not include:
- 89 (A) an individual who is in the custody of the Division of Child and Family
90 Services or the Division of Juvenile Justice and Youth Services;
- 91 (B) an individual who applies for employment with, or is employed by, the
92 Department of Health and Human Services;
- 93 (C) a parent of a person receiving services from the Division of Services for
94 People with Disabilities, if the parent provides direct care to and resides with
95 the person, including if the parent provides direct care to and resides with the
96 person pursuant to a court order; or
- 97 (D) an individual or a department contractor who provides services in an adults
98 only substance use disorder program, as defined by rule adopted by the
99 Department of Health and Human Services in accordance with Title 63G,

- 100 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program
101 director or a member, as defined by Section 26B-2-105, of the program.
- 102 (b) "Application" means a background check application to the office.
- 103 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
104 Public Safety, created in Section 53-10-201.
- 105 (d) "Criminal finding" means a record of:
- 106 (i) an arrest for a criminal offense;
- 107 (ii) a warrant for a criminal arrest;
- 108 (iii) charges for a criminal offense; or
- 109 (iv) a criminal conviction.
- 110 (e) "Direct access" means that an individual has, or likely will have:
- 111 (i) contact with or access to a child or vulnerable adult by which the individual will
112 have the opportunity for personal communication or touch with the child or
113 vulnerable adult; or
- 114 (ii) an opportunity to view medical, financial, or other confidential personal
115 identifying information of the child, the child's parent or legal guardian, or the
116 vulnerable adult.
- 117 (f)(i) "Direct access qualified" means that the applicant has an eligible determination
118 by the office within the license and renewal time period; and
- 119 (ii) no more than 180 days have passed since the date on which the applicant's
120 association with a certification, contract, or licensee with the department expires.
- 121 (g) "Incidental care" means occasional care, not in excess of five hours per week and
122 never overnight, for a foster child.
- 123 (h) "Licensee" means an individual or a human services program licensed by the
124 division.
- 125 (i) "Non-criminal finding" means a record maintained in:
- 126 (i) the Division of Child and Family Services' Management Information System
127 described in Section 80-2-1001;
- 128 (ii) the Division of Child and Family Services' Licensing Information System
129 described in Section 80-2-1002;
- 130 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
131 exploitation database described in Section 26B-6-210;
- 132 (iv) juvenile court arrest, adjudication, and disposition records;
- 133 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,

- 134 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
135 offender registry; or
- 136 (vi) a state child abuse or neglect registry.
- 137 (j) "Office" means the Office of Background Processing within the department.
- 138 (k) "Personal identifying information" means:
- 139 (i) current name, former names, nicknames, and aliases;
- 140 (ii) date of birth;
- 141 (iii) physical address and email address;
- 142 (iv) telephone number;
- 143 (v) driver license or other government-issued identification;
- 144 (vi) social security number;
- 145 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
146 specified by the office; and
- 147 (viii) other information specified by the office by rule made in accordance with Title
148 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 149 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
150 following to the office:
- 151 (a) personal identifying information;
- 152 (b) a fee established by the office under Section 63J-1-504;
- 153 (c) a disclosure form, specified by the office, for consent for:
- 154 (i) an initial background check upon association with a certification, contract, or
155 licensee with the department;
- 156 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
157 certification, contract, or licensee with the department for 180 days;
- 158 (iii) a background check when the office determines that reasonable cause exists; and
- 159 (iv) retention of personal identifying information, including fingerprints, for
160 monitoring and notification as described in Subsections (3)(c) and (4);
- 161 (d) if an applicant resided outside of the United States and its territories during the five
162 years immediately preceding the day on which the information described in
163 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
164 whether the applicant was convicted of a crime during the time that the applicant
165 resided outside of the United States or its territories; and
- 166 (e) an application showing an applicant's association with a certification, contract, or a
167 licensee with the department, for the purpose of the office tracking the direct access

168 qualified status of the applicant, which expires 180 days after the date on which the
169 applicant is no longer associated with a certification, contract, or a licensee with the
170 department.

171 (3) The office:

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

174 (i) check state and regional criminal background databases for the applicant's
175 criminal history by:

176 (A) submitting personal identifying information to the bureau for a search; or

177 (B) using the applicant's personal identifying information to search state and
178 regional criminal background databases as authorized under Section 53-10-108;

179 (ii) submit the applicant's personal identifying information and fingerprints to the
180 bureau for a criminal history search of applicable national criminal background
181 databases;

182 (iii) search the Division of Child and Family Services' Licensing Information System
183 described in Section 80-2-1002;

184 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title
185 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national
186 sex offender registry for an applicant 18 years old or older;

187 (v) if the applicant is associated with a licensee for a prospective foster or adoptive
188 parent, search the Division of Child and Family Services' Management
189 Information System described in Section 80-2-1001;

190 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
191 or exploitation database described in Section 26B-6-210;

192 (vii) search the juvenile court records for substantiated findings of severe child abuse
193 or neglect described in Section 80-3-404; and

194 (viii) search the juvenile court arrest, adjudication, and disposition records, as
195 provided under Section 78A-6-209;

196 (b) may conduct all or portions of a background check in connection with determining
197 whether an applicant is direct access qualified, as provided by rule, made by the
198 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

199 (i) for an annual renewal; or

200 (ii) when the office determines that reasonable cause exists;

201 (c) may submit an applicant's personal identifying information, including fingerprints, to

- 202 the bureau for checking, retaining, and monitoring of state and national criminal
203 background databases and for notifying the office of new criminal activity associated
204 with the applicant;
- 205 (d) shall track the status of an applicant under this section to ensure that the applicant is
206 not required to duplicate the submission of the applicant's fingerprints if the applicant
207 is associated with more than one certification, contract, or licensee with the
208 department;
- 209 (e) shall notify the bureau when a direct access qualified individual has not been
210 associated with a certification, contract, or licensee with the department for a period
211 of 180 days;
- 212 (f) shall adopt measures to strictly limit access to personal identifying information solely
213 to the individuals responsible for processing and entering the applications for
214 background checks and to protect the security of the personal identifying information
215 the office reviews under this Subsection (3);
- 216 (g) as necessary to comply with the federal requirement to check a state's child abuse
217 and neglect registry regarding any applicant working in a congregate care program,
218 shall:
- 219 (i) search the Division of Child and Family Services' Licensing Information System
220 described in Section 80-2-1002; and
- 221 (ii) require the child abuse and neglect registry be checked in each state where an
222 applicant resided at any time during the five years immediately preceding the day
223 on which the application is submitted to the office; and
- 224 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
225 Rulemaking Act, to implement the provisions of this Subsection (3) relating to
226 background checks.
- 227 (4)(a) With the personal identifying information the office submits to the bureau under
228 Subsection (3), the bureau shall check against state and regional criminal background
229 databases for the applicant's criminal history.
- 230 (b) With the personal identifying information and fingerprints the office submits to the
231 bureau under Subsection (3), the bureau shall check against national criminal
232 background databases for the applicant's criminal history.
- 233 (c) Upon direction from the office, and with the personal identifying information and
234 fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:
- 235 (i) maintain a separate file of the fingerprints for search by future submissions to the

- 236 local and regional criminal records databases, including latent prints; and
- 237 (ii) monitor state and regional criminal background databases and identify criminal
- 238 activity associated with the applicant.
- 239 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
- 240 Investigation Next Generation Identification System, to be retained in the Federal
- 241 Bureau of Investigation Next Generation Identification System for the purpose of:
- 242 (i) being searched by future submissions to the national criminal records databases,
- 243 including the Federal Bureau of Investigation Next Generation Identification
- 244 System and latent prints; and
- 245 (ii) monitoring national criminal background databases and identifying criminal
- 246 activity associated with the applicant.
- 247 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal
- 248 activity associated with the applicant.
- 249 (f) Upon notice that an individual who has direct access qualified status will no longer
- 250 be associated with a certification, contract, or licensee with the department, the
- 251 bureau shall:
- 252 (i) discard and destroy any retained fingerprints; and
- 253 (ii) notify the Federal Bureau of Investigation when the license has expired or an
- 254 individual's direct access to a child or a vulnerable adult has ceased, so that the
- 255 Federal Bureau of Investigation will discard and destroy the retained fingerprints
- 256 from the Federal Bureau of Investigation Next Generation Identification System.
- 257 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access
- 258 qualified status to an applicant who, within three years from the date on which the
- 259 office conducts the background check, was convicted of:
- 260 (i) a felony or misdemeanor involving conduct that constitutes any of the following:
- 261 (A) an offense identified as domestic violence, lewdness, voyeurism, battery,
- 262 cruelty to animals, or bestiality;
- 263 (B) a violation of any pornography law, including sexual exploitation of a minor
- 264 or aggravated sexual exploitation of a minor;
- 265 (C) sexual solicitation or prostitution;
- 266 (D) a violent offense committed in the presence of a child, as described in Section
- 267 76-3-203.10;
- 268 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;
- 269 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;

- 270 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;
- 271 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 272 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 273 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass
- 274 Destruction;
- 275 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
- 276 Injunctions;
- 277 (L) aggravated arson, as described in Section 76-6-103;
- 278 (M) aggravated burglary, as described in Section 76-6-203;
- 279 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;
- 280 (O) aggravated robbery, as described in Section 76-6-302;
- 281 (P) endangering persons in a human services program, as described in Section
- 282 26B-2-113;
- 283 (Q) failure to report, as described in Section 80-2-609;
- 284 (R) identity fraud crime, as described in Section 76-6-1102;
- 285 (S) leaving a child unattended in a motor vehicle, as described in Section
- 286 76-10-2202;
- 287 (T) riot, as described in Section 76-9-101;
- 288 (U) sexual battery, as described in Section 76-9-702.1; or
- 289 (V) threatening with or using a dangerous weapon in a fight or quarrel, as
- 290 described in Section 76-10-506; or
- 291 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
- 292 in the state, would constitute a violation of an offense described in Subsection
- 293 (5)(a)(i).
- 294 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
- 295 peer support provider or a mental health professional, if the applicant provides
- 296 services in a program that serves only adults with a primary mental health
- 297 diagnosis, with or without a co-occurring substance use disorder.
- 298 (ii) The office shall conduct a comprehensive review of an applicant described in
- 299 Subsection (5)(b)(i) in accordance with Subsection (7).
- 300 (c) The office shall deny direct access qualified status to an applicant if the office finds
- 301 that a court order prohibits the applicant from having direct access to a child or
- 302 vulnerable adult.
- 303 (6) The office shall conduct a comprehensive review of an applicant's background check if

- 304 the applicant:
- 305 (a) has a felony or class A misdemeanor conviction that is more than three years from
306 the date on which the office conducts the background check, for an offense described
307 in Subsection (5)(a);
- 308 (b) has a felony charge or conviction that is no more than 10 years from the date on
309 which the office conducts the background check for an offense not described in
310 Subsection (5)(a);
- 311 (c) has a felony charge or conviction that is more than 10 years from the date on which
312 the office conducts the background check, for an offense not described in Subsection
313 (5)(a), with criminal or non-criminal findings after the date of the felony charge or
314 conviction;
- 315 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than
316 three years and no more than 10 years from the date on which the office conducts the
317 background check for an offense described in Subsection (5)(a);
- 318 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10
319 years from the date on which the office conducts the background check, for an
320 offense described in Subsection (5)(a), with criminal or non-criminal findings after
321 the date of conviction;
- 322 (f) has a misdemeanor charge or conviction that is no more than three years from the
323 date on which the office conducts the background check for an offense not described
324 in Subsection (5)(a);
- 325 (g) has a misdemeanor charge or conviction that is more than three years from the date
326 on which the office conducts the background check, for an offense not described in
327 Subsection (5)(a), with criminal or non-criminal findings after the date of charge or
328 conviction;
- 329 (h) is currently subject to a plea in abeyance or diversion agreement for an offense
330 described in Subsection (5)(a);
- 331 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title
332 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
333 offender registry;
- 334 (j) has a record of an adjudication in juvenile court for an act that, if committed by an
335 adult, would be a felony or misdemeanor, if the applicant is:
- 336 (i) under 28 years old; or
- 337 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is

- 338 currently subject to a plea in abeyance or diversion agreement for a felony or a
339 misdemeanor offense described in Subsection (5)(a);
- 340 (k) has a pending charge for an offense described in Subsection (5)(a);
- 341 (l) has a listing that occurred no more than 15 years from the date on which the office
342 conducts the background check in the Division of Child and Family Services'
343 Licensing Information System described in Section ;
- 344 (m) has a listing that occurred more than 15 years from the date on which the office
345 conducts the background check in the Division of Child and Family Services'
346 Licensing Information System described in Section 80-2-1002, with criminal or
347 non-criminal findings after the date of the listing;
- 348 (n) has a listing that occurred no more than 15 years from the date on which the office
349 conducts the background check in the Division of Aging and Adult Services'
350 vulnerable adult abuse, neglect, or exploitation database described in Section
351 26B-6-210;
- 352 (o) has a listing that occurred more than 15 years from the date on which the office
353 conducts the background check in the Division of Aging and Adult Services'
354 vulnerable adult abuse, neglect, or exploitation database described in Section
355 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 356 (p) has a substantiated finding that occurred no more than 15 years from the date on
357 which the office conducts the background check of severe child abuse or neglect
358 under Section 80-3-404 or 80-3-504[-]; or
- 359 (q) has a substantiated finding that occurred more than 15 years from the date on which
360 the office conducts the background check of severe child abuse or neglect under
361 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of
362 the listing.
- 363 (7)(a) The comprehensive review shall include an examination of:
- 364 (i) the date of the offense or incident;
- 365 (ii) the nature and seriousness of the offense or incident;
- 366 (iii) the circumstances under which the offense or incident occurred;
- 367 (iv) the age of the perpetrator when the offense or incident occurred;
- 368 (v) whether the offense or incident was an isolated or repeated incident;
- 369 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
370 adult, including:
- 371 (A) actual or threatened, nonaccidental physical, mental, or financial harm;

- 372 (B) sexual abuse;
- 373 (C) sexual exploitation; or
- 374 (D) negligent treatment;
- 375 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 376 treatment received, or additional academic or vocational schooling completed;
- 377 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
- 378 which the applicant is applying; and
- 379 (ix) if the background check of an applicant is being conducted for the purpose of
- 380 giving direct access qualified status to an applicant seeking a position in a
- 381 congregate care program or to become a prospective foster or adoptive parent, any
- 382 listing in the Division of Child and Family Services' Management Information
- 383 System described in Section 80-2-1001.
- 384 (b) At the conclusion of the comprehensive review, the office shall deny direct access
- 385 qualified status to an applicant if the office finds the approval would likely create a
- 386 risk of harm to a child or vulnerable adult.
- 387 (8) The office shall grant direct access qualified status to an applicant who is not denied
- 388 under this section.
- 389 (9)(a) The office may conditionally grant direct access qualified status to an applicant,
- 390 for a maximum of 60 days after the day on which the office sends written notice,
- 391 without requiring that the applicant be directly supervised, if the office:
- 392 (i) is awaiting the results of the criminal history search of national criminal
- 393 background databases; and
- 394 (ii) would otherwise grant direct access qualified status to the applicant under this
- 395 section.
- 396 (b) The office may conditionally grant direct access qualified status to an applicant, for a
- 397 maximum of one year after the day on which the office sends written notice, without
- 398 requiring that the applicant be directly supervised if the office:
- 399 (i) is awaiting the results of an out-of-state registry for providers other than foster and
- 400 adoptive parents; and
- 401 (ii) would otherwise grant direct access qualified status to the applicant under this
- 402 section.
- 403 (c) Upon receiving the results of the criminal history search of a national criminal
- 404 background database, the office shall grant or deny direct access qualified status to
- 405 the applicant in accordance with this section.

- 406 (10)(a) Each time an applicant is associated with a licensee, the department shall review
407 the current status of the applicant's background check to ensure the applicant is still
408 eligible for direct access qualified status in accordance with this section.
- 409 (b) A licensee may not permit an individual to have direct access to a child or a
410 vulnerable adult without being directly supervised unless:
- 411 (i) the individual is the parent or guardian of the child, or the guardian of the
412 vulnerable adult;
- 413 (ii) the individual is approved by the parent or guardian of the child, or the guardian
414 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 415 (iii) the individual is only permitted to have direct access to a vulnerable adult who
416 voluntarily invites the individual to visit; or
- 417 (iv) the individual only provides incidental care for a foster child on behalf of a foster
418 parent who has used reasonable and prudent judgment to select the individual to
419 provide the incidental care for the foster child.
- 420 (c) Notwithstanding any other provision of this section, an applicant who is denied direct
421 access qualified status shall not have direct access to a child or vulnerable adult
422 unless the office grants direct access qualified status to the applicant through a
423 subsequent application in accordance with this section.
- 424 (11) If the office denies direct access qualified status to an applicant, the applicant may
425 request a hearing in the department's Office of Administrative Hearings to challenge the
426 office's decision.
- 427 (12)(a) This Subsection (12) applies to an applicant associated with a certification,
428 contract, or licensee serving adults only.
- 429 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee
430 shall comply with this section.
- 431 (c) The office shall conduct a comprehensive review for an applicant if:
- 432 (i) the applicant is seeking a position:
- 433 (A) as a peer support provider;
- 434 (B) as a mental health professional; or
- 435 (C) in a program that serves only adults with a primary mental health diagnosis,
436 with or without a co-occurring substance use disorder; and
- 437 (ii) within three years from the date on which the office conducts the background
438 check, the applicant has a felony or misdemeanor charge or conviction or a
439 non-criminal finding.

- 440 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate
441 care program, an applicant seeking to provide a prospective foster home, an applicant
442 seeking to provide a prospective adoptive home, and each adult living in the home of
443 the prospective foster or prospective adoptive home.
- 444 (b) As federally required, the office shall:
- 445 (i) check the child abuse and neglect registry in each state where each applicant
446 resided in the five years immediately preceding the day on which the applicant
447 applied to be a foster or adoptive parent, to determine whether the prospective
448 foster or adoptive parent is listed in the registry as having a substantiated or
449 supported finding of child abuse or neglect; and
- 450 (ii) except for applicants seeking a position in a congregate care program, check the
451 child abuse and neglect registry in each state where each adult living in the home
452 of the prospective foster or adoptive home resided in the five years immediately
453 preceding the day on which the applicant applied to be a foster or adoptive parent,
454 to determine whether the adult is listed in the registry as having a substantiated or
455 supported finding of child abuse or neglect.
- 456 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:
- 457 (i) federal law or rule permits otherwise; or
- 458 (ii) the requirements would prohibit the Division of Child and Family Services or a
459 court from placing a child with:
- 460 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
- 461 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,
462 or 80-3-303, pending completion of the background check described in
463 Subsections (5), (6), and (7).
- 464 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access
465 qualified status if the applicant has been convicted of:
- 466 (i) a felony involving conduct that constitutes any of the following:
- 467 (A) child abuse, as described in ~~[Sections]~~ Section 76-5-109;
- 468 (B) aggravated child abuse, as described in Section~~[,]~~ ~~[76-5-109.2, and]~~
469 76-5-109.2;
- 470 (C) child abandonment, as described in Section 76-5-109.3;
- 471 (D) child torture, as described in Section 76-5-109.4;
- 472 ~~[(B)]~~ (E) commission of domestic violence in the presence of a child, as described
473 in Section 76-5-114;

- 474 [~~(C)~~] (F) abuse or neglect of a child with a disability, as described in Section
475 76-5-110;
- 476 [~~(D)~~] (G) intentional aggravated abuse of a vulnerable adult, as described in
477 Section 76-5-111;
- 478 [~~(E)~~] (H) endangerment of a child or vulnerable adult, as described in Section
479 76-5-112.5;
- 480 [~~(F)~~] (I) aggravated murder, as described in Section 76-5-202;
- 481 [~~(G)~~] (J) murder, as described in Section 76-5-203;
- 482 [~~(H)~~] (K) manslaughter, as described in Section 76-5-205;
- 483 [~~(I)~~] (L) child abuse homicide, as described in Section 76-5-208;
- 484 [~~(J)~~] (M) homicide by assault, as described in Section 76-5-209;
- 485 [~~(K)~~] (N) kidnapping, as described in Section 76-5-301;
- 486 [~~(L)~~] (O) child kidnapping, as described in Section 76-5-301.1;
- 487 [~~(M)~~] (P) aggravated kidnapping, as described in Section 76-5-302;
- 488 [~~(N)~~] (Q) human trafficking of a child, as described in Section 76-5-308.5;
- 489 [~~(O)~~] (R) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 490 [~~(P)~~] (S) sexual exploitation of a minor, as described in Title 76, Chapter 5b,
491 Sexual Exploitation Act;
- 492 [~~(Q)~~] (T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 493 [~~(R)~~] (U) aggravated arson, as described in Section 76-6-103;
- 494 [~~(S)~~] (V) aggravated burglary, as described in Section 76-6-203;
- 495 [~~(T)~~] (W) aggravated robbery, as described in Section 76-6-302;
- 496 [~~(U)~~] (X) lewdness involving a child, as described in Section 76-9-702.5;
- 497 [~~(V)~~] (Y) incest, as described in Section 76-7-102; or
- 498 [~~(W)~~] (Z) domestic violence, as described in Section 77-36-1; or
- 499 (ii) an offense committed outside the state that, if committed in the state, would
500 constitute a violation of an offense described in Subsection (13)(d)(i).
- 501 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
502 qualified status to an applicant if, within the five years from the date on which the
503 office conducts the background check, the applicant was convicted of a felony
504 involving conduct that constitutes a violation of any of the following:
- 505 (i) aggravated assault, as described in Section 76-5-103;
- 506 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 507 (iii) mayhem, as described in Section 76-5-105;

- 508 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
509 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
510 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
511 Act;
512 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
513 Precursor Act; or
514 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 515 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
516 a comprehensive review of an applicant's background check under this section if the
517 applicant:
- 518 (i) has an offense described in Subsection (5)(a);
519 (ii) has an infraction conviction entered on a date that is no more than three years
520 before the date on which the office conducts the background check;
521 (iii) has a listing in the Division of Child and Family Services' Licensing Information
522 System described in Section 80-2-1002;
523 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
524 neglect, or exploitation database described in Section 26B-2-210;
525 (v) has a substantiated finding of severe child abuse or neglect under Section
526 80-3-404 or 80-3-504; or
527 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
528 substantiated or supported finding of a severe type of child abuse or neglect, as
529 defined in Section 80-1-102.

- 530 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
531 office may make rules, consistent with this part, to:
- 532 (a) establish procedures for, and information to be examined in, the comprehensive
533 review described in Subsections (6), (7), and (13); and
534 (b) determine whether to consider an offense or incident that occurred while an
535 individual was in the custody of the Division of Child and Family Services or the
536 Division of Juvenile Justice and Youth Services for purposes of granting or denying
537 direct access qualified status to an applicant.

538 Section 2. Section **53G-6-204** is amended to read:

539 **53G-6-204 . School-age children exempt from school attendance.**

- 540 (1)(a) A local school board or charter school governing board may excuse a school-age
541 child from attendance for any of the following reasons:

- 542 (i) a school-age child over 16 years old may receive a partial release from school to
543 enter employment, or attend a trade school, if the school-age child has completed
544 grade 8; or
- 545 (ii) on an annual basis, a school-age child may receive a full release from attending a
546 public, regularly established private, or part-time school or class if:
- 547 (A) the school-age child has already completed the work required for graduation
548 from high school;
- 549 (B) the school-age child is in a physical or mental condition, certified by a
550 competent physician or physician assistant if required by the local school board
551 or charter school governing board, which renders attendance inexpedient and
552 impracticable;
- 553 (C) proper influences and adequate opportunities for education are provided in
554 connection with the school-age child's employment; or
- 555 (D) the district superintendent or charter school governing board has determined
556 that a school-age child over 16 years old is unable to profit from attendance at
557 school because of inability or a continuing negative attitude toward school
558 regulations and discipline.
- 559 (b) A school-age child receiving a partial release from school under Subsection (1)(a)(i)
560 is required to attend:
- 561 (i) school part time as prescribed by the local school board or charter school
562 governing board; or
- 563 (ii) a home school part time.
- 564 (c) In each case, evidence of reasons for granting an exemption under Subsection (1)
565 must be sufficient to satisfy the local school board or charter school governing board.
- 566 (d) A local school board or charter school governing board that excuses a school-age
567 child from attendance as provided by this Subsection (1) shall issue a certificate that
568 the child is excused from attendance during the time specified on the certificate.
- 569 (2)(a)(i) As used in this Subsection (2)(a), "child abuse" means a criminal felony or
570 attempted felony offense of which an individual is convicted, or to which an
571 individual pleads guilty or no contest, for conduct that constitutes any of the
572 following:
- 573 (A) child abuse under Section 76-5-109;
- 574 (B) aggravated child abuse under Section 76-5-109.2;
- 575 (C) child abandonment under Section 76-5-109.3;

- 576 (D) child torture under Section 76-5-109.4;
577 ~~(D)~~ (E) commission of domestic violence in the presence of a child under Section
578 76-5-114;
579 ~~(E)~~ (F) child abuse homicide under Section 76-5-208;
580 ~~(F)~~ (G) child kidnapping under Section 76-5-301.1;
581 ~~(G)~~ (H) human trafficking of a child under Section 76-5-308.5;
582 ~~(H)~~ (I) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or in
583 Title 76, Chapter 5b, Part 2, Sexual Exploitation, if the victim is under 18 years
584 old;
585 ~~(I)~~ (J) sexual exploitation of a minor under Section 76-5b-201;
586 ~~(J)~~ (K) aggravated sexual exploitation of a minor under Section 76-5b-201.1; or
587 ~~(K)~~ (L) an offense in another state that, if committed in this state, would
588 constitute an offense described in this Subsection (2)(a)(i).
589 (ii) Except as provided in Subsection (2)(a)(iii), a local school board shall excuse a
590 school-age child from attendance, if the school-age child's parent or legal guardian
591 files a signed affidavit with the school-age child's school district of residence, as
592 defined in Section 53G-6-302, that:
593 (A) the school-age child will attend a home school; and
594 (B) the parent or legal guardian assumes sole responsibility for the education of
595 the school-age child, except to the extent the school-age child is dual enrolled
596 in a public school as provided in Section 53G-6-702.
597 (iii) If a parent or legal guardian has been convicted of child abuse or if a court of
598 competent jurisdiction has made a substantiated finding of child abuse against the
599 parent or legal guardian:
600 (A) the parent or legal guardian may not assume responsibility for the education
601 of a school-age child under Subsection (2)(a)(ii); and
602 (B) the local school board may not accept the affidavit described in Subsection
603 (2)(a)(ii) from the parent or legal guardian or otherwise exempt the school-age
604 child from attendance under Subsection (2)(a)(ii) in relation to the parent's or
605 legal guardian's intent to home school the child.
606 (iv) Nothing in this Subsection (2)(a) affects the ability of another of a child's parents
607 or legal guardians who is not prohibited under Subsection (2)(a)(iii) to file the
608 affidavit described in Subsection (2)(a)(ii).
609 (b) A signed affidavit filed in accordance with Subsection (2)(a) shall remain in effect as

- 610 long as:
- 611 (i) the school-age child attends a home school;
- 612 (ii) the school district where the affidavit was filed remains the school-age child's
- 613 district of residence; and
- 614 (iii) the parent or legal guardian who filed the signed affidavit has not been convicted
- 615 of child abuse or been the subject of a substantiated finding of child abuse by a
- 616 court of competent jurisdiction.
- 617 (c) A parent or legal guardian of a school-age child who attends a home school is solely
- 618 responsible for:
- 619 (i) the selection of instructional materials and textbooks;
- 620 (ii) the time, place, and method of instruction; and
- 621 (iii) the evaluation of the home school instruction.
- 622 (d) A local school board may not:
- 623 (i) require a parent or legal guardian of a school-age child who attends a home school
- 624 to maintain records of instruction or attendance;
- 625 (ii) require credentials for individuals providing home school instruction;
- 626 (iii) inspect home school facilities; or
- 627 (iv) require standardized or other testing of home school students.
- 628 (e) Upon the request of a parent or legal guardian, a local school board shall identify the
- 629 knowledge, skills, and competencies a student is recommended to attain by grade
- 630 level and subject area to assist the parent or legal guardian in achieving college and
- 631 career readiness through home schooling.
- 632 (f) A local school board that excuses a school-age child from attendance under this
- 633 Subsection (2) shall annually issue a certificate stating that the school-age child is
- 634 excused from attendance for the specified school year.
- 635 (g) A local school board shall issue a certificate excusing a school-age child from
- 636 attendance:
- 637 (i) within 30 days after receipt of a signed affidavit filed by the school-age child's
- 638 parent or legal guardian under this Subsection (2); and
- 639 (ii) on or before August 1 each year thereafter unless:
- 640 (A) the school-age child enrolls in a school within the school district;
- 641 (B) the school-age child's parent or legal guardian notifies the school district that
- 642 the school-age child no longer attends a home school; or
- 643 (C) the school-age child's parent or legal guardian notifies the school district that

644 the school-age child's school district of residence has changed.
 645 (3) A parent or legal guardian who is eligible to file and files a signed affidavit under
 646 Subsection (2)(a) is exempt from the application of Subsections 53G-6-202(2), (5), and
 647 (6).

648 (4)(a) Nothing in this section may be construed to prohibit or discourage voluntary
 649 cooperation, resource sharing, or testing opportunities between a school or school
 650 district and a parent or legal guardian of a child attending a home school.

651 (b) The exemptions in this section apply regardless of whether:

652 (i) a parent or legal guardian provides education instruction to the parent's or legal
 653 guardian's child alone or in cooperation with other parents or legal guardians
 654 similarly exempted under this section; or

655 (ii) the parent or legal guardian makes payment for educational services the parent's
 656 or legal guardian's child receives.

657 Section 3. Section **76-2-401** is amended to read:

658 **76-2-401 . Justification as defense -- When allowed.**

659 (1) Conduct which is justified is a defense to prosecution for any offense based on the
 660 conduct. The defense of justification may be claimed:

661 (a) when the actor's conduct is in defense of persons or property under the circumstances
 662 described in Sections 76-2-402 through 76-2-406 of this part;

663 (b) when the actor's conduct is reasonable and in fulfillment of his duties as a
 664 governmental officer or employee;

665 (c) when the actor's conduct is reasonable discipline of minors by parents, guardians,
 666 teachers, or other persons in loco parentis, as limited by Subsection (2);

667 (d) when the actor's conduct is reasonable discipline of persons in custody under the
 668 laws of the state; or

669 (e) when the actor's conduct is justified for any other reason under the laws of this state.

670 (2) The defense of justification under Subsection (1)(c) is not available if the offense
 671 charged involves causing serious bodily injury, as defined in Section 76-1-101.5, serious [
 672 ~~physical~~]injury, as defined in Section 76-5-109, or the death of the minor.

673 Section 4. Section **76-3-203.5** is amended to read:

674 **76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.**

675 (1) As used in this section:

676 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
 677 United States, or any district, possession, or territory of the United States for which

678 the maximum punishment the offender may be subjected to exceeds one year in
679 prison.

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

685 (c) "Violent felony" means:

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

688 (A) arson as described in Section 76-6-102;

689 (B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);

690 (C) criminal mischief as described in Section 76-6-106;

691 (D) aggravated arson as described in Section 76-6-103;

692 (E) assault by prisoner as described in Section 76-5-102.5;

693 (F) disarming a police officer as described in Section 76-5-102.8;

694 (G) aggravated assault as described in Section 76-5-103;

695 (H) aggravated assault by prisoner as described in Section 76-5-103.5;

696 (I) mayhem as described in Section 76-5-105;

697 (J) stalking as described in Subsection 76-5-106.5(2);

698 (K) threat of terrorism as described in Section 76-5-107.3;

699 (L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);

700 (M) child torture as described in Section 76-5-109.4;

701 [~~(M)~~] (N) commission of domestic violence in the presence of a child as described
702 in Section 76-5-114;

703 [~~(N)~~] (O) abuse or neglect of a child with a disability as described in Section
704 76-5-110;

705 [~~(O)~~] (P) abuse or exploitation of a vulnerable adult as described in Section
706 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;

707 [~~(P)~~] (Q) endangerment of a child or vulnerable adult as described in Section
708 76-5-112.5;

709 [~~(Q)~~] (R) an offense described in Chapter 5, Part 2, Criminal Homicide;

710 [~~(R)~~] (S) kidnapping as described in Section 76-5-301;

711 [~~(S)~~] (T) child kidnapping as described in Section 76-5-301.1;

712 [~~(T)~~] (U) aggravated kidnapping as described in Section 76-5-302;
713 [~~(U)~~] (V) rape as described in Section 76-5-402;
714 [~~(V)~~] (W) rape of a child as described in Section 76-5-402.1;
715 [~~(W)~~] (X) object rape as described in Section 76-5-402.2;
716 [~~(X)~~] (Y) object rape of a child as described in Section 76-5-402.3;
717 [~~(Y)~~] (Z) forcible sodomy as described in Section 76-5-403;
718 [~~(Z)~~] (AA) sodomy on a child as described in Section 76-5-403.1;
719 [~~(AA)~~] (BB) forcible sexual abuse as described in Section 76-5-404;
720 [~~(BB)~~] (CC) sexual abuse of a child as described in Section 76-5-404.1;
721 [~~(CC)~~] (DD) aggravated sexual abuse of a child as described in Section 76-5-404.3;
722 [~~(DD)~~] (EE) aggravated sexual assault as described in Section 76-5-405;
723 [~~(EE)~~] (FF) sexual exploitation of a minor as described in Section 76-5b-201;
724 [~~(FF)~~] (GG) aggravated sexual exploitation of a minor as described in Section
725 76-5b-201.1;
726 [~~(GG)~~] (HH) sexual exploitation of a vulnerable adult as described in Section
727 76-5b-202;
728 [~~(HH)~~] (II) burglary as described in Subsection 76-6-202(3)(b);
729 [~~(H)~~] (JJ) aggravated burglary as described in Section 76-6-203;
730 [~~(J)~~] (KK) robbery as described in Section 76-6-301;
731 [~~(K)~~] (LL) aggravated robbery as described in Section 76-6-302;
732 [~~(L)~~] (MM) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or
733 (1)(a)(ii);
734 [~~(M)~~] (NN) tampering with a witness as described in Section 76-8-508;
735 [~~(N)~~] (OO) retaliation against a witness, victim, or informant as described in
736 Section 76-8-508.3;
737 [~~(O)~~] (PP) tampering or retaliating against a juror as described in Subsection
738 76-8-508.5(2)(a)(iii);
739 [~~(P)~~] (QQ) extortion to dismiss a criminal proceeding as described in Subsection
740 76-6-406(1)(a)(i), (ii), or (ix);
741 [~~(Q)~~] (RR) possession, use, or removal of explosive, chemical, or incendiary
742 devices as described in Subsections 76-10-306(3) through (6);
743 [~~(R)~~] (SS) unlawful delivery of explosive, chemical, or incendiary devices as
744 described in Section 76-10-307;
745 [~~(S)~~] (TT) purchase or possession of a dangerous weapon or handgun by a

- 746 restricted person as described in Section 76-10-503;
- 747 [~~TT~~] (UU) aggravated exploitation of prostitution as described in Subsection
- 748 76-10-1306(1)(a);
- 749 [~~UU~~] (VV) bus hijacking as described in Section 76-10-1504; and
- 750 [~~VV~~] (WW) discharging firearms and hurling missiles as described in Section
- 751 76-10-1505; or
- 752 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 753 any district, possession, or territory of the United States which would constitute a
- 754 violent felony as defined in this Subsection (1) if committed in this state.
- 755 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier
- 756 of fact determines beyond a reasonable doubt that the person is a habitual violent
- 757 offender under this section, the penalty for a:
- 758 (a) third degree felony is as if the conviction were for a first degree felony;
- 759 (b) second degree felony is as if the conviction were for a first degree felony; or
- 760 (c) first degree felony remains the penalty for a first degree penalty except:
- 761 (i) the convicted person is not eligible for probation; and
- 762 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
- 763 habitual violent offender as an aggravating factor in determining the length of
- 764 incarceration.
- 765 (3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
- 766 notice in the information or indictment that the defendant is subject to punishment as
- 767 a habitual violent offender under this section. Notice shall include the case number,
- 768 court, and date of conviction or commitment of any case relied upon by the
- 769 prosecution.
- 770 (b)(i) The defendant shall serve notice in writing upon the prosecutor if the
- 771 defendant intends to deny that:
- 772 (A) the defendant is the person who was convicted or committed;
- 773 (B) the defendant was represented by counsel or had waived counsel; or
- 774 (C) the defendant's plea was understandingly or voluntarily entered.
- 775 (ii) The notice of denial shall be served not later than five days prior to trial and shall
- 776 state in detail the defendant's contention regarding the previous conviction and
- 777 commitment.
- 778 (4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a
- 779 jury, the jury may not be told, until after it returns its verdict on the underlying felony

- 780 charge, of the:
- 781 (i) defendant's previous convictions for violent felonies, except as otherwise provided
782 in the Utah Rules of Evidence; or
- 783 (ii) allegation against the defendant of being a habitual violent offender.
- 784 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
785 being an habitual violent offender by the same jury, if practicable, unless the
786 defendant waives the jury, in which case the allegation shall be tried immediately to
787 the court.
- 788 (c)(i) Before or at the time of sentencing the trier of fact shall determine if this
789 section applies.
- 790 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
791 and the defendant shall be afforded an opportunity to present any necessary
792 additional evidence.
- 793 (iii) Before sentencing under this section, the trier of fact shall determine whether this
794 section is applicable beyond a reasonable doubt.
- 795 (d) If any previous conviction and commitment is based upon a plea of guilty or no
796 contest, there is a rebuttable presumption that the conviction and commitment were
797 regular and lawful in all respects if the conviction and commitment occurred after
798 January 1, 1970. If the conviction and commitment occurred prior to January 1,
799 1970, the burden is on the prosecution to establish by a preponderance of the
800 evidence that the defendant was then represented by counsel or had lawfully waived
801 the right to have counsel present, and that the defendant's plea was understandingly
802 and voluntarily entered.
- 803 (e) If the trier of fact finds this section applicable, the court shall enter that specific
804 finding on the record and shall indicate in the order of judgment and commitment
805 that the defendant has been found by the trier of fact to be a habitual violent offender
806 and is sentenced under this section.
- 807 (5)(a) The sentencing enhancement provisions of Section 76-3-407 supersede the
808 provisions of this section.
- 809 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
810 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part
811 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.
- 812 (6) The sentencing enhancement described in this section does not apply if:
- 813 (a) the offense for which the person is being sentenced is:

- 814 (i) a grievous sexual offense;
- 815 (ii) child kidnapping, Section 76-5-301.1;
- 816 (iii) aggravated kidnapping, Section 76-5-302; or
- 817 (iv) forcible sexual abuse, Section 76-5-404; and
- 818 (b) applying the sentencing enhancement provided for in this section would result in a
- 819 lower maximum penalty than the penalty provided for under the section that
- 820 describes the offense for which the person is being sentenced.

821 Section 5. Section **76-3-406** is amended to read:

822 **76-3-406 . Crimes for which probation, suspension of sentence, lower category of**

823 **offense, or hospitalization may not be granted.**

- 824 (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a,
- 825 Commitment and Treatment of Individuals with a Mental Condition, except as provided
- 826 in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted,
- 827 the execution or imposition of sentence may not be suspended, the court may not enter a
- 828 judgment for a lower category of offense, and hospitalization may not be ordered, the
- 829 effect of which would in any way shorten the prison sentence for an individual who
- 830 commits a capital felony or a first degree felony involving:
- 831 (a) child torture as described in Section 76-5-109.4;
- 832 (b) aggravated murder as described in Section 76-5-202;
- 833 ~~(b)~~ (c) murder as described in Section 76-5-203;
- 834 ~~(c)~~ (d) child kidnapping as described in Section 76-5-301.1;
- 835 ~~(d)~~ (e) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
- 836 ~~(e)~~ (f) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);
- 837 ~~(f)~~ (g) rape of a child as described in Section 76-5-402.1;
- 838 ~~(g)~~ (h) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);
- 839 ~~(h)~~ (i) object rape of a child as described in Section 76-5-402.3;
- 840 ~~(i)~~ (j) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);
- 841 ~~(j)~~ (k) sodomy on a child as described in Section 76-5-403.1;
- 842 ~~(k)~~ (l) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
- 843 ~~(l)~~ (m) aggravated sexual abuse of a child as described in Section 76-5-404.3;
- 844 ~~(m)~~ (n) aggravated sexual assault as described in Section 76-5-405; or
- 845 ~~(n)~~ (o) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 846 (2) Except for an offense before the district court in accordance with Section 80-6-502 or
- 847 80-6-504, the provisions of this section do not apply if the sentencing court finds that the

848 defendant:

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

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

852 Section 6. Section **76-5-109** is amended to read:

853 **76-5-109 . Child abuse.**

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

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

856 (ii) [~~"Physical injury~~] "Injury" means an injury to or condition of a child which
857 impairs the physical or psychological condition of the child, including:

858 (A) a bruise or other contusion of the skin;

859 (B) a minor laceration or abrasion;

860 (C) failure to thrive or malnutrition; or

861 (D) any other condition [~~which~~] that imperils the child's physical or psychological
862 health or welfare and that is not a serious [~~physical~~] injury.

863 (iii)(A) "Serious [~~physical~~] injury" means [~~any~~] a physical or psychological injury
864 or a set of physical or psychological injuries that:

865 (I) seriously impairs the child's health, which includes the child's physical or
866 mental well-being or development;

867 [~~(H)~~] ~~involves physical torture;~~

868 [~~(HH)~~] (II) causes serious emotional harm to the child; or

869 [~~(HV)~~] (III) involves a substantial risk of death to the child.

870 (B) "Serious [~~physical~~] injury" includes:

871 (I) fracture of any bone or bones;

872 (II) intracranial bleeding, swelling or contusion of the brain, whether caused by
873 blows, shaking, or causing the child's head to impact with an object or
874 surface;

875 (III) any burn, including burns inflicted by hot water, or those caused by
876 placing a hot object upon the skin or body of the child;

877 (IV) any injury caused by use of a dangerous weapon;

878 (V) any combination of two or more [~~physical~~] injuries inflicted by the same [~~person~~]
879 individual, either at the same time or on different occasions;

880 (VI) any damage to internal organs of the body;

881 (VII) any conduct toward a child that results in severe emotional harm, severe

- 882 developmental delay or intellectual disability, or severe impairment of the
 883 child's ability to function;
- 884 (VIII) any injury that creates a permanent disfigurement or protracted loss or
 885 impairment of the function of a bodily member, limb, or organ;
- 886 (IX) any impediment of the breathing or the circulation of blood by application
 887 of pressure to the neck, throat, or chest, or by the obstruction of the nose or
 888 mouth, that is likely to produce a loss of consciousness;
- 889 (X) any conduct involving unreasonable forcible restriction of a child's
 890 movements, including restraining or confining the child with restraints or in
 891 an enclosed space or forcing the child to remain in a stress position;
- 892 (XI) any conduct involving forcing or coercing a child to injure the child's self,
 893 an individual known to the child, or an animal known to the child;
- 894 (XII) any conduct involving a threat to harm or kill the child, an individual
 895 known to the child, or an animal known to the child;
- 896 (XIII) any conduct involving unreasonably subjecting a child to excessive heat,
 897 cold, darkness, solitary confinement, or sleep deprivation;
- 898 ~~(XIV)~~ (XIV) any conduct that results in starvation~~[-or-]~~ , dehydration, failure to
 899 thrive, or malnutrition, that jeopardizes the child's life or seriously injures
 900 the child's physical or mental well-being or development; or
- 901 ~~(XIV)~~ (XV) unconsciousness caused by the unlawful infliction of a brain injury
 902 or unlawfully causing any deprivation of oxygen to the brain.
- 903 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 904 (2) An actor commits child abuse if the actor:
- 905 (a) inflicts upon a child ~~[physical]~~ an injury; or
- 906 (b) having the care or custody of ~~[such]~~ a child, causes or permits another to inflict [
 907 ~~physical]~~ an injury upon [a] the child.
- 908 (3)(a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or
 909 knowingly.
- 910 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly.
- 911 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal
 912 negligence.
- 913 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means
 914 alone through prayer, in lieu of medical treatment, in accordance with the tenets and
 915 practices of an established church or religious denomination of which the parent or

- 916 legal guardian is a member or adherent may not, for that reason alone, be considered
 917 to have committed an offense under this section.
- 918 (b) A parent or guardian of a child does not violate this section by selecting a treatment
 919 option for a medical condition of the child, if the treatment option is one that a
 920 reasonable parent or guardian would believe to be in the best interest of the child.
- 921 (c) An actor is not guilty of an offense under this section for conduct that constitutes:
 922 (i) reasonable discipline or management of a child, including withholding privileges;
 923 (ii) conduct described in Section 76-2-401; or
 924 (iii) the use of reasonable and necessary physical restraint or force on a child:
 925 (A) in self-defense;
 926 (B) in defense of others;
 927 (C) to protect the child; or
 928 (D) to remove a weapon in the possession of a child for any of the reasons
 929 described in Subsections (4)(c)(iii)(A) through (C).

930 Section 7. Section **76-5-109.2** is amended to read:

931 **76-5-109.2 . Aggravated child abuse.**

- 932 (1)(a) As used in this section:
 933 (i) "Child" means the same as that term is defined in Section 76-5-109.
 934 (ii) "Serious [~~physical~~]injury" means the same as that term is defined in Section
 935 76-5-109.
- 936 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 937 (2) [An] Under circumstances not amounting to a violation of Section 76-5-109.4, Child
 938 torture, an actor commits aggravated child abuse if the actor:
 939 (a) inflicts upon a child a serious [~~physical~~]injury; or
 940 (b) having the care or custody of [~~such~~] a child, causes or permits another to inflict a
 941 serious [~~physical~~]injury upon [a] the child.
- 942 (3)(a) A violation of Subsection (2) is a second degree felony if done intentionally or
 943 knowingly.
 944 (b) A violation of Subsection (2) is a third degree felony if done recklessly.
 945 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal
 946 negligence.
- 947 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means
 948 alone through prayer, in lieu of medical treatment, in accordance with the tenets and
 949 practices of an established church or religious denomination of which the parent or

950 legal guardian is a member or adherent may not, for that reason alone, be considered
951 to have committed an offense under this section.

952 (b) A parent or guardian of a child does not violate this section by selecting a treatment
953 option for the medical condition of the child, if the treatment option is one that a
954 reasonable parent or guardian would believe to be in the best interest of the child.

955 (c) An actor is not guilty of an offense under this section for conduct that constitutes:

956 (i) conduct described in Section 76-2-401; or

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

958 (A) in self-defense;

959 (B) in defense of others;

960 (C) to protect the child; or

961 (D) to remove a weapon in the possession of a child for any of the reasons

962 described in Subsections (4)(c)(ii)(A) through (C).

963 Section 8. Section **76-5-109.3** is amended to read:

964 **76-5-109.3 . Child abandonment.**

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

966 (i) "Child" means the same as that term is defined in Section 76-5-109.

967 (ii) "Enterprise" means the same as that term is defined in Section 76-10-1602.

968 (iii) "Serious [~~physical~~]injury" means the same as that term is defined in Section
969 76-5-109.

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

971 (2)(a) Except as provided in Subsection (4), an actor commits child abandonment if the
972 actor:

973 (i) is a parent or legal guardian of a child, and:

974 (A) intentionally ceases to maintain physical custody of the child;

975 (B) intentionally fails to make reasonable arrangements for the safety, care, and
976 physical custody of the child; and

977 (C)(I) intentionally fails to provide the child with food, shelter, or clothing;

978 (II) manifests an intent to permanently not resume physical custody of the
979 child; or

980 (III) for a period of at least 30 days, intentionally fails to resume physical
981 custody of the child and fails to manifest a genuine intent to resume
982 physical custody of the child; or

983 (ii) encourages or causes the parent or legal guardian of a child to violate Subsection

- 984 (2)(a)(i).
- 985 (b) Except as provided in Subsection (4), an enterprise commits child abandonment if
986 the enterprise encourages, commands, induces by misrepresentation, or causes
987 another to violate Subsection (2)(a).
- 988 (3)(a)(i) A violation of Subsection (2) is a third degree felony.
- 989 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second
990 degree felony if, as a result of the child abandonment:
- 991 (A) the child suffers a serious ~~[physical]~~injury; or
992 (B) the actor or enterprise receives, directly or indirectly, any benefit.
- 993 (b)(i) In addition to the penalty described in Subsection (3)(a)(ii), the court may
994 order the actor or enterprise described in Subsection (3)(a)(ii)(B) to pay the costs
995 of investigating and prosecuting the offense and the costs of securing any
996 forfeiture provided for under Subsection (3)(b)(ii).
- 997 (ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is
998 subject to criminal or civil forfeiture pursuant to Title 77, Chapter 11b, Forfeiture
999 of Seized Property.
- 1000 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means
1001 alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1002 practices of an established church or religious denomination of which the parent or
1003 legal guardian is a member or adherent may not, for that reason alone, be considered
1004 to have committed an offense under this section.
- 1005 (b) An actor is not guilty of an offense under this section for conduct that constitutes:
- 1006 (i) the safe relinquishment of a child pursuant to the provisions of Section 80-4-502;
1007 (ii) giving legal consent to a court order for termination of parental rights:
1008 (A) in a legal adoption proceeding; or
1009 (B) in a case in which a petition for the termination of parental rights, or the
1010 termination of a guardianship, has been filed;
- 1011 (iii) reasonable discipline or management of a child, including withholding
1012 privileges; or
1013 (iv) conduct described in Section 76-2-401.
- 1014 (c) It is a defense to prosecution under Subsection (2)(a)(i) that the actor committed
1015 child abandonment due to:
- 1016 (i) intimidation;
1017 (ii) isolation;

- 1018 (iii) harassment;
- 1019 (iv) coercion;
- 1020 (v) the actor's reasonable fear of bodily harm; or
- 1021 (vi) the reasonable actions of the actor to protect the safety and welfare of the actor or
- 1022 another individual.

1023 Section 9. Section **76-5-109.4** is enacted to read:

1024 **76-5-109.4 . Child torture.**

1025 (1)(a) As used in this section:

- 1026 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 1027 (ii) "Course of conduct" means a pattern of conduct composed of two or more acts
- 1028 that evidence a continuity of purpose.
- 1029 (iii) "Serious injury" means the same as that term is defined in Section 76-5-109.

1030 (b) Terms defined in Section 76-1-101.5 apply to this section.

1031 (2) An actor commits child torture if the actor intentionally or knowingly inflicts upon a

1032 child, or having the care or custody of a child, intentionally or knowingly causes or

1033 permits another to inflict upon the child:

- 1034 (a) a serious injury that is inflicted in an exceptionally cruel or exceptionally depraved
- 1035 manner that causes the child to experience extreme physical or psychological pain or
- 1036 anguish; or
- 1037 (b) a serious injury, or more than one serious injury, as part of a course of conduct or
- 1038 over a prolonged period of time.

1039 (3) A violation of Subsection (2) is a first degree felony subject to a sentence of

1040 imprisonment of at least 10 years and which may be for life.

1041 (4) Imprisonment under Subsection (3) is mandatory in accordance with Section 76-3-406.

1042 (5) An actor's conduct is not subject to punishment under Subsection (2)(b) if the serious

1043 injury that forms the basis for the offense is based solely on the commission of two or

1044 more injuries by the same individual as described under Subsection 76-5-109(1)

1045 (a)(iii)(B)(V).

1046 Section 10. Section **76-5-110** is amended to read:

1047 **76-5-110 . Abuse or neglect of a child with a disability.**

1048 (1)(a) As used in this section:

- 1049 (i) "Abuse" means:
- 1050 (A) inflicting [~~physical~~]injury;
- 1051 (B) having the care or custody of a child with a disability, causing or permitting

- 1052 another to inflict ~~[physical]~~injury; or
- 1053 (C) unreasonable confinement.
- 1054 (ii) "Caretaker" means:
- 1055 (A) any parent, legal guardian, or other person having under that person's care and
- 1056 custody a child with a disability; or
- 1057 (B) any person, corporation, or public institution that has assumed by contract or
- 1058 court order the responsibility to provide food, shelter, clothing, medical, and
- 1059 other necessities to a child with a disability.
- 1060 (iii) "Child with a disability" means an individual under 18 years old who is impaired
- 1061 because of mental illness, mental deficiency, physical illness or disability, or other
- 1062 cause, to the extent that the individual is unable to care for the individual's own
- 1063 personal safety or to provide necessities such as food, shelter, clothing, and
- 1064 medical care.
- 1065 (iv) "Injury" means the same as that term is defined in Section 76-5-109.
- 1066 ~~[(iv)]~~ (v) "Neglect" means failure by a caretaker to provide care, nutrition, clothing,
- 1067 shelter, supervision, or medical care.
- 1068 ~~[(v) "Physical injury" means the same as that term is defined in Section 76-5-109.]~~
- 1069 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1070 (2) An actor commits abuse or neglect of a child with a disability if the actor is a caretaker
- 1071 and intentionally, knowingly, or recklessly abuses or neglects a child with a disability.
- 1072 (3) A violation of Subsection (2) is a third degree felony.
- 1073 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means
- 1074 alone through prayer, in lieu of medical treatment, in accordance with the tenets and
- 1075 practices of an established church or religious denomination of which the parent or
- 1076 legal guardian is a member or adherent may not, for that reason alone, be considered
- 1077 to be in violation under this section.
- 1078 (b) Subject to Section 80-3-109, the exception under Subsection (4)(a) does not preclude
- 1079 a court from ordering medical services from a physician licensed to engage in the
- 1080 practice of medicine to be provided to the child where there is substantial risk of
- 1081 harm to the child's health or welfare if the treatment is not provided.
- 1082 (c) A caretaker of a child with a disability does not violate this section by selecting a
- 1083 treatment option for a medical condition of a child with a disability, if the treatment
- 1084 option is one that a reasonable caretaker would believe to be in the best interest of the
- 1085 child with a disability.

1086 Section 11. Section **76-5-202** is amended to read:

1087 **76-5-202 . Aggravated murder -- Penalties -- Affirmative defense and special**
1088 **mitigation -- Separate offense.**

1089 (1)(a) As used in this section:

1090 (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.

1091 (ii) "Emergency responder" means the same as that term is defined in Section
1092 53-2b-102.

1093 (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.

1094 (iv) "Law enforcement officer" means the same as that term is defined in Section
1095 53-13-103.

1096 (v) "Peace officer" means:

1097 (A) a correctional officer, federal officer, law enforcement officer, or special
1098 function officer; or

1099 (B) any other person who may exercise peace officer authority in accordance with
1100 Title 53, Chapter 13, Peace Officer Classifications.

1101 (vi) "Special function officer" means the same as that term is defined in Section
1102 53-13-105.

1103 (vii) "Target a law enforcement officer" means an act:

1104 (A) involving the unlawful use of force and violence against a law enforcement
1105 officer;

1106 (B) that causes serious bodily injury or death; and

1107 (C) that is in furtherance of political or social objectives in order to intimidate or
1108 coerce a civilian population or to influence or affect the conduct of a
1109 government or a unit of government.

1110 (viii) "Weapon of mass destruction" means the same as that term is defined in Section
1111 76-10-401.

1112 (b) Terms defined in Section 76-1-101.5 apply to this section.

1113 (2)(a) An actor commits aggravated murder if the actor intentionally or knowingly
1114 causes the death of another individual under any of the following circumstances:

1115 (i) the actor committed homicide while confined in a jail or other correctional
1116 institution;

1117 (ii)(A) the actor committed homicide incident to one act, scheme, course of
1118 conduct, or criminal episode during which two or more individuals other than
1119 the actor were killed; or

- 1120 (B) the actor, during commission of the homicide, attempted to kill one or more
1121 other individuals in addition to the deceased individual;
- 1122 (iii) the actor knowingly created a great risk of death to another individual other than
1123 the deceased individual and the actor;
- 1124 (iv) the actor committed homicide incident to an act, scheme, course of conduct, or
1125 criminal episode during which the actor committed or attempted to commit
1126 aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a
1127 child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse
1128 of a child, aggravated sexual abuse of a child, aggravated child abuse as described
1129 in Subsection 76-5-109.2(3)(a), child torture, or aggravated sexual assault,
1130 aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or
1131 kidnapping, or child kidnapping;
- 1132 (v) the actor committed homicide incident to one act, scheme, course of conduct, or
1133 criminal episode during which the actor committed the crime of abuse or
1134 desecration of a dead human body as described in Subsection 76-9-704(2)(e);
- 1135 (vi) the actor committed homicide for the purpose of avoiding or preventing an arrest
1136 of the actor or another individual by a peace officer acting under color of legal
1137 authority or for the purpose of effecting the actor's or another individual's escape
1138 from lawful custody;
- 1139 (vii) the actor committed homicide for pecuniary gain;
- 1140 (viii) the actor committed, engaged, or employed another person to commit the
1141 homicide subject to an agreement or contract for remuneration or the promise of
1142 remuneration for commission of the homicide;
- 1143 (ix) the actor previously committed or was convicted of:
- 1144 (A) aggravated murder under this section;
- 1145 (B) attempted aggravated murder under this section;
- 1146 (C) murder, under Section 76-5-203;
- 1147 (D) attempted murder, under Section 76-5-203; or
- 1148 (E) an offense committed in another jurisdiction which if committed in this state
1149 would be a violation of a crime listed in this Subsection (2)(a)(ix);
- 1150 (x) the actor was previously convicted of:
- 1151 (A) aggravated assault, under Section 76-5-103;
- 1152 (B) mayhem, under Section 76-5-105;
- 1153 (C) kidnapping, under Section 76-5-301;

- 1154 (D) child kidnapping, under Section 76-5-301.1;
- 1155 (E) aggravated kidnapping, under Section 76-5-302;
- 1156 (F) rape, under Section 76-5-402;
- 1157 (G) rape of a child, under Section 76-5-402.1;
- 1158 (H) object rape, under Section 76-5-402.2;
- 1159 (I) object rape of a child, under Section 76-5-402.3;
- 1160 (J) forcible sodomy, under Section 76-5-403;
- 1161 (K) sodomy on a child, under Section 76-5-403.1;
- 1162 (L) aggravated sexual abuse of a child, under Section 76-5-404.3;
- 1163 (M) aggravated sexual assault, under Section 76-5-405;
- 1164 (N) aggravated arson, under Section 76-6-103;
- 1165 (O) aggravated burglary, under Section 76-6-203;
- 1166 (P) aggravated robbery, under Section 76-6-302;
- 1167 (Q) felony discharge of a firearm, under Section 76-10-508.1; or
- 1168 (R) an offense committed in another jurisdiction which if committed in this state
- 1169 would be a violation of a crime listed in this Subsection (2)(a)(x);
- 1170 (xi) the actor committed homicide for the purpose of:
- 1171 (A) preventing a witness from testifying;
- 1172 (B) preventing a person from providing evidence or participating in any legal
- 1173 proceedings or official investigation;
- 1174 (C) retaliating against a person for testifying, providing evidence, or participating
- 1175 in any legal proceedings or official investigation; or
- 1176 (D) disrupting or hindering any lawful governmental function or enforcement of
- 1177 laws;
- 1178 (xii) the deceased individual was a local, state, or federal public official, or a
- 1179 candidate for public office, and the homicide is based on, is caused by, or is
- 1180 related to that official position, act, capacity, or candidacy;
- 1181 (xiii) the deceased individual was on duty in a verified position or the homicide is
- 1182 based on, is caused by, or is related to the deceased individual's position, and the
- 1183 actor knew, or reasonably should have known, that the deceased individual holds
- 1184 or has held the position of:
- 1185 (A) a peace officer;
- 1186 (B) an executive officer, prosecuting officer, jailer, or prison official;
- 1187 (C) a firefighter, search and rescue personnel, emergency medical personnel,

- 1188 ambulance personnel, or any other emergency responder;
- 1189 (D) a judge or other court official, juror, probation officer, or parole officer; or
- 1190 (E) a security officer contracted to secure, guard, or otherwise protect tangible
- 1191 personal property, real property, or the life and well-being of human or animal
- 1192 life in the area of the offense;
- 1193 (xiv) the actor committed homicide:
- 1194 (A) by means of a destructive device, bomb, explosive, incendiary device, or
- 1195 similar device which was planted, hidden, or concealed in any place, area,
- 1196 dwelling, building, or structure, or was mailed or delivered;
- 1197 (B) by means of any weapon of mass destruction; or
- 1198 (C) to target a law enforcement officer;
- 1199 (xv) the actor committed homicide during the act of unlawfully assuming control of
- 1200 an aircraft, train, or other public conveyance by use of threats or force with intent
- 1201 to:
- 1202 (A) obtain any valuable consideration for the release of the public conveyance or
- 1203 any passenger, crew member, or any other person aboard;
- 1204 (B) direct the route or movement of the public conveyance; or
- 1205 (C) otherwise exert control over the public conveyance;
- 1206 (xvi) the actor committed homicide by means of the administration of a poison or of
- 1207 any lethal substance or of any substance administered in a lethal amount, dosage,
- 1208 or quantity;
- 1209 (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or
- 1210 for ransom;
- 1211 (xviii) the actor committed homicide in an especially heinous, atrocious, cruel, or
- 1212 exceptionally depraved manner, any of which must be demonstrated by physical
- 1213 torture, serious physical abuse, or serious bodily injury of the deceased individual
- 1214 before death;
- 1215 (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body,
- 1216 whether before or after death, in a manner demonstrating the actor's depravity of
- 1217 mind; or
- 1218 (xx) the deceased individual, at the time of the death of the deceased individual:
- 1219 (A) was younger than 14 years old; and
- 1220 (B) was not an unborn child.
- 1221 (b) An actor commits aggravated murder if the actor, with reckless indifference to

- 1222 human life, causes the death of another individual incident to an act, scheme, course
1223 of conduct, or criminal episode during which the actor is a major participant in the
1224 commission or attempted commission of:
- 1225 (i) aggravated child abuse, punishable as a felony of the second degree under
1226 Subsection 76-5-109.2(3)(a);
- 1227 (ii) child torture under Section 76-5-109.4;
- 1228 [~~(ii)~~] (iii) child kidnapping[;] under Section 76-5-301.1;
- 1229 [~~(iii)~~] (iv) rape of a child[;] under Section 76-5-402.1;
- 1230 [~~(iv)~~] (v) object rape of a child[;] under Section 76-5-402.3;
- 1231 [~~(v)~~] (vi) sodomy on a child[;] under Section 76-5-403.1; or
- 1232 [~~(vi)~~] (vii) sexual abuse or aggravated sexual abuse of a child[;] under Section
1233 76-5-404.1.
- 1234 (3)(a) If a notice of intent to seek the death penalty has been filed, a violation of
1235 Subsection (2) is a capital felony.
- 1236 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is
1237 a noncapital first degree felony punishable as provided in Section 76-3-207.7.
- 1238 (c)(i) Within 60 days after arraignment of the defendant, the prosecutor may file
1239 notice of intent to seek the death penalty.
- 1240 (ii) The notice shall be served on the defendant or defense counsel and filed with the
1241 court.
- 1242 (iii) Notice of intent to seek the death penalty may be served and filed more than 60
1243 days after the arraignment upon written stipulation of the parties or upon a finding
1244 by the court of good cause.
- 1245 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
1246 noncapital first degree felony aggravated murder during the period in which the
1247 prosecutor may file a notice of intent to seek the death penalty under Subsection
1248 (3)(c)(i).
- 1249 (e) If the defendant was younger than 18 years old at the time the offense was
1250 committed, aggravated murder is a noncapital first degree felony punishable as
1251 provided in Section 76-3-207.7.
- 1252 (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of
1253 aggravated murder, or alternatively, attempted aggravated murder, as described in
1254 this section, are proved beyond a reasonable doubt, and also finds that the existence
1255 of special mitigation is established by a preponderance of the evidence and in

1256 accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as
1257 follows:

1258 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall
1259 enter a judgment of conviction for murder; or

1260 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the
1261 court shall enter a judgment of conviction for attempted murder.

1262 (4)(a) It is an affirmative defense to a charge of aggravated murder or attempted
1263 aggravated murder that the actor caused the death of another or attempted to cause
1264 the death of another under a reasonable belief that the circumstances provided a legal
1265 justification or excuse for the conduct although the conduct was not legally justifiable
1266 or excusable under the existing circumstances.

1267 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
1268 the viewpoint of a reasonable person under the then existing circumstances.

1269 (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of
1270 aggravated murder, or alternatively, attempted aggravated murder, as described in
1271 this section, are proved beyond a reasonable doubt, and also finds the affirmative
1272 defense described in this Subsection (4) is not disproven beyond a reasonable doubt,
1273 the court shall enter a judgment of conviction as follows:

1274 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall
1275 enter a judgment of conviction for murder; or

1276 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the
1277 court shall enter a judgment of conviction for attempted murder.

1278 (5)(a) Any aggravating circumstance described in Subsection (2) that constitutes a
1279 separate offense does not merge with the crime of aggravated murder.

1280 (b) An actor who is convicted of aggravated murder, based on an aggravating
1281 circumstance described in Subsection (2) that constitutes a separate offense, may also
1282 be convicted of, and punished for, the separate offense.

1283 Section 12. Section **76-5-203** is amended to read:

1284 **76-5-203 . Murder -- Penalties-- Affirmative defense and special mitigation --**
1285 **Separate offenses.**

1286 (1)(a) As used in this section, "predicate offense" means:

1287 (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

1288 (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused
1289 individual is younger than 18 years old;

- 1290 (iii) child torture under Section 76-5-109.4;
 1291 [~~(iii)~~] (iv) kidnapping under Section 76-5-301;
 1292 [~~(iv)~~] (v) child kidnapping under Section 76-5-301.1;
 1293 [~~(v)~~] (vi) aggravated kidnapping under Section 76-5-302;
 1294 [~~(vi)~~] (vii) rape under Section 76-5-402;
 1295 [~~(vii)~~] (viii) rape of a child under Section 76-5-402.1;
 1296 [~~(viii)~~] (ix) object rape under Section 76-5-402.2;
 1297 [~~(ix)~~] (x) object rape of a child under Section 76-5-402.3;
 1298 [~~(x)~~] (xi) forcible sodomy under Section 76-5-403;
 1299 [~~(xi)~~] (xii) sodomy upon a child under Section 76-5-403.1;
 1300 [~~(xii)~~] (xiii) forcible sexual abuse under Section 76-5-404;
 1301 [~~(xiii)~~] (xiv) sexual abuse of a child under Section 76-5-404.1;
 1302 [~~(xiv)~~] (xv) aggravated sexual abuse of a child under Section 76-5-404.3;
 1303 [~~(xv)~~] (xvi) aggravated sexual assault under Section 76-5-405;
 1304 [~~(xvi)~~] (xvii) arson under Section 76-6-102;
 1305 [~~(xvii)~~] (xviii) aggravated arson under Section 76-6-103;
 1306 [~~(xviii)~~] (xix) burglary under Section 76-6-202;
 1307 [~~(xix)~~] (xx) aggravated burglary under Section 76-6-203;
 1308 [~~(xx)~~] (xxi) robbery under Section 76-6-301;
 1309 [~~(xxi)~~] (xxii) aggravated robbery under Section 76-6-302;
 1310 [~~(xxii)~~] (xxiii) escape under Section 76-8-309;
 1311 [~~(xxiii)~~] (xxiv) aggravated escape under Section 76-8-309.3; or
 1312 [~~(xxiv)~~] (xxv) a felony violation of Section 76-10-508 or 76-10-508.1 regarding
 1313 discharge of a firearm or dangerous weapon.
- 1314 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1315 (2) An actor commits murder if:
- 1316 (a) the actor intentionally or knowingly causes the death of another individual;
- 1317 (b) intending to cause serious bodily injury to another individual, the actor commits an
- 1318 act clearly dangerous to human life that causes the death of the other individual;
- 1319 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 1320 actor knowingly engages in conduct that creates a grave risk of death to another
- 1321 individual and thereby causes the death of the other individual;
- 1322 (d)(i) the actor is engaged in the commission, attempted commission, or immediate
- 1323 flight from the commission or attempted commission of any predicate offense, or

- 1324 is a party to the predicate offense;
- 1325 (ii) an individual other than a party described in Section 76-2-202 is killed in the
1326 course of the commission, attempted commission, or immediate flight from the
1327 commission or attempted commission of any predicate offense; and
- 1328 (iii) the actor acted with the intent required as an element of the predicate offense;
- 1329 (e) the actor recklessly causes the death of a peace officer or military service member in
1330 uniform while in the commission or attempted commission of:
- 1331 (i) an assault against a peace officer under Section 76-5-102.4;
- 1332 (ii) interference with a peace officer while making a lawful arrest under Section
1333 76-8-305 if the actor uses force against the peace officer; or
- 1334 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 1335 or
- 1336 (f) the actor commits a homicide that would be aggravated murder, but the offense is
1337 reduced in accordance with Subsection 76-5-202(4).
- 1338 (3)(a)(i) A violation of Subsection (2) is a first degree felony.
- 1339 (ii) A defendant who is convicted of murder shall be sentenced to imprisonment for
1340 an indeterminate term of not less than 15 years and which may be for life.
- 1341 (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,
1342 or alternatively, attempted murder, as described in this section are proved beyond a
1343 reasonable doubt, and also finds that the existence of special mitigation is established
1344 by a preponderance of the evidence and in accordance with Section 76-5-205.5, the
1345 court shall enter a judgment of conviction as follows:
- 1346 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
1347 judgment of conviction for manslaughter; or
- 1348 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall,
1349 notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment
1350 of conviction for attempted manslaughter.
- 1351 (4)(a) It is an affirmative defense to a charge of murder or attempted murder that the
1352 defendant caused the death of another individual or attempted to cause the death of
1353 another individual under a reasonable belief that the circumstances provided a legal
1354 justification or excuse for the conduct although the conduct was not legally justifiable
1355 or excusable under the existing circumstances.
- 1356 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
1357 the viewpoint of a reasonable person under the then existing circumstances.

- 1358 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or
 1359 alternatively, attempted murder, as described in this section are proved beyond a
 1360 reasonable doubt, and also finds the affirmative defense described in this Subsection
 1361 (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of
 1362 conviction as follows:
- 1363 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
 1364 judgment of conviction for manslaughter; or
- 1365 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall
 1366 enter a judgment of conviction for attempted manslaughter.
- 1367 (5)(a) Any predicate offense that constitutes a separate offense does not merge with the
 1368 crime of murder.
- 1369 (b) An actor who is convicted of murder, based on a predicate offense that constitutes a
 1370 separate offense, may also be convicted of, and punished for, the separate offense.
- 1371 Section 13. Section **76-5-208** is amended to read:
- 1372 **76-5-208 . Child abuse homicide -- Penalties.**
- 1373 (1)(a) As used in this section, "child abuse" means an offense described in [~~Sections~~
 1374 Section 76-5-109, 76-5-109.2, 76-5-109.3, [and] 76-5-109.4, or 76-5-114.
- 1375 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1376 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an
 1377 actor commits child abuse homicide if:
- 1378 (a)(i) the actor causes the death of another individual who is younger than 18 years
 1379 old; and
- 1380 (ii) the individual's death results from child abuse; and
- 1381 (b)(i) the child abuse is based on a violation of Section 76-5-109.4, Child Torture;
 1382 (ii) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);
 1383 [~~(ii)~~] (iii) the child abuse is done with criminal negligence under Subsection
 1384 76-5-109.2(3)(c); or
 1385 [~~(iii)~~] (iv) under circumstances not amounting to the type of child abuse homicide
 1386 described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly,
 1387 recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or
 1388 (c).
- 1389 (3)(a) A violation of Subsection (2) under the circumstances described in Subsection
 1390 (2)(b)(i) is a first degree felony.
- 1391 (b) A violation of Subsection (2) under the circumstances described in Subsection

1392 (2)(b)(ii) or (iii) is a second degree felony.

1393 Section 14. Section **76-7-101** is amended to read:

1394 **76-7-101 . Bigamy -- Penalty -- Defense.**

1395 (1) An individual is guilty of bigamy if:

1396 (a) the individual purports to marry another individual; and

1397 (b) knows or reasonably should know that one or both of the individuals described in

1398 Subsection (1)(a) are legally married to another individual.

1399 (2) An individual who violates Subsection (1) is guilty of an infraction.

1400 (3) An individual is guilty of a third degree felony if the individual induces bigamy:

1401 (a) under fraudulent or false pretenses; or

1402 (b) by threat or coercion.

1403 (4) An individual is guilty of a second degree felony if the individual:

1404 (a) cohabitates with another individual with whom the individual is engaged in bigamy
1405 as described in Subsection (1); and

1406 (b) in furtherance of the conduct described in Subsection (4)(a), commits a felony
1407 offense, or for Subsection [~~(4)(b)(xiii)~~] (4)(b)(xiv), a misdemeanor offense, in
1408 violation of one or more of the following:

1409 (i) Section 76-5-109, child abuse;

1410 (ii) Section 76-5-109.2, aggravated child abuse;

1411 (iii) Section 76-5-109.3, child abandonment;

1412 (iv) Section 76-5-109.4, child torture;

1413 [~~(iv)~~] (v) Section 76-5-111, abuse of a vulnerable adult;

1414 [~~(v)~~] (vi) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

1415 [~~(vi)~~] (vii) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

1416 [~~(vii)~~] (viii) Section 76-5-111.4, financial exploitation of a vulnerable adult;

1417 [~~(viii)~~] (ix) Chapter 5, Part 2, Criminal Homicide;

1418 [~~(ix)~~] (x) Section 76-5-208, child abuse homicide;

1419 [~~(x)~~] (xi) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

1420 [~~(xi)~~] (xii) Chapter 5, Part 4, Sexual Offenses;

1421 [~~(xii)~~] (xiii) Section 76-7-201, criminal nonsupport;

1422 [~~(xiii)~~] (xiv) Section 76-9-702.1, sexual battery;

1423 [~~(xiv)~~] (xv) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or

1424 [~~(xv)~~] (xvi) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

1425 (5) It is a defense to prosecution under Subsection (2) that:

- 1426 (a) the individual ceased the practice of bigamy as described in Subsection (1) under
 1427 reasonable fear of coercion or bodily harm;
- 1428 (b) the individual entered the practice of bigamy, as described in Subsection (1), as a
 1429 minor and ceased the practice of bigamy at any time after the individual entered the
 1430 practice of bigamy; or
- 1431 (c) law enforcement discovers that the individual practices bigamy, as described in
 1432 Subsection (1), as a result of the individual's efforts to protect the safety and welfare
 1433 of another individual.

1434 Section 15. Section **77-41-102** is amended to read:

1435 **77-41-102 . Definitions.**

1436 As used in this chapter:

- 1437 (1) "Child abuse offender" means an individual:
- 1438 (a) who has been convicted in this state of a violation of:
- 1439 (i)(A) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b); or
 1440 [(ii)] (B) attempting, soliciting, or conspiring to commit aggravated child abuse
 1441 under Subsection 76-5-109.2(3)(a) or (b); or
- 1442 (ii)(A) child torture under Section 76-5-109.4; or
 1443 (B) attempting, soliciting, or conspiring to commit child torture under Section
 1444 76-5-109.4;
- 1445 (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to
 1446 commit a crime in another jurisdiction, including a state, federal, or military court,
 1447 that is substantially equivalent to the offense listed in Subsection (1)(a); and
- 1448 (ii)(A) who is a Utah resident; or
 1449 (B) who is not a Utah resident but is in this state for a total of 10 days in a
 1450 12-month period, regardless of whether the offender intends to permanently
 1451 reside in this state;
- 1452 (c)(i)(A) who is required to register as a child abuse offender in another
 1453 jurisdiction of original conviction;
- 1454 (B) who is required to register as a child abuse offender by a state, a federal, or a
 1455 military court; or
- 1456 (C) who would be required to register as a child abuse offender if residing in the
 1457 jurisdiction of the conviction regardless of the date of the conviction or a
 1458 previous registration requirement; and
- 1459 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of

- 1460 whether the offender intends to permanently reside in this state;
- 1461 (d)(i)(A) who is a nonresident regularly employed or working in this state; or
- 1462 (B) who is a student in this state; and
- 1463 (ii)(A) who was convicted of the offense listed in Subsection (1)(a) or a
- 1464 substantially equivalent offense in another jurisdiction; or
- 1465 (B) who is required to register in the individual's state of residence based on a
- 1466 conviction for an offense that is not substantially equivalent to an offense listed
- 1467 in Subsection (1)(a);
- 1468 (e) who is found not guilty by reason of insanity in this state or in another jurisdiction of
- 1469 the offense listed in Subsection (1)(a); or
- 1470 (f)(i) who is adjudicated under Section 80-6-701 for the offense listed in Subsection
- 1471 (1)(a); and
- 1472 (ii) who has been committed to the division for secure care, as defined in Section
- 1473 80-1-102, for that offense if:
- 1474 (A) the individual remains in the division's custody until 30 days before the
- 1475 individual's 21st birthday;
- 1476 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
- 1477 under Section 80-6-605 and the individual remains in the division's custody
- 1478 until 30 days before the individual's 25th birthday; or
- 1479 (C) the individual is moved from the division's custody to the custody of the
- 1480 department before expiration of the division's jurisdiction over the individual.
- 1481 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
- 1482 Safety established in ~~[section]~~ Section 53-10-201.
- 1483 (3) "Business day" means a day on which state offices are open for regular business.
- 1484 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal
- 1485 Identification showing that the offender has met the requirements of Section 77-41-112.
- 1486 (5)(a) "Convicted" means a plea or conviction of:
- 1487 (i) guilty;
- 1488 (ii) guilty with a mental illness; or
- 1489 (iii) no contest.
- 1490 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in
- 1491 abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.
- 1492 (c) "Convicted" does not include:
- 1493 (i) a withdrawn or dismissed plea in abeyance;

- 1494 (ii) a diversion agreement; or
- 1495 (iii) an adjudication of a minor for an offense under Section 80-6-701.
- 1496 (6) "Department" means the Department of Public Safety.
- 1497 (7) "Division" means the Division of Juvenile Justice and Youth Services.
- 1498 (8) "Employed" or "carries on a vocation" includes employment that is full time or part
1499 time, whether financially compensated, volunteered, or for the purpose of government or
1500 educational benefit.
- 1501 (9) "Indian Country" means:
- 1502 (a) all land within the limits of any Indian reservation under the jurisdiction of the
1503 United States government, regardless of the issuance of any patent, and includes
1504 rights-of-way running through the reservation;
- 1505 (b) all dependent Indian communities within the borders of the United States whether
1506 within the original or subsequently acquired territory, and whether or not within the
1507 limits of a state; and
- 1508 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
1509 not been extinguished, including rights-of-way running through the allotments.
- 1510 (10) "Jurisdiction" means any state, Indian Country, United States Territory, or property
1511 under the jurisdiction of the United States military, Canada, the United Kingdom,
1512 Australia, or New Zealand.
- 1513 (11) "Kidnap offender" means an individual, other than a natural parent of the victim:
- 1514 (a) who has been convicted in this state of a violation of:
- 1515 (i) kidnapping under Subsection 76-5-301(2)(c) or (d);
- 1516 (ii) child kidnapping under Section 76-5-301.1;
- 1517 (iii) aggravated kidnapping under Section 76-5-302;
- 1518 (iv) human trafficking for labor under Section 76-5-308;
- 1519 (v) human smuggling under Section 76-5-308.3;
- 1520 (vi) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);
- 1521 (vii) aggravated human trafficking under Section 76-5-310;
- 1522 (viii) aggravated human smuggling under Section 76-5-310.1;
- 1523 (ix) human trafficking of a vulnerable adult for labor under Section 76-5-311; or
- 1524 (x) attempting, soliciting, or conspiring to commit a felony offense listed in
1525 Subsections (11)(a)(i) through (ix);
- 1526 (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to
1527 commit a crime in another jurisdiction, including a state, federal, or military court,

- 1528 that is substantially equivalent to the offenses listed in Subsection (11)(a); and
1529 (ii)(A) who is a Utah resident; or
1530 (B) who is not a Utah resident but is in this state for a total of 10 days in a
1531 12-month period, regardless of whether the offender intends to permanently
1532 reside in this state;
- 1533 (c)(i)(A) who is required to register as a kidnap offender in another jurisdiction
1534 of original conviction;
1535 (B) who is required to register as a kidnap offender by a state, federal, or military
1536 court; or
1537 (C) who would be required to register as a kidnap offender if residing in the
1538 jurisdiction of the conviction regardless of the date of the conviction or a
1539 previous registration requirement; and
1540 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of
1541 whether the offender intends to permanently reside in this state;
- 1542 (d)(i)(A) who is a nonresident regularly employed or working in this state; or
1543 (B) who is a student in this state; and
1544 (ii)(A) who was convicted of one or more offenses listed in Subsection (11)(a) or
1545 any substantially equivalent offense in another jurisdiction; or
1546 (B) who is required to register in the individual's state of residence based on a
1547 conviction for an offense that is not substantially equivalent to an offense listed
1548 in Subsection (11)(a);
- 1549 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction
1550 of one or more offenses listed in Subsection (11)(a); or
1551 (f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1552 Subsection (11)(a); and
1553 (ii) who has been committed to the division for secure care, as defined in Section
1554 80-1-102, for that offense if:
1555 (A) the individual remains in the division's custody until 30 days before the
1556 individual's 21st birthday;
1557 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
1558 under Section 80-6-605 and the individual remains in the division's custody
1559 until 30 days before the individual's 25th birthday; or
1560 (C) the individual is moved from the division's custody to the custody of the
1561 department before expiration of the division's jurisdiction over the individual.

- 1562 (12) "Natural parent" means a minor's biological or adoptive parent, including the minor's
1563 noncustodial parent.
- 1564 (13) "Offender" means a child abuse offender, kidnap offender, or sex offender.
- 1565 (14) "Online identifier" or "Internet identifier":
- 1566 (a) means any electronic mail, chat, instant messenger, social networking, or similar
1567 name used for Internet communication; and
- 1568 (b) does not include date of birth, social security number, PIN number, or Internet
1569 passwords.
- 1570 (15) "Primary residence" means the location where the offender regularly resides, even if
1571 the offender intends to move to another location or return to another location at a future
1572 date.
- 1573 (16) "Register" means to comply with the requirements of this chapter and administrative
1574 rules of the department made under this chapter.
- 1575 (17) "Registration website" means the Sex, Kidnap, and Child Abuse Offender Notification
1576 and Registration website described in Section 77-41-110 and the information on the
1577 website.
- 1578 (18) "Secondary residence" means real property that the offender owns or has a financial
1579 interest in, or a location where the offender stays overnight a total of 10 or more nights
1580 in a 12-month period when not staying at the offender's primary residence.
- 1581 (19) "Sex offender" means an individual:
- 1582 (a) convicted in this state of:
- 1583 (i) a felony or class A misdemeanor violation of enticing a minor under Section
1584 76-4-401;
- 1585 (ii) sexual exploitation of a vulnerable adult under Section 76-5b-202;
- 1586 (iii) human trafficking for sexual exploitation under Section 76-5-308.1;
- 1587 (iv) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5
1588 (4)(b);
- 1589 (v) aggravated human trafficking for sexual exploitation under Section 76-5-310;
- 1590 (vi) human trafficking of a vulnerable adult for sexual exploitation under Section
1591 76-5-311;
- 1592 (vii) unlawful sexual activity with a minor under Section 76-5-401, except as
1593 provided in Subsection 76-5-401(3)(b) or (c);
- 1594 (viii) sexual abuse of a minor under Section 76-5-401.1, except as provided in
1595 Subsection 76-5-401.1(3);

- 1596 (ix) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- 1597 (x) rape under Section 76-5-402;
- 1598 (xi) rape of a child under Section 76-5-402.1;
- 1599 (xii) object rape under Section 76-5-402.2;
- 1600 (xiii) object rape of a child under Section 76-5-402.3;
- 1601 (xiv) a felony violation of forcible sodomy under Section 76-5-403;
- 1602 (xv) sodomy on a child under Section 76-5-403.1;
- 1603 (xvi) forcible sexual abuse under Section 76-5-404;
- 1604 (xvii) sexual abuse of a child under Section 76-5-404.1;
- 1605 (xviii) aggravated sexual abuse of a child under Section 76-5-404.3;
- 1606 (xix) aggravated sexual assault under Section 76-5-405;
- 1607 (xx) custodial sexual relations under Section 76-5-412, when the individual in
- 1608 custody is younger than 18 years old, if the offense is committed on or after May
- 1609 10, 2011;
- 1610 (xxi) sexual exploitation of a minor under Section 76-5b-201;
- 1611 (xxii) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 1612 (xxiii) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- 1613 (xxiv) incest under Section 76-7-102;
- 1614 (xxv) lewdness under Section 76-9-702, if the individual has been convicted of the
- 1615 offense four or more times;
- 1616 (xxvi) sexual battery under Section 76-9-702.1, if the individual has been convicted
- 1617 of the offense four or more times;
- 1618 (xxvii) any combination of convictions of lewdness under Section 76-9-702, and of
- 1619 sexual battery under Section 76-9-702.1, that total four or more convictions;
- 1620 (xxviii) lewdness involving a child under Section 76-9-702.5;
- 1621 (xxix) a felony or class A misdemeanor violation of voyeurism under Section
- 1622 76-9-702.7;
- 1623 (xxx) aggravated exploitation of prostitution under Section 76-10-1306; or
- 1624 (xxxi) attempting, soliciting, or conspiring to commit a felony offense listed in this
- 1625 Subsection (19)(a);
- 1626 (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to
- 1627 commit a crime in another jurisdiction, including a state, federal, or military court,
- 1628 that is substantially equivalent to the offenses listed in Subsection (19)(a); and
- 1629 (ii)(A) who is a Utah resident; or

- 1630 (B) who is not a Utah resident but is in this state for a total of 10 days in a
1631 12-month period, regardless of whether the offender intends to permanently
1632 reside in this state;
- 1633 (c)(i)(A) who is required to register as a sex offender in another jurisdiction of
1634 original conviction;
- 1635 (B) who is required to register as a sex offender by a state, federal, or military
1636 court; or
- 1637 (C) who would be required to register as a sex offender if residing in the
1638 jurisdiction of the original conviction regardless of the date of the conviction or
1639 a previous registration requirement; and
- 1640 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of
1641 whether the offender intends to permanently reside in this state;
- 1642 (d)(i)(A) who is a nonresident regularly employed or working in this state; or
1643 (B) who is a student in this state; and
- 1644 (ii)(A) who was convicted of one or more offenses listed in Subsection (19)(a) or
1645 a substantially equivalent offense in another jurisdiction; or
1646 (B) who is required to register in the individual's jurisdiction of residence based
1647 on a conviction for an offense that is not substantially equivalent to an offense
1648 listed in Subsection (19)(a);
- 1649 (e) who is found not guilty by reason of insanity in this state, or in another jurisdiction of
1650 one or more offenses listed in Subsection (19)(a); or
- 1651 (f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1652 Subsection (19)(a); and
- 1653 (ii) who has been committed to the division for secure care, as defined in Section
1654 80-1-102, for that offense if:
- 1655 (A) the individual remains in the division's custody until 30 days before the
1656 individual's 21st birthday;
- 1657 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
1658 under Section 80-6-605 and the individual remains in the division's custody
1659 until 30 days before the individual's 25th birthday; or
- 1660 (C) the individual is moved from the division's custody to the custody of the
1661 department before expiration of the division's jurisdiction over the individual.
- 1662 (20) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving
1663 Under the Influence and Reckless Driving.

1664 (21) "Vehicle" means a motor vehicle, an aircraft, or a watercraft subject to registration in
1665 any jurisdiction.

1666 Section 16. Section **78B-6-117** is amended to read:

1667 **78B-6-117 . Who may adopt -- Adoption of minor.**

1668 (1) A minor child may be adopted by an adult individual, in accordance with this section
1669 and this part.

1670 (2) A child may be adopted by:

1671 (a) adults who are legally married to each other in accordance with the laws of this state,
1672 including adoption by a stepparent; or

1673 (b) subject to Subsections (3) and (4), a single adult.

1674 (3) A child may not be adopted by an individual who is cohabiting in a relationship that is
1675 not a legally valid and binding marriage under the laws of this state unless the individual
1676 is a relative of the child or a recognized placement under the Indian Child Welfare Act,
1677 25 U.S.C. Sec. 1901 et seq.

1678 (4) To provide a child who is in the custody of the division with the most beneficial family
1679 structure, when a child in the custody of the division is placed for adoption, the division
1680 or child-placing agency shall place the child with a married couple, unless:

1681 (a) there are no qualified married couples who:

1682 (i) have applied to adopt a child;

1683 (ii) are willing to adopt the child; and

1684 (iii) are an appropriate placement for the child;

1685 (b) the child is placed with a relative of the child;

1686 (c) the child is placed with an individual who has already developed a substantial
1687 relationship with the child;

1688 (d) the child is placed with an individual who:

1689 (i) is selected by a parent or former parent of the child, if the parent or former parent
1690 consented to the adoption of the child; and

1691 (ii) the parent or former parent described in Subsection (4)(d)(i):

1692 (A) knew the individual with whom the child is placed before the parent
1693 consented to the adoption; or

1694 (B) became aware of the individual with whom the child is placed through a

1695 source other than the division or the child-placing agency that assists with the
1696 adoption of the child; or

1697 (e) it is in the best interests of the child to place the child with a single adult.

- 1698 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption
 1699 is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a
 1700 felony or attempted felony involving conduct that constitutes any of the following:
- 1701 (a) child abuse, as described in Section 76-5-109;
 - 1702 (b) aggravated child abuse, as described in Section 76-5-109.2;
 - 1703 (c) child abandonment, as described in Section 76-5-109.3;
 - 1704 (d) child torture, as described in Section 76-5-109.4;
 - 1705 (e) commission of domestic violence in the presence of a child, as described in Section
 1706 76-5-114;
 - 1707 ~~[(b)]~~ (f) child abuse homicide, as described in Section 76-5-208;
 - 1708 ~~[(e)]~~ (g) child kidnapping, as described in Section 76-5-301.1;
 - 1709 ~~[(d)]~~ (h) human trafficking of a child, as described in Section 76-5-308.5;
 - 1710 ~~[(e)]~~ (i) sexual abuse of a minor, as described in Section 76-5-401.1;
 - 1711 ~~[(f)]~~ (j) rape of a child, as described in Section 76-5-402.1;
 - 1712 ~~[(g)]~~ (k) object rape of a child, as described in Section 76-5-402.3;
 - 1713 ~~[(h)]~~ (l) sodomy on a child, as described in Section 76-5-403.1;
 - 1714 ~~[(i)]~~ (m) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual
 1715 abuse of a child, as described in Section 76-5-404.3;
 - 1716 ~~[(j)]~~ (n) sexual exploitation of a minor, as described in Section 76-5b-201;
 - 1717 ~~[(k)]~~ (o) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;
 - 1718 or
 - 1719 ~~[(l)] aggravated child abuse, as described in Section 76-5-109.2;~~
 - 1720 ~~[(m)] child abandonment, as described in Section 76-5-109.3;~~
 - 1721 ~~[(n)] commission of domestic violence in the presence of a child, as described in Section~~
 1722 ~~76-5-114; or]~~
 - 1723 ~~[(o)]~~ (p) an offense in another state that, if committed in this state, would constitute an
 1724 offense described in this Subsection (5).
- 1725 (6)(a) For purpose of this Subsection (6), "disqualifying offense" means an offense
 1726 listed in Subsection (5) that prevents a court from considering an individual for
 1727 adoption of a child except as provided in this Subsection (6).
- 1728 (b) An individual described in Subsection (5) may only be considered for adoption of a
 1729 child if the following criteria are met by clear and convincing evidence:
 - 1730 (i) at least 10 years have elapsed from the day on which the individual is successfully
 1731 released from prison, jail, parole, or probation related to a disqualifying offense;

- 1732 (ii) during the 10 years before the day on which the individual files a petition with the
1733 court seeking adoption, the individual has not been convicted, pleaded guilty, or
1734 pleaded no contest to an offense greater than an infraction or traffic violation that
1735 would likely impact the health, safety, or well-being of the child;
- 1736 (iii) the individual can provide evidence of successful treatment or rehabilitation
1737 directly related to the disqualifying offense;
- 1738 (iv) the court determines that the risk related to the disqualifying offense is unlikely
1739 to cause harm, as defined in Section 80-1-102, or potential harm to the child
1740 currently or at any time in the future when considering all of the following:
- 1741 (A) the child's age;
- 1742 (B) the child's gender;
- 1743 (C) the child's development;
- 1744 (D) the nature and seriousness of the disqualifying offense;
- 1745 (E) the preferences of a child 12 years old or older;
- 1746 (F) any available assessments, including custody evaluations, home studies,
1747 pre-placement adoptive evaluations, parenting assessments, psychological or
1748 mental health assessments, and bonding assessments; and
- 1749 (G) any other relevant information;
- 1750 (v) the individual can provide evidence of all of the following:
- 1751 (A) the relationship with the child is of long duration;
- 1752 (B) that an emotional bond exists with the child; and
- 1753 (C) that adoption by the individual who has committed the disqualifying offense
1754 ensures the best interests of the child are met; and
- 1755 (vi) the adoption is by:
- 1756 (A) a stepparent whose spouse is the adoptee's parent and consents to the
1757 adoption; or
- 1758 (B) subject to Subsection (6)(d), a relative of the child as defined in Section
1759 80-3-102 and there is not another relative without a disqualifying offense filing
1760 an adoption petition.
- 1761 (c) The individual with the disqualifying offense bears the burden of proof regarding
1762 why adoption with that individual is in the best interest of the child over another
1763 responsible relative or equally situated individual who does not have a disqualifying
1764 offense.
- 1765 (d) If there is an alternative responsible relative who does not have a disqualifying

- 1766 offense filing an adoption petition, the following applies:
- 1767 (i) preference for adoption shall be given to a relative who does not have a
- 1768 disqualifying offense; and
- 1769 (ii) before the court may grant adoption to the individual who has the disqualifying
- 1770 offense over another responsible, willing, and able relative:
- 1771 (A) an impartial custody evaluation shall be completed; and
- 1772 (B) a guardian ad litem shall be assigned.
- 1773 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final
- 1774 decision on adoption has not been made and to a case filed on or after March 25, 2017.
- 1775 Section 17. Section **78B-7-801** is amended to read:
- 1776 **78B-7-801 . Definitions.**
- 1777 As used in this part:
- 1778 (1)(a) "Jail release agreement" means a written agreement that is entered into by an
- 1779 individual who is arrested or issued a citation, regardless of whether the individual is
- 1780 booked into jail:
- 1781 (i) under which the arrested or cited individual agrees to not engage in any of the
- 1782 following:
- 1783 (A) telephoning, contacting, or otherwise communicating with the alleged victim,
- 1784 directly or indirectly;
- 1785 (B) threatening or harassing the alleged victim; or
- 1786 (C) knowingly entering onto the premises of the alleged victim's residence or on
- 1787 premises temporarily occupied by the alleged victim, unless, after a law
- 1788 enforcement officer or the law enforcement officer's employing agency notifies
- 1789 or attempts to notify the alleged victim, the individual enters the premises
- 1790 while accompanied by a law enforcement officer for the purpose of retrieving
- 1791 the individual's personal belongings; and
- 1792 (ii) that specifies other conditions of release from jail or arrest.
- 1793 (b) "Jail release agreement" includes a written agreement that includes the conditions
- 1794 described in Section (1)(a) entered into by a minor who is taken into custody or
- 1795 placed in detention or a shelter facility under Section 80-6-201.
- 1796 (2) "Jail release court order" means a written court order that:
- 1797 (a) orders an arrested or cited individual not to engage in any of the following:
- 1798 (i) telephoning, contacting, or otherwise communicating with the alleged victim,
- 1799 directly or indirectly;

- 1800 (ii) threatening or harassing the alleged victim; or
- 1801 (iii) knowingly entering onto the premises of the alleged victim's residence or on
- 1802 premises temporarily occupied by the alleged victim, unless, after a law
- 1803 enforcement officer or the law enforcement officer's employing agency notifies or
- 1804 attempts to notify the alleged victim, the individual enters the premises while
- 1805 accompanied by a law enforcement officer for the purpose of retrieving the
- 1806 individual's personal belongings; and
- 1807 (b) specifies other conditions of release from jail.
- 1808 (3) "Minor" means the same as that term is defined in Section 80-1-102.
- 1809 (4) "Offense against a child or vulnerable adult" means the commission or attempted
- 1810 commission of an offense described in:
- 1811 (a) Section 76-5-109, child abuse;
- 1812 (b) Section 76-5-109.2, aggravated child abuse;
- 1813 (c) Section 76-5-109.3, child abandonment;
- 1814 (d) Section 76-5-109.4, child torture;
- 1815 [~~(d)~~] (e) Section 76-5-110, abuse or neglect of a child with a disability;
- 1816 [~~(e)~~] (f) Section 76-5-111, abuse of a vulnerable adult;
- 1817 [~~(f)~~] (g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1818 [~~(g)~~] (h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1819 [~~(h)~~] (i) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1820 [~~(i)~~] (j) Section 76-5-114, commission of domestic violence in the presence of a child; or
- 1821 [~~(j)~~] (k) Section 76-9-702.1, sexual battery.
- 1822 (5) "Qualifying offense" means:
- 1823 (a) domestic violence;
- 1824 (b) an offense against a child or vulnerable adult; or
- 1825 (c) the commission or attempted commission of an offense described in Section
- 1826 76-9-702.1 or Title 76, Chapter 5, Part 4, Sexual Offenses.
- 1827 Section 18. Section **80-1-102** is amended to read:
- 1828 **80-1-102 . Juvenile Code definitions.**
- 1829 Except as provided in Section 80-6-1103, as used in this title:
- 1830 (1)(a) "Abuse" means:
- 1831 (i)(A) nonaccidental harm of a child;
- 1832 (B) threatened harm of a child;
- 1833 (C) sexual exploitation;

- 1834 (D) sexual abuse; or
- 1835 (E) human trafficking of a child in violation of Section 76-5-308.5; or
- 1836 (ii) that a child's natural parent:
- 1837 (A) intentionally, knowingly, or recklessly causes the death of another parent of
- 1838 the child;
- 1839 (B) is identified by a law enforcement agency as the primary suspect in an
- 1840 investigation for intentionally, knowingly, or recklessly causing the death of
- 1841 another parent of the child; or
- 1842 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 1843 recklessly causing the death of another parent of the child.
- 1844 (b) "Abuse" does not include:
- 1845 (i) reasonable discipline or management of a child, including withholding privileges;
- 1846 (ii) conduct described in Section 76-2-401; or
- 1847 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 1848 (A) in self-defense;
- 1849 (B) in defense of others;
- 1850 (C) to protect the child; or
- 1851 (D) to remove a weapon in the possession of a child for any of the reasons
- 1852 described in Subsections (1)(b)(iii)(A) through (C).
- 1853 (2) "Abused child" means a child who has been subjected to abuse.
- 1854 (3)(a) "Adjudication" means, except as provided in Subsection (3)(b):
- 1855 (i) for a delinquency petition or criminal information under Chapter 6, Juvenile
- 1856 Justice:
- 1857 (A) a finding by the juvenile court that the facts alleged in a delinquency petition
- 1858 or criminal information alleging that a minor committed an offense have been
- 1859 proved;
- 1860 (B) an admission by a minor in the juvenile court as described in Section 80-6-306;
- 1861 or
- 1862 (C) a plea of no contest by minor in the juvenile court; or
- 1863 (ii) for all other proceedings under this title, a finding by the juvenile court that the
- 1864 facts alleged in the petition have been proved.
- 1865 (b) "Adjudication" does not include:
- 1866 (i) an admission by a minor described in Section 80-6-306 until the juvenile court
- 1867 enters the minor's admission; or

- 1868 (ii) a finding of not competent to proceed in accordance with Section 80-6-402.
- 1869 (4)(a) "Adult" means an individual who is 18 years old or older.
- 1870 (b) "Adult" does not include an individual:
- 1871 (i) who is 18 years old or older; and
- 1872 (ii) who is a minor.
- 1873 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
- 1874 78A-2-801.
- 1875 (6) "Board" means the Board of Juvenile Court Judges.
- 1876 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18
- 1877 years old.
- 1878 (8) "Child and family plan" means a written agreement between a child's parents or
- 1879 guardian and the Division of Child and Family Services as described in Section 80-3-307.
- 1880 (9) "Child placing" means the same as that term is defined in Section 26B-2-101.
- 1881 (10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.
- 1882 (11) "Child protection team" means a team consisting of:
- 1883 (a) the child welfare caseworker assigned to the case;
- 1884 (b) if applicable, the child welfare caseworker who made the decision to remove the
- 1885 child;
- 1886 (c) a representative of the school or school district where the child attends school;
- 1887 (d) if applicable, the law enforcement officer who removed the child from the home;
- 1888 (e) a representative of the appropriate Children's Justice Center, if one is established
- 1889 within the county where the child resides;
- 1890 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
- 1891 with the child's circumstances;
- 1892 (g) if appropriate, a representative of law enforcement selected by the chief of police or
- 1893 sheriff in the city or county where the child resides; and
- 1894 (h) any other individuals determined appropriate and necessary by the team coordinator
- 1895 and chair.
- 1896 (12)(a) "Chronic abuse" means repeated or patterned abuse.
- 1897 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 1898 (13)(a) "Chronic neglect" means repeated or patterned neglect.
- 1899 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 1900 (14) "Clandestine laboratory operation" means the same as that term is defined in Section
- 1901 58-37d-3.

- 1902 (15) "Commit" or "committed" means, unless specified otherwise:
1903 (a) with respect to a child, to transfer legal custody; and
1904 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 1905 (16) "Community-based program" means a nonsecure residential or nonresidential program,
1906 designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
1907 restrictive setting, consistent with public safety, and operated by or under contract with
1908 the Division of Juvenile Justice and Youth Services.
- 1909 (17) "Community placement" means placement of a minor in a community-based program
1910 described in Section 80-5-402.
- 1911 (18) "Correctional facility" means:
1912 (a) a county jail; or
1913 (b) a secure correctional facility as defined in Section 64-13-1.
- 1914 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a
1915 minor's likelihood of reoffending.
- 1916 (20) "Department" means the Department of Health and Human Services created in Section
1917 26B-1-201.
- 1918 (21) "Dependent child" or "dependency" means a child who is without proper care through
1919 no fault of the child's parent, guardian, or custodian.
- 1920 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a
1921 parent or a previous custodian to another person, agency, or institution.
- 1922 (23) "Detention" means home detention or secure detention.
- 1923 (24) "Detention facility" means a facility, established by the Division of Juvenile Justice
1924 and Youth Services in accordance with Section 80-5-501, for minors held in detention.
- 1925 (25) "Detention risk assessment tool" means an evidence-based tool established under
1926 Section 80-5-203 that:
1927 (a) assesses a minor's risk of failing to appear in court or reoffending before
1928 adjudication; and
1929 (b) is designed to assist in making a determination of whether a minor shall be held in
1930 detention.
- 1931 (26) "Developmental immaturity" means incomplete development in one or more domains
1932 that manifests as a functional limitation in the minor's present ability to:
1933 (a) consult with counsel with a reasonable degree of rational understanding; and
1934 (b) have a rational as well as factual understanding of the proceedings.
- 1935 (27) "Disposition" means an order by a juvenile court, after the adjudication of a minor,

- 1936 under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.
- 1937 (28) "Educational neglect" means that, after receiving a notice of compulsory education
1938 violation under Section 53G-6-202, the parent or guardian fails to make a good faith
1939 effort to ensure that the child receives an appropriate education.
- 1940 (29) "Educational series" means an evidence-based instructional series:
- 1941 (a) obtained at a substance abuse program that is approved by the Division of Integrated
1942 Healthcare in accordance with Section 26B-5-104; and
- 1943 (b) designed to prevent substance use or the onset of a mental health disorder.
- 1944 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 1945 (31) "Evidence-based" means a program or practice that has had multiple randomized
1946 control studies or a meta-analysis demonstrating that the program or practice is effective
1947 for a specific population or has been rated as effective by a standardized program
1948 evaluation tool.
- 1949 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 1950 (33) "Formal probation" means a minor is:
- 1951 (a) supervised in the community by, and reports to, a juvenile probation officer or an
1952 agency designated by the juvenile court; and
- 1953 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 1954 (34) "Group rehabilitation therapy" means psychological and social counseling of one or
1955 more individuals in the group, depending upon the recommendation of the therapist.
- 1956 (35) "Guardian" means a person appointed by a court to make decisions regarding a minor,
1957 including the authority to consent to:
- 1958 (a) marriage;
- 1959 (b) enlistment in the armed forces;
- 1960 (c) major medical, surgical, or psychiatric treatment; or
- 1961 (d) legal custody, if legal custody is not vested in another individual, agency, or
1962 institution.
- 1963 (36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 1964 (37) "Harm" means:
- 1965 (a) physical or developmental injury or damage;
- 1966 (b) emotional damage that results in a serious impairment in the child's growth,
1967 development, behavior, or psychological functioning;
- 1968 (c) sexual abuse; or
- 1969 (d) sexual exploitation.

- 1970 (38) "Home detention" means placement of a minor:
- 1971 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent
- 1972 of the minor's parent, guardian, or custodian, under terms and conditions established
- 1973 by the Division of Juvenile Justice and Youth Services or the juvenile court; or
- 1974 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the
- 1975 minor's home, or in a surrogate home with the consent of the minor's parent,
- 1976 guardian, or custodian, under terms and conditions established by the Division of
- 1977 Juvenile Justice and Youth Services or the juvenile court.
- 1978 (39)(a) "Incest" means engaging in sexual intercourse with an individual whom the
- 1979 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,
- 1980 aunt, nephew, niece, or first cousin.
- 1981 (b) "Incest" includes:
- 1982 (i) blood relationships of the whole or half blood, regardless of whether the
- 1983 relationship is legally recognized;
- 1984 (ii) relationships of parent and child by adoption; and
- 1985 (iii) relationships of stepparent and stepchild while the marriage creating the
- 1986 relationship of a stepparent and stepchild exists.
- 1987 (40) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 1988 (41) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 1989 (42) "Indigent defense service provider" means the same as that term is defined in Section
- 1990 78B-22-102.
- 1991 (43) "Indigent defense services" means the same as that term is defined in Section
- 1992 78B-22-102.
- 1993 (44) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
- 1994 (45)(a) "Intake probation" means a minor is:
- 1995 (i) monitored by a juvenile probation officer; and
- 1996 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 1997 (b) "Intake probation" does not include formal probation.
- 1998 (46) "Intellectual disability" means a significant subaverage general intellectual functioning
- 1999 existing concurrently with deficits in adaptive behavior that constitutes a substantial
- 2000 limitation to the individual's ability to function in society.
- 2001 (47) "Juvenile offender" means:
- 2002 (a) a serious youth offender; or
- 2003 (b) a youth offender.

- 2004 (48) "Juvenile probation officer" means a probation officer appointed under Section
2005 78A-6-205.
- 2006 (49) "Juvenile receiving center" means a nonsecure, nonresidential program established by
2007 the Division of Juvenile Justice and Youth Services, or under contract with the Division
2008 of Juvenile Justice and Youth Services, that is responsible for minors taken into
2009 temporary custody under Section 80-6-201.
- 2010 (50) "Legal custody" means a relationship embodying:
2011 (a) the right to physical custody of the minor;
2012 (b) the right and duty to protect, train, and discipline the minor;
2013 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
2014 medical care;
2015 (d) the right to determine where and with whom the minor shall live; and
2016 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2017 (51) "Licensing Information System" means the Licensing Information System maintained
2018 by the Division of Child and Family Services under Section 80-2-1002.
- 2019 (52) "Management Information System" means the Management Information System
2020 developed by the Division of Child and Family Services under Section 80-2-1001.
- 2021 (53) "Mental illness" means:
2022 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
2023 behavioral, or related functioning; or
2024 (b) the same as that term is defined in:
2025 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
2026 published by the American Psychiatric Association; or
2027 (ii) the current edition of the International Statistical Classification of Diseases and
2028 Related Health Problems.
- 2029 (54) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:
2030 (a) a child; or
2031 (b) an individual:
2032 (i)(A) who is at least 18 years old and younger than 21 years old; and
2033 (B) for whom the Division of Child and Family Services has been specifically
2034 ordered by the juvenile court to provide services because the individual was an
2035 abused, neglected, or dependent child or because the individual was
2036 adjudicated for an offense;
2037 (ii)(A) who is at least 18 years old and younger than 25 years old; and

- 2038 (B) whose case is under the jurisdiction of the juvenile court in accordance with
2039 Subsection 78A-6-103(1)(b); or
- 2040 (iii)(A) who is at least 18 years old and younger than 21 years old; and
- 2041 (B) whose case is under the jurisdiction of the juvenile court in accordance with
2042 Subsection 78A-6-103(1)(c).
- 2043 (55) "Mobile crisis outreach team" means the same as that term is defined in Section
2044 26B-5-101.
- 2045 (56) "Molestation" means that an individual, with the intent to arouse or gratify the sexual
2046 desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
2047 or the breast of a female child, or takes indecent liberties with a child as defined in
2048 Section 76-5-401.1.
- 2049 (57)(a) "Natural parent" means, except as provided in Section 80-3-302, a minor's
2050 biological or adoptive parent.
- 2051 (b) "Natural parent" includes the minor's noncustodial parent.
- 2052 (58)(a) "Neglect" means action or inaction causing:
- 2053 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe
2054 Relinquishment of a Newborn Child;
- 2055 (ii) lack of proper parental care of a child by reason of the fault or habits of the
2056 parent, guardian, or custodian;
- 2057 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or
2058 necessary subsistence or medical care, or any other care necessary for the child's
2059 health, safety, morals, or well-being;
- 2060 (iv) a child to be at risk of being neglected or abused because another child in the
2061 same home is neglected or abused;
- 2062 (v) abandonment of a child through an unregulated child custody transfer under
2063 Section 78B-24-203; or
- 2064 (vi) educational neglect.
- 2065 (b) "Neglect" does not include:
- 2066 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
2067 reason, does not provide specified medical treatment for a child;
- 2068 (ii) a health care decision made for a child by the child's parent or guardian, unless
2069 the state or other party to a proceeding shows, by clear and convincing evidence,
2070 that the health care decision is not reasonable and informed;
- 2071 (iii) a parent or guardian exercising the right described in Section 80-3-304; or

- 2072 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
2073 maturity to avoid harm or unreasonable risk of harm, to engage in independent
2074 activities, including:
- 2075 (A) traveling to and from school, including by walking, running, or bicycling;
 - 2076 (B) traveling to and from nearby commercial or recreational facilities;
 - 2077 (C) engaging in outdoor play;
 - 2078 (D) remaining in a vehicle unattended, except under the conditions described in
2079 Subsection 76-10-2202(2);
 - 2080 (E) remaining at home unattended; or
 - 2081 (F) engaging in a similar independent activity.
- 2082 (59) "Neglected child" means a child who has been subjected to neglect.
- 2083 (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation
2084 officer, without an adjudication of the minor's case under Section 80-6-701, upon the
2085 consent in writing of:
- 2086 (a) the assigned juvenile probation officer; and
 - 2087 (b)(i) the minor; or
 - 2088 (ii) the minor and the minor's parent, guardian, or custodian.
- 2089 (61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual
2090 disability or related condition, or developmental immaturity, lacks the ability to:
- 2091 (a) understand the nature of the proceedings against the minor or of the potential
2092 disposition for the offense charged; or
 - 2093 (b) consult with counsel and participate in the proceedings against the minor with a
2094 reasonable degree of rational understanding.
- 2095 (62) "Parole" means a conditional release of a juvenile offender from residency in secure
2096 care to live outside of secure care under the supervision of the Division of Juvenile
2097 Justice and Youth Services, or another person designated by the Division of Juvenile
2098 Justice and Youth Services.
- 2099 (63) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2100 (64)(a) "Probation" means a legal status created by court order, following an
2101 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the
2102 minor's home under prescribed conditions.
- 2103 (b) "Probation" includes intake probation or formal probation.
- 2104 (65) "Prosecuting attorney" means:
- 2105 (a) the attorney general and any assistant attorney general;

- 2106 (b) any district attorney or deputy district attorney;
- 2107 (c) any county attorney or assistant county attorney; and
- 2108 (d) any other attorney authorized to commence an action on behalf of the state.
- 2109 (66) "Protective custody" means the shelter of a child by the Division of Child and Family
- 2110 Services from the time the child is removed from the home until the earlier of:
- 2111 (a) the day on which the shelter hearing is held under Section 80-3-301; or
- 2112 (b) the day on which the child is returned home.
- 2113 (67) "Protective services" means expedited services that are provided:
- 2114 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 2115 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 2116 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
- 2117 causes of neglect or abuse; and
- 2118 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 2119 (c) in cases where the child's welfare is endangered:
- 2120 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 2121 enforcement agency;
- 2122 (ii) to cause a protective order to be issued for the protection of the child, when
- 2123 appropriate; and
- 2124 (iii) to protect the child from the circumstances that endanger the child's welfare
- 2125 including, when appropriate:
- 2126 (A) removal from the child's home;
- 2127 (B) placement in substitute care; and
- 2128 (C) petitioning the court for termination of parental rights.
- 2129 (68) "Protective supervision" means a legal status created by court order, following an
- 2130 adjudication on the ground of abuse, neglect, or dependency, whereby:
- 2131 (a) the minor is permitted to remain in the minor's home; and
- 2132 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
- 2133 by an agency designated by the juvenile court.
- 2134 (69)(a) "Related condition" means a condition that:
- 2135 (i) is found to be closely related to intellectual disability;
- 2136 (ii) results in impairment of general intellectual functioning or adaptive behavior
- 2137 similar to that of an intellectually disabled individual;
- 2138 (iii) is likely to continue indefinitely; and
- 2139 (iv) constitutes a substantial limitation to the individual's ability to function in society.

- 2140 (b) "Related condition" does not include mental illness, psychiatric impairment, or
2141 serious emotional or behavioral disturbance.
- 2142 (70)(a) "Residual parental rights and duties" means the rights and duties remaining with
2143 a parent after legal custody or guardianship, or both, have been vested in another
2144 person or agency, including:
- 2145 (i) the responsibility for support;
 - 2146 (ii) the right to consent to adoption;
 - 2147 (iii) the right to determine the child's religious affiliation; and
 - 2148 (iv) the right to reasonable parent-time unless restricted by the court.
- 2149 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
2150 right to consent to:
- 2151 (i) marriage;
 - 2152 (ii) enlistment; and
 - 2153 (iii) major medical, surgical, or psychiatric treatment.
- 2154 (71) "Runaway" means a child, other than an emancipated child, who willfully leaves the
2155 home of the child's parent or guardian, or the lawfully prescribed residence of the child,
2156 without permission.
- 2157 (72) "Secure care" means placement of a minor, who is committed to the Division of
2158 Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under
2159 contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour
2160 supervision and confinement of the minor.
- 2161 (73) "Secure care facility" means a facility, established in accordance with Section 80-5-503,
2162 for juvenile offenders in secure care.
- 2163 (74) "Secure detention" means temporary care of a minor who requires secure custody in a
2164 physically restricting facility operated by, or under contract with, the Division of
2165 Juvenile Justice and Youth Services:
- 2166 (a) before disposition of an offense that is alleged to have been committed by the minor;
 - 2167 or
 - 2168 (b) under Section 80-6-704.
- 2169 (75) "Serious youth offender" means an individual who:
- 2170 (a) is at least 14 years old, but under 25 years old;
 - 2171 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
2172 of the juvenile court was extended over the individual's case until the individual was
2173 25 years old in accordance with Section 80-6-605; and

- 2174 (c) is committed by the juvenile court to the Division of Juvenile Justice and Youth
2175 Services for secure care under Sections 80-6-703 and 80-6-705.
- 2176 (76) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
2177 (77) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
2178 child.
- 2179 (78)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection
2180 (78)(b):
- 2181 (i) if committed by an individual who is 18 years old or older:
- 2182 (A) chronic abuse;
2183 (B) severe abuse;
2184 (C) sexual abuse;
2185 (D) sexual exploitation;
2186 (E) abandonment;
2187 (F) chronic neglect; or
2188 (G) severe neglect; or
- 2189 (ii) if committed by an individual who is under 18 years old:
- 2190 (A) causing serious ~~physical~~ injury, as defined in Subsection 76-5-109(1), to
2191 another child that indicates a significant risk to other children; or
2192 (B) sexual behavior with or upon another child that indicates a significant risk to
2193 other children.
- 2194 (b) "Severe type of child abuse or neglect" does not include:
- 2195 (i) the use of reasonable and necessary physical restraint by an educator in
2196 accordance with Subsection 53G-8-302(2) or Section 76-2-401;
- 2197 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the
2198 use of reasonable and necessary physical restraint or force in self-defense or
2199 otherwise appropriate to the circumstances to obtain possession of a weapon or
2200 other dangerous object in the possession or under the control of a child or to
2201 protect the child or another individual from physical injury; or
- 2202 (iii) a health care decision made for a child by a child's parent or guardian, unless,
2203 subject to Subsection (78)(c), the state or other party to the proceeding shows, by
2204 clear and convincing evidence, that the health care decision is not reasonable and
2205 informed.
- 2206 (c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the
2207 right to obtain a second health care opinion.

- 2208 (79) "Sexual abuse" means:
- 2209 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
2210 adult directed towards a child;
- 2211 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
2212 committed by a child towards another child if:
- 2213 (i) there is an indication of force or coercion;
- 2214 (ii) the children are related, as described in Subsection (39), including siblings by
2215 marriage while the marriage exists or by adoption;
- 2216 (iii) there have been repeated incidents of sexual contact between the two children,
2217 unless the children are 14 years old or older; or
- 2218 (iv) there is a disparity in chronological age of four or more years between the two
2219 children;
- 2220 (c) engaging in any conduct with a child that would constitute an offense under any of
2221 the following, regardless of whether the individual who engages in the conduct is
2222 actually charged with, or convicted of, the offense:
- 2223 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
2224 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 2225 (ii) child bigamy, Section 76-7-101.5;
- 2226 (iii) incest, Section 76-7-102;
- 2227 (iv) lewdness, Section 76-9-702;
- 2228 (v) sexual battery, Section 76-9-702.1;
- 2229 (vi) lewdness involving a child, Section 76-9-702.5; or
- 2230 (vii) voyeurism, Section 76-9-702.7; or
- 2231 (d) subjecting a child to participate in or threatening to subject a child to participate in a
2232 sexual relationship, regardless of whether that sexual relationship is part of a legal or
2233 cultural marriage.
- 2234 (80) "Sexual exploitation" means knowingly:
- 2235 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2236 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2237 (ii) engage in any sexual or simulated sexual conduct for the purpose of
2238 photographing, filming, recording, or displaying in any way the sexual or
2239 simulated sexual conduct;
- 2240 (b) displaying, distributing, possessing for the purpose of distribution, or selling material
2241 depicting a child:

- 2242 (i) in the nude, for the purpose of sexual arousal of any individual; or
2243 (ii) engaging in sexual or simulated sexual conduct; or
2244 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
2245 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
2246 exploitation of a minor, regardless of whether the individual who engages in the
2247 conduct is actually charged with, or convicted of, the offense.
- 2248 (81) "Shelter" means the temporary care of a child in a physically unrestricted facility
2249 pending a disposition or transfer to another jurisdiction.
- 2250 (82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.
- 2251 (83) "Significant risk" means a risk of harm that is determined to be significant in
2252 accordance with risk assessment tools and rules established by the Division of Child and
2253 Family Services in accordance with Title 63G, Chapter 3, Utah Administrative
2254 Rulemaking Act, that focus on:
- 2255 (a) age;
2256 (b) social factors;
2257 (c) emotional factors;
2258 (d) sexual factors;
2259 (e) intellectual factors;
2260 (f) family risk factors; and
2261 (g) other related considerations.
- 2262 (84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- 2263 (85) "Status offense" means an offense that would not be an offense but for the age of the
2264 offender.
- 2265 (86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or
2266 excessive use of alcohol or other drugs or substances.
- 2267 (87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance
2268 of the evidence, and separate consideration of each allegation made or identified in the
2269 case, that abuse, neglect, or dependency occurred .
- 2270 (88) "Substitute care" means:
- 2271 (a) the placement of a minor in a family home, group care facility, or other placement
2272 outside the minor's own home, either at the request of a parent or other responsible
2273 relative, or upon court order, when it is determined that continuation of care in the
2274 minor's own home would be contrary to the minor's welfare;
2275 (b) services provided for a minor in the protective custody of the Division of Child and

- 2276 Family Services, or a minor in the temporary custody or custody of the Division of
2277 Child and Family Services, as those terms are defined in Section 80-2-102; or
2278 (c) the licensing and supervision of a substitute care facility.
- 2279 (89) "Supported" means a finding by the Division of Child and Family Services based on
2280 the evidence available at the completion of an investigation, and separate consideration
2281 of each allegation made or identified during the investigation, that there is a reasonable
2282 basis to conclude that abuse, neglect, or dependency occurred.
- 2283 (90) "Termination of parental rights" means the permanent elimination of all parental rights
2284 and duties, including residual parental rights and duties, by court order.
- 2285 (91) "Therapist" means:
- 2286 (a) an individual employed by a state division or agency for the purpose of conducting
2287 psychological treatment and counseling of a minor in the division's or agency's
2288 custody; or
- 2289 (b) any other individual licensed or approved by the state for the purpose of conducting
2290 psychological treatment and counseling.
- 2291 (92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that
2292 the child is at an unreasonable risk of harm or neglect.
- 2293 (93) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
- 2294 (a) results in behavior that is beyond the control or ability of the child, or the parent or
2295 guardian, to manage effectively;
- 2296 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
2297 (c) results in the situations described in Subsections (93)(a) and (b).
- 2298 (94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
2299 conclude that abuse, neglect, or dependency occurred.
- 2300 (95) "Unsupported" means a finding by the Division of Child and Family Services at the
2301 completion of an investigation, after the day on which the Division of Child and Family
2302 Services concludes the alleged abuse, neglect, or dependency is not without merit, that
2303 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
- 2304 (96) "Validated risk and needs assessment" means an evidence-based tool that assesses a
2305 minor's risk of reoffending and a minor's criminogenic needs.
- 2306 (97) "Without merit" means a finding at the completion of an investigation by the Division
2307 of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or
2308 dependency did not occur, or that the alleged perpetrator was not responsible for the
2309 abuse, neglect, or dependency.

- 2310 (98) "Youth offender" means an individual who is:
- 2311 (a) at least 12 years old, but under 21 years old; and
- 2312 (b) committed by the juvenile court to the Division of Juvenile Justice and Youth
- 2313 Services for secure care under Sections 80-6-703 and 80-6-705.
- 2314 Section 19. Section **81-9-202** is amended to read:
- 2315 **81-9-202 . Advisory guidelines for a custody and parent-time arrangement.**
- 2316 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304,
- 2317 the following advisory guidelines are suggested to govern a custody and parent-time
- 2318 arrangement between parents.
- 2319 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a
- 2320 court-imposed solution.
- 2321 (3) A parent-time schedule shall be used to maximize the continuity and stability of the
- 2322 minor child's life.
- 2323 (4) Each parent shall give special consideration to make the minor child available to attend
- 2324 family functions including funerals, weddings, family reunions, religious holidays,
- 2325 important ceremonies, and other significant events in the life of the minor child or in the
- 2326 life of either parent which may inadvertently conflict with the parent-time schedule.
- 2327 (5)(a) The court shall determine the responsibility for the pick up, delivery, and return
- 2328 of the minor child when the parent-time order is entered.
- 2329 (b) The court may change the responsibility described in Subsection (5)(a) at any time a
- 2330 subsequent modification is made to the parent-time order.
- 2331 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
- 2332 (i) have the minor child ready for parent-time at the time the minor child is to be
- 2333 picked up ; and
- 2334 (ii) be present at the custodial home or make reasonable alternate arrangements to
- 2335 receive the minor child at the time the minor child is returned.
- 2336 (d) If the custodial parent will be transporting the minor child, the noncustodial parent
- 2337 shall:
- 2338 (i) be at the appointed place at the time the noncustodial parent is to receive the
- 2339 minor child; and
- 2340 (ii) have the minor child ready to be picked up at the appointed time and place or
- 2341 have made reasonable alternate arrangements for the custodial parent to pick up
- 2342 the minor child.
- 2343 (6) A parent may not interrupt regular school hours for a school-age minor child for the

- 2344 exercise of parent-time.
- 2345 (7) The court may:
- 2346 (a) make alterations in the parent-time schedule to reasonably accommodate the work
2347 schedule of both parents; and
- 2348 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the
2349 standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 2350 (8) The court may make alterations in the parent-time schedule to reasonably accommodate
2351 the distance between the parties and the expense of exercising parent-time.
- 2352 (9) A parent may not withhold parent-time or child support due to the other parent's failure
2353 to comply with a court-ordered parent-time schedule.
- 2354 (10)(a) The custodial parent shall notify the noncustodial parent within 24 hours of
2355 receiving notice of all significant school, social, sports, and community functions in
2356 which the minor child is participating or being honored.
- 2357 (b) The noncustodial parent is entitled to attend and participate fully in the functions
2358 described in Subsection (10)(a).
- 2359 (c) The noncustodial parent shall have access directly to all school reports including
2360 preschool and daycare reports and medical records.
- 2361 (d) A parent shall immediately notify the other parent in the event of a medical
2362 emergency.
- 2363 (11) Each parent shall provide the other with the parent's current address and telephone
2364 number, email address, and other virtual parent-time access information within 24 hours
2365 of any change.
- 2366 (12)(a) Each parent shall permit and encourage, during reasonable hours, reasonable
2367 and uncensored communications with the minor child, in the form of mail privileges
2368 and virtual parent-time if the equipment is reasonably available.
- 2369 (b) If the parents cannot agree on whether the equipment is reasonably available, the
2370 court shall decide whether the equipment for virtual parent-time is reasonably
2371 available by taking into consideration:
- 2372 (i) the best interests of the minor child;
- 2373 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
- 2374 (iii) any other factors the court considers material.
- 2375 (13)(a) Parental care is presumed to be better care for the minor child than surrogate
2376 care.
- 2377 (b) The court shall encourage the parties to cooperate in allowing the noncustodial

- 2378 parent, if willing and able to transport the minor child, to provide the child care.
- 2379 (c) Child care arrangements existing during the marriage are preferred as are child care
2380 arrangements with nominal or no charge.
- 2381 (14) Each parent shall:
- 2382 (a) provide all surrogate care providers with the name, current address, and telephone
2383 number of the other parent; and
- 2384 (b) provide the noncustodial parent with the name, current address, and telephone
2385 number of all surrogate care providers unless the court for good cause orders
2386 otherwise.
- 2387 (15)(a) Each parent is entitled to an equal division of major religious holidays
2388 celebrated by the parents.
- 2389 (b) The parent who celebrates a religious holiday that the other parent does not celebrate
2390 shall have the right to be together with the minor child on the religious holiday.
- 2391 (16) If the minor child is on a different parent-time schedule than a sibling, based on
2392 Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for
2393 parent-time with all the minor children so that parent-time is uniform between school
2394 aged and nonschool aged children, is appropriate.
- 2395 (17)(a) When one or both parents are servicemembers or contemplating joining a
2396 uniformed service, the parents should resolve issues of custodial responsibility in the
2397 event of deployment as soon as practicable through reaching a voluntary agreement
2398 pursuant to Section 78B-20-201 or through court order obtained pursuant to this part.
- 2399 (b) Service members shall ensure their family care plan reflects orders and agreements
2400 entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents
2401 Custody, Parent-time, and Visitation Act.
- 2402 (18) A parent shall immediately notify the other parent if:
- 2403 (a) the parent resides with an individual or provides an individual with access to the
2404 minor child; and
- 2405 (b) the parent knows that the individual:
- 2406 (i) is required to register as a sex offender or a kidnap offender for an offense against
2407 a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
- 2408 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child
2409 Abuse Offender Registry; or
- 2410 (iii) has been convicted of:
- 2411 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,

- 2412 76-5-109.4, 76-5-114, or 76-5-208;
2413 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
2414 Offenses;
2415 (C) an offense for kidnapping or human trafficking of a minor child under Title
2416 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
2417 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
2418 Sexual Exploitation Act; or
2419 (E) an offense that is substantially similar to an offense under Subsections
2420 (18)(b)(iii)(A) through (D).

2421 (19)(a) For emergency purposes, whenever the minor child travels with a parent, the
2422 parent shall provide the following information to the other parent:

- 2423 (i) an itinerary of travel dates;
2424 (ii) destinations;
2425 (iii) places where the minor child or traveling parent can be reached; and
2426 (iv) the name and telephone number of an available third person who would be
2427 knowledgeable of the minor child's location.

2428 (b) Unchaperoned travel of a minor child under the age of five years is not
2429 recommended.

2430 Section 20. Section **81-9-207** is amended to read:

2431 **81-9-207 . Supervised parent-time.**

- 2432 (1) If it is necessary to protect a minor child and there is no less restrictive means
2433 reasonably available, and in accordance with Section 81-9-104, a court may order
2434 supervised parent-time if the court finds evidence that the minor child would be subject
2435 to physical or emotional harm or child abuse, as described in Sections 76-5-109,
2436 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, and 80-1-102, from the noncustodial
2437 parent if left unsupervised with the noncustodial parent.
- 2438 (2) If the court finds evidence of domestic violence, child abuse, or an ongoing risk to a
2439 child, and orders supervised parent-time, the court shall give preference to supervision
2440 by a professional individual or private agency trained in child abuse reporting laws, the
2441 developmental needs of a child, and the dynamics of domestic violence, child abuse,
2442 sexual abuse, and substance abuse.
- 2443 (3) If a professional individual or private agency described in Subsection (2) is not
2444 available, affordable, or practicable under the circumstances, a court shall give
2445 preference to supervision by an individual who is:

- 2446 (a) capable and willing to provide physical and psychological safety and security to the
 2447 minor child, and to assist in the avoidance and prevention of domestic and family
 2448 violence; and
- 2449 (b) is trained in child abuse reporting laws, the developmental needs of a child, and the
 2450 dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
- 2451 (4) If an individual described in Subsection (2) or (3) is not available, affordable, or
 2452 practicable under the circumstances, or if the court does not find evidence of domestic
 2453 violence, child abuse, or an ongoing risk to a minor child, a court may order supervised
 2454 parent-time that is supervised by an individual who is willing to supervise, and is
 2455 capable of protecting the minor child from physical or emotional harm, or child abuse,
 2456 and the court shall give preference to individuals suggested by the parties, including
 2457 relatives.
- 2458 (5) At the time supervised parent-time is imposed, the court shall consider:
- 2459 (a) whether the cost of professional or agency services is likely to prevent the
 2460 noncustodial parent from exercising parent-time; and
- 2461 (b) whether the requirement for supervised parent-time should expire after a set period
 2462 of time.
- 2463 (6)(a) Except when the court makes a finding that, due to abuse by or the incapacity of
 2464 the noncustodial parent, supervised parent-time will be necessary indefinitely to
 2465 ensure the physical or psychological safety and protection of the minor child, the
 2466 court shall, in its order for supervised parent-time, provide specific goals and
 2467 expectations for the noncustodial parent to accomplish before unsupervised
 2468 parent-time may be granted.
- 2469 (b) The court shall schedule one or more follow-up hearings to revisit the issue of
 2470 supervised parent-time.
- 2471 (7) A noncustodial parent may, at any time, petition the court to modify the order for
 2472 supervised parent-time if the noncustodial parent can demonstrate that the specific goals
 2473 and expectations set by the court as described in Subsection (6) have been accomplished.
- 2474 Section 21. Section **81-9-208** is amended to read:
- 2475 **81-9-208 . Modification or termination of a custody or parent-time order --**
 2476 **Noncompliance with a parent-time order.**
- 2477 (1) The court has continuing jurisdiction to make subsequent changes to modify:
- 2478 (a) custody of a minor child if there is a showing of a substantial and material change in
 2479 circumstances since the entry of the order; and

- 2480 (b) parent-time for a minor child if there is a showing that there is a change in
2481 circumstances since the entry of the order.
- 2482 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a
2483 showing by a parent that the other parent:
- 2484 (a) resides with an individual or provides an individual with access to the minor child;
2485 and
- 2486 (b) knows that the individual:
- 2487 (i) is required to register as a sex offender or a kidnap offender for an offense against
2488 a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
- 2489 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child
2490 Abuse Offender Registry; or
- 2491 (iii) has been convicted of:
- 2492 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,
2493 76-5-109.4, 76-5-114, or 76-5-208;
- 2494 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
2495 Offenses;
- 2496 (C) an offense for kidnapping or human trafficking of a minor child under Title
2497 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 2498 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
2499 Sexual Exploitation Act; or
- 2500 (E) an offense that is substantially similar to an offense under Subsections
2501 (2)(b)(iii)(A) through (D).
- 2502 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if
2503 they are not the parents, the court may, after a hearing, modify or terminate an order that
2504 established joint legal custody or joint physical custody if:
- 2505 (a) the verified petition or accompanying affidavit initially alleges that admissible
2506 evidence will show that there has been a substantial and material change in the
2507 circumstances of the minor child or one or both parents or joint legal or physical
2508 custodians since the entry of the order to be modified;
- 2509 (b) a modification of the terms and conditions of the order would be an improvement for
2510 and in the best interest of the minor child; and
- 2511 (c)(i) both parents have complied in good faith with the dispute resolution procedure
2512 in accordance with Subsection 81-9-205(8); or
- 2513 (ii) if no dispute resolution procedure is contained in the order that established joint

2514 legal custody or joint physical custody, the court orders the parents to participate
2515 in a dispute resolution procedure in accordance with Subsection 81-9-205(13)
2516 unless the parents certify that, in good faith, they have used a dispute resolution
2517 procedure to resolve their dispute.

2518 (4)(a) In determining whether the best interest of a minor child will be served by either
2519 modifying or terminating the joint legal custody or joint physical custody order, the
2520 court shall, in addition to other factors the court considers relevant, consider the
2521 factors described in Sections 81-9-204 and 81-9-205.

2522 (b) A court order modifying or terminating an existing joint legal custody or joint
2523 physical custody order shall contain written findings that:
2524 (i) a substantial and material change of circumstance has occurred; and
2525 (ii) a modification of the terms and conditions of the order would be an improvement
2526 for and in the best interest of the minor child.

2527 (c) The court shall give substantial weight to the existing joint legal custody or joint
2528 physical custody order when the minor child is thriving, happy, and well-adjusted.

2529 (5) The court shall, in every case regarding a petition for termination of a joint legal
2530 custody or joint physical custody order, consider reasonable alternatives to preserve the
2531 existing order in accordance with Section 81-9-204.

2532 (6) The court may modify the terms and conditions of the existing order in accordance with
2533 this chapter and may order the parents to file a parenting plan in accordance with
2534 Section 81-9-203.

2535 (7) A parent requesting a modification from sole custody to joint legal custody or joint
2536 physical custody or both, or any other type of shared parenting arrangement, shall file
2537 and serve a proposed parenting plan with the petition to modify in accordance with
2538 Section 81-9-203.

2539 (8) If an issue before the court involves custodial responsibility in the event of deployment
2540 of one or both parents who are service members, and the service member has not yet
2541 been notified of deployment, the court shall resolve the issue based on the standards in
2542 Sections 78B-20-306 through 78B-20-309.

2543 (9) If the court finds that an action to modify custody or parent-time is filed or answered
2544 frivolously and, in a manner, designed to harass the other party, the court shall assess
2545 attorney fees as costs against the offending party.

2546 (10) If a petition to modify custody or parent-time provisions of a court order is made and
2547 denied, the court shall order the petitioner to pay the reasonable attorney fees expended

2548 by the prevailing party in that action if the court determines that the petition was without
2549 merit and not asserted or defended against in good faith.

2550 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a
2551 visitation order by a grandparent or other member of the immediate family where a
2552 visitation or parent-time right has been previously granted by the court, the court:

2553 (a) may award to the prevailing party:

2554 (i) actual attorney fees incurred;

2555 (ii) the costs incurred by the prevailing party because of the other party's failure to
2556 provide or exercise court-ordered visitation or parent-time, including:

2557 (A) court costs;

2558 (B) child care expenses;

2559 (C) transportation expenses actually incurred;

2560 (D) lost wages, if ascertainable; or

2561 (E) counseling for a parent or a minor child if ordered or approved by the court; or

2562 (iii) any other appropriate equitable remedy; and

2563 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up
2564 parent-time is not in the best interest of the minor child.

2565 Section 22. Section **81-9-402** is amended to read:

2566 **81-9-402 . Custody and visitation for individuals other than a parent -- Venue.**

2567 (1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a
2568 parent retain the fundamental right and duty to exercise primary control over the care,
2569 supervision, upbringing, and education of a minor child of the parent.

2570 (b) There is a rebuttable presumption that a parent's decisions are in the minor child's
2571 best interests.

2572 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
2573 visitation rights to an individual other than a parent who, by clear and convincing
2574 evidence, establishes that:

2575 (a) the individual has intentionally assumed the role and obligations of a parent;

2576 (b) the individual and the minor child have formed a substantial emotional bond and
2577 created a parent-child type relationship;

2578 (c) the individual substantially contributed emotionally or financially to the minor child's
2579 well being;

2580 (d) the assumption of the parental role is not the result of a financially compensated
2581 surrogate care arrangement;

- 2582 (e) the continuation of the relationship between the individual and the minor child is in
2583 the minor child's best interest;
- 2584 (f) the loss or cessation of the relationship between the individual and the minor child
2585 would substantially harm the minor child; and
- 2586 (g) the parent:
- 2587 (i) is absent; or
- 2588 (ii) is found by a court to have abused or neglected the minor child.
- 2589 (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350,
2590 an individual shall file a verified petition, or a petition supported by an affidavit, for
2591 custodial or visitation rights to the minor child in the juvenile court if a matter is pending
2592 in the juvenile court, or in the district court in the county where the minor child:
- 2593 (a) currently resides; or
- 2594 (b) lived with a parent or an individual other than a parent who acted as a parent within
2595 six months before the commencement of the action.
- 2596 (4) An individual may file a petition under this section in a pending divorce, parentage
2597 action, or other proceeding, including a proceeding in the juvenile court involving
2598 custody of or visitation with a minor child.
- 2599 (5) The petition shall include detailed facts supporting the petitioner's right to file the
2600 petition including the criteria set forth in Subsection (2) and residency information
2601 described in Section 78B-13-209.
- 2602 (6) An individual may not file a petition under this section against a parent who is actively
2603 serving outside the state in any branch of the military.
- 2604 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the
2605 Utah Rules of Civil Procedure on all of the following:
- 2606 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
- 2607 (b) any individual who has court-ordered custody or visitation rights;
- 2608 (c) the minor child's guardian;
- 2609 (d) the guardian ad litem, if one has been appointed;
- 2610 (e) an individual or agency that has physical custody of the minor child or that claims to
2611 have custody or visitation rights; and
- 2612 (f) any other individual or agency that has previously appeared in any action regarding
2613 custody of or visitation with the minor child.
- 2614 (8) The court may order a custody evaluation to be conducted in any proceeding brought
2615 under this section.

- 2616 (9) The court may enter temporary orders in a proceeding brought under this section
2617 pending the entry of final orders.
- 2618 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child
2619 under this section to an individual:
- 2620 (a) who is not the parent of the minor child; and
- 2621 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no
2622 contest to a felony or attempted felony involving conduct that constitutes any of the
2623 following:
- 2624 (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3,
2625 76-5-109.4, and 76-5-114;
- 2626 (ii) child abuse homicide, as described in Section 76-5-208;
- 2627 (iii) child kidnapping, as described in Section 76-5-301.1;
- 2628 (iv) human trafficking of a child, as described in Section 76-5-308.5;
- 2629 (v) sexual abuse of a minor, as described in Section 76-5-401.1;
- 2630 (vi) rape of a child, as described in Section 76-5-402.1;
- 2631 (vii) object rape of a child, as described in Section 76-5-402.3;
- 2632 (viii) sodomy on a child, as described in Section 76-5-403.1;
- 2633 (ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual
2634 abuse of a child, as described in Section 76-5-404.3;
- 2635 (x) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2636 (xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- 2637 (xii) an offense in another state that, if committed in this state, would constitute an
2638 offense described in this Subsection (10).
- 2639 (11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed
2640 in Subsection (10) that prevents a court from granting custody except as provided in
2641 this Subsection (11).
- 2642 (b) An individual described in Subsection (10) may only be considered for custody of a
2643 minor child if the following criteria are met by clear and convincing evidence:
- 2644 (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;
- 2645 (ii) at least 10 years have elapsed from the day on which the individual is
2646 successfully released from prison, jail, parole, or probation related to a
2647 disqualifying offense;
- 2648 (iii) during the 10 years before the day on which the individual files a petition with
2649 the court seeking custody the individual has not been convicted, plead guilty, or

- 2650 plead no contest to an offense greater than an infraction or traffic violation that
2651 would likely impact the health, safety, or well-being of the minor child;
- 2652 (iv) the individual can provide evidence of successful treatment or rehabilitation
2653 directly related to the disqualifying offense;
- 2654 (v) the court determines that the risk related to the disqualifying offense is unlikely to
2655 cause harm, as defined in Section 80-1-102, or potential harm to the minor child
2656 currently or at any time in the future when considering all of the following:
- 2657 (A) the minor child's age;
- 2658 (B) the minor child's gender;
- 2659 (C) the minor child's development;
- 2660 (D) the nature and seriousness of the disqualifying offense;
- 2661 (E) the preferences of a minor child who is 12 years old or older;
- 2662 (F) any available assessments, including custody evaluations, parenting
2663 assessments, psychological or mental health assessments, and bonding
2664 assessments; and
- 2665 (G) any other relevant information;
- 2666 (vi) the individual can provide evidence of the following:
- 2667 (A) the relationship with the minor child is of long duration;
- 2668 (B) that an emotional bond exists with the minor child; and
- 2669 (C) that custody by the individual who has committed the disqualifying offense
2670 ensures the best interests of the minor child are met;
- 2671 (vii)(A) there is no other responsible relative known to the court who has or likely
2672 could develop an emotional bond with the minor child and does not have a
2673 disqualifying offense; or
- 2674 (B) if there is a responsible relative known to the court that does not have a
2675 disqualifying offense, Subsection (11)(d) applies; and
- 2676 (viii) that the continuation of the relationship between the individual with the
2677 disqualifying offense and the minor child could not be sufficiently maintained
2678 through any type of visitation if custody were given to the relative with no
2679 disqualifying offense described in Subsection (11)(d).
- 2680 (c) The individual with the disqualifying offense bears the burden of proof regarding
2681 why placement with that individual is in the best interest of the minor child over
2682 another responsible relative or equally situated individual who does not have a
2683 disqualifying offense.

- 2684 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to
2685 the court who does not have a disqualifying offense:
- 2686 (i) preference for custody is given to a relative who does not have a disqualifying
2687 offense; and
 - 2688 (ii) before the court may place custody with the individual who has the disqualifying
2689 offense over another responsible, willing, and able relative:
 - 2690 (A) an impartial custody evaluation shall be completed; and
 - 2691 (B) a guardian ad litem shall be assigned.
- 2692 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final
2693 decision on custody has not been made and to a case filed on or after March 25, 2017.
- 2694 Section 23. **Effective date.**
- 2695 This bill takes effect on May 7, 2025.