

1 **SEXUAL EXPLOITATION AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David P. Hinkins**

5 House Sponsor: Jennifer M. Seelig

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Criminal Code relating to sexual exploitation
10 of minors and vulnerable adults.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ enacts the Sexual Exploitation Act;
- 15 ▶ consolidates criminal provisions relating to sexual exploitation of a vulnerable adult
16 and sexual exploitation of a minor;
- 17 ▶ makes legislative findings;
- 18 ▶ modifies and clarifies criminal provisions relating to sexual exploitation of a minor
19 and sexual exploitation of a vulnerable adult;
- 20 ▶ modifies the conduct that constitutes sexual exploitation of a vulnerable adult;
- 21 ▶ makes sexual exploitation of a vulnerable adult a third degree felony;
- 22 ▶ provides that it is a separate offense of sexual exploitation of a vulnerable adult for
23 each vulnerable adult depicted, and each time the vulnerable adult is depicted, in
24 vulnerable adult pornography;
- 25 ▶ provides an affirmative defense to the crime of sexual exploitation of a vulnerable
26 adult;
- 27 ▶ provides exceptions from criminal and civil liability for legitimate law enforcement
28 activities;
- 29 ▶ provides that it is not a defense to a crime described in this bill that the accused did

30 not know the age of the victim; and
31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides an effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **9-7-215**, as last amended by Laws of Utah 2004, Chapter 193
- 39 **31A-21-501**, as last amended by Laws of Utah 2009, Chapter 326
- 40 **53A-6-501**, as last amended by Laws of Utah 2008, Chapters 189 and 190
- 41 **62A-2-120**, as last amended by Laws of Utah 2010, Chapter 365
- 42 **62A-3-301**, as last amended by Laws of Utah 2008, Chapter 91
- 43 **63M-7-502**, as last amended by Laws of Utah 2010, Chapter 254
- 44 **76-1-302**, as last amended by Laws of Utah 2009, Chapters 84 and 292
- 45 **76-3-203.1**, as last amended by Laws of Utah 2010, Chapter 193
- 46 **76-3-203.5**, as last amended by Laws of Utah 2010, Chapter 334
- 47 **76-3-407**, as repealed and reenacted by Laws of Utah 2007, Chapter 339
- 48 **76-5-111**, as last amended by Laws of Utah 2007, Chapter 31
- 49 **76-5-112.5**, as repealed and reenacted by Laws of Utah 2009, Chapter 153
- 50 **76-9-702.5**, as last amended by Laws of Utah 2009, Chapters 354 and 366
- 51 **76-10-1602 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter
- 52 334
- 53 **76-10-1602 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 276
- 54 and 334
- 55 **77-22-2.5**, as last amended by Laws of Utah 2010, Chapter 371
- 56 **77-27-21.5**, as last amended by Laws of Utah 2010, Chapters 55, 120, 144, 283, and
- 57 328

58 **77-36-1**, as last amended by Laws of Utah 2010, Chapters 218 and 384
59 **78A-6-105**, as renumbered and amended by Laws of Utah 2008, Chapter 3

60 ENACTS:

61 **76-5b-101**, Utah Code Annotated 1953
62 **76-5b-202**, Utah Code Annotated 1953
63 **76-5b-302**, Utah Code Annotated 1953

64 RENUMBERS AND AMENDS:

65 **76-5b-102**, (Renumbered from 76-5a-1, as last amended by Laws of Utah 1985,
66 Chapter 226)
67 **76-5b-103**, (Renumbered from 76-5a-2, as last amended by Laws of Utah 2001,
68 Chapter 176)
69 **76-5b-201**, (Renumbered from 76-5a-3, as last amended by Laws of Utah 2009,
70 Chapter 257)
71 **76-5b-301**, (Renumbered from 76-5a-4, as last amended by Laws of Utah 1985,
72 Chapter 226)



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

75 Section 1. Section **9-7-215** is amended to read:

76 **9-7-215. Internet and online access policy required.**

77 (1) As used in this section:

78 (a) "Child pornography" is as defined in Section ~~[76-5a-2]~~ 76-5b-103.

79 (b) "Harmful to minors" is as defined in Section 76-10-1201.

80 (c) "Obscene" is as defined in 20 U.S.C. Sec. 9101.

81 (d) "Technology protection measure" means a technology that blocks or filters Internet
82 access to visual depictions.

83 (2) State funds may not be provided to any public library that offers use of the Internet
84 or an online service to the public unless the library:

85 (a) (i) has in place a policy of Internet safety for minors including the operation of a

86 technology protection measure:

87 (A) with respect to any publicly accessible computer with Internet access; and

88 (B) that protects against access to visual depictions that are:

89 (I) child pornography;

90 (II) harmful to minors; or

91 (III) obscene; and

92 (ii) is enforcing the operation of the technology protection measure described in

93 Subsection (2)(a)(i) during any use of a computer by a minor; and

94 (b) (i) has in place a policy of Internet safety including the operation of a technology

95 protection measure:

96 (A) with respect to any publicly accessible computer with Internet access; and

97 (B) that protects against access to visual depictions that are:

98 (I) child pornography; or

99 (II) obscene; and

100 (ii) is enforcing the operation of the technology protection measure described in

101 Subsection (2)(b)(i) during any use of a computer.

102 (3) This section does not prohibit a public library from limiting Internet access or

103 otherwise protecting against materials other than the materials specified in this section.

104 (4) An administrator, supervisor, or other representative of a public library may disable

105 a technology protection measure described in Subsection (2):

106 (a) at the request of a library patron who is not a minor; and

107 (b) to enable access for research or other lawful purposes.

108 Section 2. Section **31A-21-501** is amended to read:

109 **31A-21-501. Definitions.**

110 For purposes of this part:

111 (1) "Applicant" means:

112 (a) in the case of an individual life or accident and health policy, the person who seeks

113 to contract for insurance benefits; or

114 (b) in the case of a group life or accident and health policy, the proposed certificate
115 holder.

116 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
117 individual who is 16 years of age or older who:

- 118 (a) is or was a spouse of the other party;
- 119 (b) is or was living as if a spouse of the other party;
- 120 (c) is related by blood or marriage to the other party;
- 121 (d) has one or more children in common with the other party; or
- 122 (e) resides or has resided in the same residence as the other party.

123 (3) "Child abuse" means the commission or attempt to commit against a child a
124 criminal offense described in:

- 125 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- 126 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 127 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or
- 128 (d) Section 76-9-702.5, Lewdness Involving a Child.

129 (4) "Domestic violence" means any criminal offense involving violence or physical
130 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
131 commit a criminal offense involving violence or physical harm, when committed by one
132 cohabitant against another and includes commission or attempt to commit, any of the following
133 offenses by one cohabitant against another:

- 134 (a) aggravated assault, as described in Section 76-5-103;
- 135 (b) assault, as described in Section 76-5-102;
- 136 (c) criminal homicide, as described in Section 76-5-201;
- 137 (d) harassment, as described in Section 76-5-106;
- 138 (e) electronic communication harassment, as described in Section 76-9-201;
- 139 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
140 76-5-301, 76-5-301.1, and 76-5-302;
- 141 (g) mayhem, as described in Section 76-5-105;

142 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and [~~Title 76, Chapter~~
143 ~~5a~~] Section 76-5b-201;

144 (i) stalking, as described in Section 76-5-106.5;

145 (j) unlawful detention, as described in Section 76-5-304;

146 (k) violation of a protective order or ex parte protective order, as described in Section
147 76-5-108;

148 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;

149 (m) possession of a deadly weapon with intent to assault, as described in Section
150 76-10-507; or

151 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
152 person, building, or vehicle, as described in Section 76-10-508.

153 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
154 be, or may have been subject to domestic violence or child abuse.

155 Section 3. Section **53A-6-501** is amended to read:

156 **53A-6-501. Disciplinary action against educator.**

157 (1) (a) The board shall take appropriate action against a person who is, or at the time of
158 an alleged offense was, the holder of a license, and:

159 (i) who, after having had a reasonable opportunity to contest the allegation, has been
160 found pursuant to a criminal, civil, or administrative action to have exhibited behavior
161 evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or
162 other violation of standards of ethical conduct, performance, or professional competence; or

163 (ii) who has been alleged to have exhibited such behavior or committed such a
164 violation.

165 (b) Prior to taking action based upon an allegation or the decision of an administrative
166 body other than UPPAC, the board shall direct UPPAC to review the allegations and any
167 related administrative action and provide findings and recommendations to the board.

168 (c) No adverse recommendation may be made without giving the accused person an
169 opportunity for a hearing.

170 (d) The board's action may include:
171 (i) revocation or suspension of a license;
172 (ii) restriction or prohibition of recertification;
173 (iii) a warning or reprimand;
174 (iv) required participation in and satisfactory completion of a rehabilitation or
175 remediation program; or
176 (v) other action which the board finds to be appropriate after a review of the UPPAC
177 findings and recommendations.

178 (e) The license holder is responsible for the costs of rehabilitation or remediation
179 required under this section.

180 (2) (a) Upon receipt of findings or recommendations from UPPAC, the board shall
181 permanently revoke the license of a person who:

182 (i) is convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses,
183 against a minor child;

184 (ii) engages in sexually explicit conduct, as defined in Section ~~[76-5a-2]~~ 76-5b-103,
185 with a student who is a minor; or

186 (iii) engages in sexually explicit conduct, as defined in Section ~~[76-5a-2]~~ 76-5b-103,
187 with a student who is:

188 (A) not a minor; and

189 (B) enrolled in a school where the person is employed.

190 (b) Upon receipt of findings or recommendation from UPPAC, the board may
191 permanently revoke the license of a person who has exhibited other behavior which the board
192 finds to be irremediable.

193 Section 4. Section **62A-2-120** is amended to read:

194 **62A-2-120. Criminal background checks -- Direct access to children or**
195 **vulnerable adults.**

196 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
197 license renewal under this chapter shall submit to the office the names and other identifying

198 information, which may include fingerprints, of all persons associated with the licensee, as
199 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

200 (b) The Criminal Investigations and Technical Services Division of the Department of
201 Public Safety, or the office as authorized under Section 53-10-108, shall process the
202 information described in Subsection (1)(a) to determine whether the individual has been
203 convicted of any crime.

204 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
205 in Utah for the five years immediately preceding the day on which the information referred to
206 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
207 national criminal history record check. The fingerprints shall be submitted to the FBI through
208 the Criminal Investigations and Technical Services Division.

209 (d) An individual is not required to comply with Subsection (1)(c) if:

210 (i) the individual continuously lived in Utah for the five years immediately preceding
211 the day on which the information described in Subsection (1)(a) is submitted to the office,
212 except for time spent outside of the United States and its territories; and

213 (ii) the background check of the individual is being conducted for a purpose other than
214 a purpose described in Subsection (1)(f).

215 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
216 States and its territories during the five years immediately preceding the day on which the
217 information described in Subsection (1)(a) is submitted to the office, the office shall require the
218 applicant to submit documentation establishing whether the applicant was convicted of a crime
219 during the time that the applicant spent outside of the United States and its territories.

220 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
221 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
222 FBI national criminal history records check, through the Criminal Investigations and Technical
223 Services Division, if the background check of the applicant is being conducted for the purpose
224 of:

225 (i) licensing a prospective foster home; or

226 (ii) approving a prospective adoptive placement of a child in state custody.

227 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
228 this section, if the background check of an applicant described in Subsection (1)(a) is being
229 conducted for the purpose of licensing a prospective foster home or approving a prospective
230 adoptive placement of a child in state custody, the office shall:

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

237 (ii) check the child abuse and neglect registry in each state where each adult living in
238 the home of the prospective foster parent or prospective adoptive parent described in
239 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
240 prospective foster parent or prospective adoptive parent applied to be a foster parent or
241 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
242 or supported finding of child abuse or neglect.

243 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

244 (i) federal law or rule permits otherwise; or

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

247 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

248 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
249 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
250 and (g).

251 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
252 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
253 background checks.

254 (2) The office shall approve a person for whom identifying information is submitted
255 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
256 program if:

257 (a) (i) the person is found to have no criminal history record; or

258 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
259 or infractions not involving any of the offenses described in Subsection (3); and

260 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
261 before the date of the search;

262 (b) the person is not listed in the statewide database of the Division of Aging and Adult
263 Services created by Section 62A-3-311.1;

264 (c) juvenile court records do not show that a court made a substantiated finding, under
265 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

266 (d) the person is not listed in the Licensing Information System of the Division of
267 Child and Family Services created by Section 62A-4a-1006;

268 (e) the person has not pled guilty or no contest to a pending charge for any:

269 (i) felony;

270 (ii) misdemeanor listed in Subsection (3); or

271 (iii) infraction listed in Subsection (3); and

272 (f) for a person described in Subsection (1)(g), the registry check described in
273 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
274 of another state as having a substantiated or supported finding of a severe type of child abuse or
275 neglect as defined in Section 62A-4a-1002.

276 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
277 date of conviction, the office may not approve a person to have direct access to children or
278 vulnerable adults in the licensee's human services program if that person has been convicted of
279 an offense, whether a felony, misdemeanor, or infraction, that is:

280 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

281 (b) a violation of any pornography law, including sexual exploitation of a minor;

- 282 (c) prostitution;
- 283 (d) included in:
 - 284 (i) Title 76, Chapter 5, Offenses Against the Person;
 - 285 (ii) [~~Title 76, Chapter 5a~~] Section 76-5b-201, Sexual Exploitation of [~~Children~~] a
 - 286 Minor; or
 - 287 (iii) Title 76, Chapter 7, Offenses Against the Family;
- 288 (e) a violation of Section 76-6-103, aggravated arson;
- 289 (f) a violation of Section 76-6-203, aggravated burglary;
- 290 (g) a violation of Section 76-6-302, aggravated robbery; or
- 291 (h) a conviction for an offense committed outside of the state that, if committed in the
- 292 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).
- 293 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
- 294 information is submitted under Subsection (1) is not approved by the office under Subsection
- 295 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
- 296 office shall conduct a comprehensive review of criminal and court records and related
- 297 circumstances if the reason the approval is not granted is due solely to one or more of the
- 298 following:
 - 299 (i) a conviction for:
 - 300 (A) any felony not listed in Subsection (3);
 - 301 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
 - 302 date of the search;
 - 303 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
 - 304 a similar statute in another state; or
 - 305 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
 - 306 have passed since the date of conviction;
 - 307 (ii) a plea of guilty or no contest to a pending:
 - 308 (A) felony;
 - 309 (B) misdemeanor listed in Subsection (3); or

310 (C) infraction listed in Subsection (3);
311 (iii) the person is listed in the statewide database of the Division of Aging and Adult
312 Services created by Section 62A-3-311.1;
313 (iv) juvenile court records show that a court made a substantiated finding, under
314 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
315 (v) the person is listed in the Licensing Information System of the Division of Child
316 and Family Services created by Section 62A-4a-1006; or
317 (vi) the person is listed in a child abuse or neglect registry of another state as having a
318 substantiated or supported finding of a severe type of child abuse or neglect as defined in
319 Section 62A-4a-1002.

320 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
321 (i) the date of the offense or incident;
322 (ii) the nature and seriousness of the offense or incident;
323 (iii) the circumstances under which the offense or incident occurred;
324 (iv) the age of the perpetrator when the offense or incident occurred;
325 (v) whether the offense or incident was an isolated or repeated incident;
326 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
327 adult, including:
328 (A) actual or threatened, nonaccidental physical or mental harm;
329 (B) sexual abuse;
330 (C) sexual exploitation; and
331 (D) negligent treatment;
332 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
333 treatment received, or additional academic or vocational schooling completed, by the person;
334 and
335 (viii) any other pertinent information.

336 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
337 shall approve the person who is the subject of the review to have direct access to children or

338 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
339 vulnerable adult.

340 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
341 office may make rules, consistent with this chapter, defining procedures for the comprehensive
342 review described in this Subsection (4).

343 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
344 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
345 the supervising.

346 (b) A licensee may not permit any person to have direct access to a child or a
347 vulnerable adult unless, subject to Subsection (5)(c), that person is:

348 (i) associated with the licensee and:

349 (A) approved by the office to have direct access to children or vulnerable adults under
350 this section; or

351 (B) (I) the office has not determined whether to approve that person to have direct
352 access to children or vulnerable adults;

353 (II) the information described in Subsection (1)(a), relating to that person, is submitted
354 to the department; and

355 (III) that person is directly supervised by a person associated with the licensee who is
356 approved by the office to have direct access to children or vulnerable adults under this section;

357 (ii) (A) not associated with the licensee; and

358 (B) directly supervised by a person associated with the licensee who is approved by the
359 office to have direct access to children or vulnerable adults under this section;

360 (iii) the parent or guardian of the child or vulnerable adult; or

361 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
362 have direct access to the child or vulnerable adult.

363 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
364 or a vulnerable adult if that person is prohibited by court order from having that access.

365 (6) (a) Within 30 days after receiving the identifying information for a person under

366 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
367 with whom the person is associated of:

- 368 (i) the office's decision regarding its background screening clearance and findings; and
- 369 (ii) a list of any convictions found in the search.

370 (b) With the notice described in Subsection (6)(a), the office shall also give to the
371 person the details of any comprehensive review conducted under Subsection (4).

372 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
373 direct access to children or vulnerable adults, the notice shall further advise the persons to
374 whom the notice is given that either the person or the licensee or applicant with whom the
375 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
376 department's Office of Administrative Hearings, to challenge the office's decision.

377 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
378 office shall make rules, consistent with this chapter:

379 (i) defining procedures for the challenge of its background screening decision
380 described in this Subsection (6); and

381 (ii) expediting the process for renewal of a license under the requirements of this
382 section and other applicable sections.

383 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
384 an initial license, or license renewal, to operate a substance abuse program that provides
385 services to adults only.

386 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
387 license a person as a prospective foster parent or a prospective adoptive parent if the person has
388 been convicted of:

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

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

391 (B) commission of domestic violence in the presence of a child, as described in Section
392 76-5-109.1;

393 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;

- 394 (D) endangerment of a child, as described in Section 76-5-112.5;
- 395 (E) aggravated murder, as described in Section 76-5-202;
- 396 (F) murder, as described in Section 76-5-203;
- 397 (G) manslaughter, as described in Section 76-5-205;
- 398 (H) child abuse homicide, as described in Section 76-5-208;
- 399 (I) homicide by assault, as described in Section 76-5-209;
- 400 (J) kidnapping, as described in Section 76-5-301;
- 401 (K) child kidnapping, as described in Section 76-5-301.1;
- 402 (L) aggravated kidnapping, as described in Section 76-5-302;
- 403 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 404 (N) an offense described in [~~Title 76, Chapter 5a~~] Section 76-5b-201, Sexual
- 405 Exploitation of [~~Children~~] a Minor;
- 406 (O) aggravated arson, as described in Section 76-6-103;
- 407 (P) aggravated burglary, as described in Section 76-6-203;
- 408 (Q) aggravated robbery, as described in Section 76-6-302; or
- 409 (R) domestic violence, as described in Section 77-36-1; or
- 410 (ii) an offense committed outside the state that, if committed in the state, would
- 411 constitute a violation of an offense described in Subsection (8)(a)(i).
- 412 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
- 413 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
- 414 immediately preceding the day on which the person would otherwise be approved or licensed,
- 415 the person has been convicted of a felony involving conduct that constitutes any of the
- 416 following:
- 417 (i) aggravated assault, as described in Section 76-5-103;
- 418 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 419 (iii) mayhem, as described in Section 76-5-105;
- 420 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 421 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

422 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
423 Act;

424 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
425 Precursor Act; or

426 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

427 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
428 the conflicting provision of Section 62A-2-120.5 shall govern.

429 Section 5. Section **62A-3-301** is amended to read:

430 **62A-3-301. Definitions.**

431 As used in this part:

432 (1) "Abandonment" means any knowing or intentional action or failure to act,
433 including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves
434 the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
435 medical or other health care.

436 (2) "Abuse" means:

437 (a) knowingly or intentionally:

438 (i) attempting to cause harm;

439 (ii) causing harm; or

440 (iii) placing another in fear of harm;

441 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
442 causes or is likely to cause harm to a vulnerable adult;

443 (c) emotional or psychological abuse;

444 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;

445 or

446 (e) deprivation of life sustaining treatment, or medical or mental health treatment,

447 except:

448 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

449 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

- 450 (3) "Adult" means a person who is 18 years of age or older.
- 451 (4) "Adult protection case file" means a record, stored in any format, contained in a
452 case file maintained by Adult Protective Services.
- 453 (5) "Adult Protective Services" means the unit within the division responsible to
454 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
455 protective services.
- 456 (6) "Capacity to consent" means the ability of a person to understand and communicate
457 regarding the nature and consequences of decisions relating to the person, and relating to the
458 person's property and lifestyle, including a decision to accept or refuse services.
- 459 (7) "Caretaker" means each person, entity, corporation, or public institution that
460 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
461 supervision, medical or other health care, resource management, or other necessities.
- 462 (8) "Counsel" means an attorney licensed to practice law in this state.
- 463 (9) "Database" means the statewide database maintained by the division under Section
464 62A-3-311.1.
- 465 (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- 466 (11) "Elder adult" means a person 65 years of age or older.
- 467 (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
468 risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- 469 (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
470 nonverbal conduct directed at a vulnerable adult that results or could result in the vulnerable
471 adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or
472 confusion.
- 473 (b) "Emotional or psychological abuse" includes ridiculing, intimidating, yelling,
474 swearing, threatening, isolating, coercing, or harassing.
- 475 (14) "Exploitation" means ~~the~~ an offense described in Subsection 76-5-111(4) or
476 Section 76-5b-202.
- 477 (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or

478 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
479 knowingly or intentionally.

480 (16) "Inconclusive" means a finding by the division that there is not a reasonable basis
481 to conclude that abuse, neglect, or exploitation occurred.

482 (17) "Intimidation" means communication through verbal or nonverbal conduct which
483 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
484 supervision, health care, or companionship, or which threatens isolation or abuse.

485 (18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
486 from having contact with another person by:

487 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
488 contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor
489 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
490 knowing that communication to be false;

491 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
492 from meeting with a visitor; or

493 (iii) making false or misleading statements to the vulnerable adult in order to induce
494 the vulnerable adult to refuse to receive communication from visitors or other family members.

495 (b) The term "isolation" does not include an act intended to protect the physical or
496 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
497 instructions of a physician or other professional advisor of the vulnerable adult.

498 (19) "Lacks capacity to consent" [~~has the meaning as provided~~] is as defined in Section
499 76-5-111.

500 (20) (a) "Neglect" means:

501 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
502 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
503 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
504 assistance; or

505 (B) failure of a caretaker to provide protection from health and safety hazards or

506 maltreatment;

507 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
508 with the degree of care that a reasonable person in a like position would exercise;

509 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
510 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
511 heating, or other services necessary to maintain the vulnerable adult's well being;

512 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
513 plan that causes or is likely to cause harm to the vulnerable adult;

514 (v) self-neglect by the vulnerable adult; or

515 (vi) abandonment by a caretaker.

516 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
517 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

518 (21) "Physical injury" includes the damage and conditions described in Section
519 76-5-111.

520 (22) "Protected person" means a vulnerable adult for whom the court has ordered
521 protective services.

522 (23) "Protective services" means services to protect a vulnerable adult from abuse,
523 neglect, or exploitation.

524 (24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
525 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to
526 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or
527 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be
528 evidence of self-neglect.

529 (25) "Serious physical injury" is as defined in Section 76-5-111.

530 (26) "Supported" means a finding by the division that there is a reasonable basis to
531 conclude that abuse, neglect, or exploitation occurred.

532 (27) "Undue influence" occurs when a person uses the person's role, relationship, or
533 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear

534 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
535 deceptively over the decision making of the vulnerable adult.

536 (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical
537 impairment which substantially affects that person's ability to:

- 538 (a) provide personal protection;
- 539 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 540 (c) obtain services necessary for health, safety, or welfare;
- 541 (d) carry out the activities of daily living;
- 542 (e) manage the adult's own financial resources; or
- 543 (f) comprehend the nature and consequences of remaining in a situation of abuse,
544 neglect, or exploitation.

545 (29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

546 Section 6. Section **63M-7-502** is amended to read:

547 **63M-7-502. Definitions.**

548 As used in this chapter:

549 (1) "Accomplice" means a person who has engaged in criminal conduct as defined in
550 Section 76-2-202.

551 (2) "Board" means the Crime Victim Reparations Board created under Section
552 63M-7-504.

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

555 (4) "Claim" means:

- 556 (a) the victim's application or request for a reparations award; and
- 557 (b) the formal action taken by a victim to apply for reparations pursuant to Sections
558 63M-7-501 through 63M-7-525.

559 (5) "Claimant" means any of the following claiming reparations under this chapter:

- 560 (a) a victim;
- 561 (b) a dependent of a deceased victim;

- 562 (c) a representative other than a collateral source; or
- 563 (d) the person or representative who files a claim on behalf of a victim.
- 564 (6) "Child" means an unemancipated person who is under 18 years of age.
- 565 (7) "Collateral source" means the definition as provided in Section 63M-7-513.
- 566 (8) "Contested case" means a case which the claimant contests, claiming the award was
- 567 either inadequate or denied, or which a county attorney, a district attorney, a law enforcement
- 568 officer, or other individual related to the criminal investigation proffers reasonable evidence of
- 569 the claimant's lack of cooperation in the prosecution of a case after an award has already been
- 570 given.
- 571 (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared
- 572 means conduct that:
 - 573 (i) is or would be subject to prosecution in this state under Section 76-1-201;
 - 574 (ii) occurs or is attempted;
 - 575 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
 - 576 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct
 - 577 possessed the capacity to commit the conduct; and
 - 578 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
 - 579 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
 - 580 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
 - 581 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.
- 582 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
- 583 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
- 584 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.
- 585 (10) "Dependent" means a natural person to whom the victim is wholly or partially
- 586 legally responsible for care or support and includes a child of the victim born after the victim's
- 587 death.
- 588 (11) "Dependent's economic loss" means loss after the victim's death of contributions
- 589 of things of economic value to the victim's dependent, not including services the dependent

590 would have received from the victim if the victim had not suffered the fatal injury, less
591 expenses of the dependent avoided by reason of victim's death.

592 (12) "Dependent's replacement services loss" means loss reasonably and necessarily
593 incurred by the dependent after the victim's death in obtaining services in lieu of those the
594 decedent would have performed for the victim's benefit if the victim had not suffered the fatal
595 injury, less expenses of the dependent avoided by reason of the victim's death and not
596 subtracted in calculating the dependent's economic loss.

597 (13) "Director" means the director of the Office of Crime Victim Reparations.

598 (14) "Disposition" means the sentencing or determination of penalty or punishment to
599 be imposed upon a person:

600 (a) convicted of a crime;

601 (b) found delinquent; or

602 (c) against whom a finding of sufficient facts for conviction or finding of delinquency
603 is made.

604 (15) "Economic loss" means economic detriment consisting only of allowable expense,
605 work loss, replacement services loss, and if injury causes death, dependent's economic loss and
606 dependent's replacement service loss. Noneconomic detriment is not loss, but economic
607 detriment is loss although caused by pain and suffering or physical impairment.

608 (16) "Elderly victim" means a person 60 years of age or older who is a victim.

609 (17) "Fraudulent claim" means a filed claim based on material misrepresentation of
610 fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds
611 for which the claimant is not eligible as provided in Section 63M-7-510.

612 (18) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

613 (19) "Law enforcement officer" means a law enforcement officer as defined in Section
614 53-13-103.

615 (20) "Medical examination" means a physical examination necessary to document
616 criminally injurious conduct but does not include mental health evaluations for the prosecution
617 and investigation of a crime.

618 (21) "Mental health counseling" means outpatient and inpatient counseling necessitated
619 as a result of criminally injurious conduct. The definition of mental health counseling is
620 subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah
621 Administrative Rulemaking Act.

622 (22) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the
623 victim which was attributable to the injury or death of the victim as provided by rules
624 promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking
625 Act.

626 (23) "Noneconomic detriment" means pain, suffering, inconvenience, physical
627 impairment, and other nonpecuniary damage, except as provided in this chapter.

628 (24) "Pecuniary loss" does not include loss attributable to pain and suffering except as
629 otherwise provided in this chapter.

630 (25) "Offender" means a person who has violated the criminal code through criminally
631 injurious conduct regardless of whether the person is arrested, prosecuted, or convicted.

632 (26) "Offense" means a violation of the criminal code.

633 (27) "Office of Crime Victim Reparations" or "office" means the office of the
634 reparations staff for the purpose of carrying out the provisions of this chapter.

635 (28) "Perpetrator" means the person who actually participated in the criminally
636 injurious conduct.

637 (29) "Reparations officer" means a person employed by the office to investigate claims
638 of victims and award reparations under this chapter, and includes the director when the director
639 is acting as a reparations officer.

640 (30) "Reparations staff" means the director, the reparations officers, and any other staff
641 employed to administer the Crime Victim Reparations Act.

642 (31) "Replacement service loss" means expenses reasonably and necessarily incurred in
643 obtaining ordinary and necessary services in lieu of those the injured person would have
644 performed, not for income but the benefit of the injured person or the injured person's
645 dependents if the injured person had not been injured.

646 (32) "Representative" means the victim, immediate family member, legal guardian,
647 attorney, conservator, executor, or an heir of a person but does not include service providers.

648 (33) "Restitution" means money or services an appropriate authority orders an offender
649 to pay or render to a victim of the offender's conduct.

650 (34) "Secondary victim" means a person who is traumatically affected by the criminally
651 injurious conduct subject to rules promulgated by the board pursuant to Title 63G, Chapter 3,
652 Utah Administrative Rulemaking Act.

653 (35) "Service provider" means a person or agency who provides a service to crime
654 victims for a monetary fee except attorneys as provided in Section 63M-7-524.

655 (36) (a) "Victim" means a person who suffers bodily or psychological injury or death as
656 a direct result of criminally injurious conduct or of the production of pornography in violation
657 of [~~Sections 76-5a-1 through 76-5a-4~~] Section 76-5b-201 if the person is a minor.

658 (b) "Victim" does not include a person who participated in or observed the judicial
659 proceedings against an offender unless otherwise provided by statute or rule.

660 (c) "Victim" includes a resident of this state who is injured or killed by an act of
661 terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

662 (37) "Work loss" means loss of income from work the injured victim would have
663 performed if the injured victim had not been injured and expenses reasonably incurred by the
664 injured victim in obtaining services in lieu of those the injured victim would have performed
665 for income, reduced by any income from substitute work the injured victim was capable of
666 performing but unreasonably failed to undertake.

667 Section 7. Section **76-1-302** is amended to read:

668 **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**
669 **evidence would identify the defendant -- Commencement of prosecution.**

670 (1) Except as otherwise provided, a prosecution for:

671 (a) a felony or negligent homicide shall be commenced within four years after it is
672 committed, except that prosecution for:

673 (i) forcible sexual abuse shall be commenced within eight years after the offense is

674 committed, if within four years after its commission the offense is reported to a law
675 enforcement agency; and

676 (ii) incest shall be commenced within eight years after the offense is committed, if
677 within four years after its commission the offense is reported to a law enforcement agency;

678 (b) a misdemeanor other than negligent homicide shall be commenced within two years
679 after it is committed; and

680 (c) any infraction shall be commenced within one year after it is committed.

681 (2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in
682 Subsections 76-3-203.5(1)(c)(i)(A) through [~~AA~~] (BB) may be commenced at any time if the
683 identity of the person who committed the crime is unknown but DNA evidence is collected that
684 would identify the person at a later date.

685 (b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of
686 May 5, 2003, and no charges have been filed.

687 (3) If the statute of limitations would have run but for the provisions of Subsection (2)
688 and identification of a perpetrator is made through DNA, a prosecution shall be commenced
689 within one year of the discovery of the identity of the perpetrator.

690 (4) A prosecution is commenced upon:

691 (a) the finding and filing of an indictment by a grand jury;

692 (b) the filing of a complaint or information; or

693 (c) the issuance of a citation.

694 Section 8. Section **76-3-203.1** is amended to read:

695 **76-3-203.1. Offenses committed in concert with two or more persons or in**
696 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

697 (1) As used in this section:

698 (a) "Criminal street gang" has the same definition as in Section 76-9-802.

699 (b) "In concert with two or more persons" means:

700 (i) the defendant was aided or encouraged by at least two other persons in committing
701 the offense and was aware of this aid or encouragement; and

702 (ii) each of the other persons:
703 (A) was physically present; or
704 (B) participated as a party to any offense listed in Subsection (5).
705 (c) "In concert with two or more persons" means, regarding intent:
706 (i) other persons participating as parties need not have the intent to engage in the same
707 offense or degree of offense as the defendant; and
708 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
709 minor were an adult.
710 (2) A person who commits any offense listed in Subsection (5) is subject to an
711 enhanced penalty for the offense as provided in Subsection (4) if the trier of fact finds beyond a
712 reasonable doubt that the person acted:
713 (a) in concert with two or more persons;
714 (b) for the benefit of, at the direction of, or in association with any criminal street gang
715 as defined in Section 76-9-802; or
716 (c) to gain recognition, acceptance, membership, or increased status with a criminal
717 street gang as defined in Section 76-9-802.
718 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to
719 be subscribed upon the information or indictment notice that the defendant is subject to the
720 enhanced penalties provided under this section.
721 (4) The enhanced penalty for a:
722 (a) class B misdemeanor is a class A misdemeanor;
723 (b) class A misdemeanor is a third degree felony;
724 (c) third degree felony is a second degree felony;
725 (d) second degree felony is a first degree felony; and
726 (e) first degree felony is an indeterminate prison term of not less than five years in
727 addition to the statutory minimum prison term for the offense, and which may be for life.
728 (5) Offenses referred to in Subsection (2) are:
729 (a) any criminal violation of the following chapters of Title 58:

- 730 (i) Chapter 37, Utah Controlled Substances Act;
- 731 (ii) Chapter 37a, Utah Drug Paraphernalia Act;
- 732 (iii) Chapter 37b, Imitation Controlled Substances Act; or
- 733 (iv) Chapter 37c, Utah Controlled Substance Precursor Act;
- 734 (b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related
- 735 Offenses;
- 736 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal
- 737 Homicide;
- 738 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,
- 739 Trafficking, and Smuggling;
- 740 (e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 741 (f) sexual exploitation of a minor as defined in Section [~~76-5a-3~~] 76-5b-201;
- 742 (g) any property destruction offense under Title 76, Chapter 6, Part 1, Property
- 743 Destruction;
- 744 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,
- 745 Burglary and Criminal Trespass;
- 746 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;
- 747 (j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail
- 748 Theft;
- 749 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504,
- 750 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514,
- 751 76-6-516, 76-6-517, 76-6-518, and 76-6-520;
- 752 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,
- 753 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- 754 (m) tampering with a witness or other violation of Section 76-8-508;
- 755 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
- 756 (o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;
- 757 (p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;

- 758 (q) pornographic and harmful materials and performances offenses under Title 76,
- 759 Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;
- 760 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;
- 761 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- 762 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 763 (u) communications fraud as defined in Section 76-10-1801;
- 764 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency
- 765 Transaction Reporting Act; and
- 766 (w) burglary of a research facility as defined in Section 76-10-2002.

767 (6) It is not a bar to imposing the enhanced penalties under this section that the persons
768 with whom the actor is alleged to have acted in concert are not identified, apprehended,
769 charged, or convicted, or that any of those persons are charged with or convicted of a different
770 or lesser offense.

771 Section 9. Section **76-3-203.5** is amended to read:

772 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

773 (1) As used in this section:

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

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

781 (c) "Violent felony" means:

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

784 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
785 Title 76, Chapter 6, Part 1, Property Destruction;

- 786 (B) assault by prisoner, Section 76-5-102.5;
- 787 (C) disarming a police officer, Section 76-5-102.8;
- 788 (D) aggravated assault, Section 76-5-103;
- 789 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 790 (F) mayhem, Section 76-5-105;
- 791 (G) stalking, Subsection 76-5-106.5(2) or (3);
- 792 (H) threat of terrorism, Section 76-5-107.3;
- 793 (I) child abuse, Subsection 76-5-109(2)(a) or (b);
- 794 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 795 (K) abuse or neglect of disabled child, Section 76-5-110;
- 796 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 797 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 798 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 799 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 800 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 801 (P) rape, Section 76-5-402;
- 802 (Q) rape of a child, Section 76-5-402.1;
- 803 (R) object rape, Section 76-5-402.2;
- 804 (S) object rape of a child, Section 76-5-402.3;
- 805 (T) forcible sodomy, Section 76-5-403;
- 806 (U) sodomy on a child, Section 76-5-403.1;
- 807 (V) forcible sexual abuse, Section 76-5-404;
- 808 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 809 (X) aggravated sexual assault, Section 76-5-405;
- 810 (Y) sexual exploitation of a minor, Section ~~[76-5a-3]~~ 76-5b-201;
- 811 (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 812 [~~Z~~] (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6,
- 813 Part 2, Burglary and Criminal Trespass;

814 [~~(AA)~~] (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3,
815 Robbery;
816 [~~(BB)~~] (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);
817 [~~(CC)~~] (DD) tampering with a witness under Subsection 76-8-508(1);
818 [~~(DD)~~] (EE) retaliation against a witness, victim, or informant under Section
819 76-8-508.3;
820 [~~(EE)~~] (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);
821 [~~(FF)~~] (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by
822 any threat or by use of force theft by extortion has been committed pursuant to Subsections
823 76-6-406(2)(a), (b), and (i);
824 [~~(GG)~~] (HH) possession, use, or removal of explosive, chemical, or incendiary devices
825 under Subsections 76-10-306(3) through (6);
826 [~~(HH)~~] (II) unlawful delivery of explosive, chemical, or incendiary devices under
827 Section 76-10-307;
828 [~~(II)~~] (JJ) purchase or possession of a dangerous weapon or handgun by a restricted
829 person under Section 76-10-503;
830 [~~(JJ)~~] (KK) unlawful discharge of a firearm under Section 76-10-508;
831 [~~(KK)~~] (LL) aggravated exploitation of prostitution under Subsection
832 76-10-1306(1)(a);
833 [~~(LL)~~] (MM) bus hijacking under Section 76-10-1504; and
834 [~~(MM)~~] (NN) discharging firearms and hurling missiles under Section 76-10-1505; or
835 (ii) any felony violation of a criminal statute of any other state, the United States, or
836 any district, possession, or territory of the United States which would constitute a violent
837 felony as defined in this Subsection (1) if committed in this state.
838 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
839 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
840 under this section, the penalty for a:
841 (a) third degree felony is as if the conviction were for a first degree felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

867 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section
868 applies.

869 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution

870 and the defendant shall be afforded an opportunity to present any necessary additional
871 evidence.

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

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

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

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

887 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
888 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part
889 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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

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

892 (i) a grievous sexual offense;

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

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

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

896 (b) applying the sentencing enhancement provided for in this section would result in a
897 lower maximum penalty than the penalty provided for under the section that describes the

898 offense for which the person is being sentenced.

899 Section 10. Section **76-3-407** is amended to read:

900 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
901 **felony convictions.**

902 (1) As used in this section:

903 (a) "Prior sexual offense" means:

904 (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

905 (ii) sexual exploitation of a minor, Section [~~76-5a-3~~] 76-5b-201;

906 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

907 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through

908 (iii); or

909 (v) an offense in another state, territory, or district of the United States that, if
910 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).

911 (b) "Sexual offense" means:

912 (i) an offense that is a felony of the second or third degree, or an attempted offense,
913 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4,
914 Sexual Offenses;

915 (ii) sexual exploitation of a minor, Section [~~76-5a-3~~] 76-5b-201;

916 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

917 (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or

918 (v) an offense in another state, territory, or district of the United States that, if
919 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).

920 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual
921 offense is increased by five years for each conviction of the defendant for a prior sexual offense
922 that arose from a separate criminal episode, if the trier of fact finds that:

923 (a) the defendant was convicted of a prior sexual offense; and

924 (b) the defendant was convicted of the prior sexual offense described in Subsection

925 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is

926 being sentenced.

927 (3) The increased maximum term described in Subsection (2) shall be in addition to,
928 and consecutive to, any other prison term served by the defendant.

929 Section 11. Section **76-5-111** is amended to read:

930 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

931 (1) As used in this section:

932 (a) "Abandonment" means a knowing or intentional action or inaction, including
933 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the
934 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
935 medical or other health care.

936 (b) "Abuse" means:

937 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally
938 or knowingly placing another in fear of imminent harm;

939 (ii) causing physical injury by knowing or intentional acts or omissions;

940 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation
941 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
942 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
943 health and safety of the adult; or

944 (iv) deprivation of life-sustaining treatment, except:

945 (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

946 (B) when informed consent, as defined in this section, has been obtained.

947 (c) "Business relationship" means a relationship between two or more individuals or
948 entities where there exists an oral or written agreement for the exchange of goods or services.

949 (d) (i) "Caretaker" means any person, entity, corporation, or public institution that
950 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
951 supervision, medical or other health care, or other necessities.

952 (ii) "Caretaker" includes a relative by blood or marriage, a household member, a person
953 who is employed or who provides volunteer work, or a person who contracts or is under court

954 order to provide care.

955 (e) "Deception" means:

956 (i) a misrepresentation or concealment:

957 (A) of a material fact relating to services rendered, disposition of property, or use of
958 property intended to benefit a vulnerable adult;

959 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

960 (C) relating to the existing or preexisting condition of any property involved in a
961 contract or agreement entered into with a vulnerable adult; or

962 (ii) the use or employment of any misrepresentation, false pretense, or false promise in
963 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

964 (f) "Elder adult" means a person 65 years of age or older.

965 (g) "Endeavor" means to attempt or try.

966 (h) "Exploitation" means ~~the~~ an offense described in Subsection (4) or Section
967 76-5b-202.

968 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
969 psychological damage, physical injury, suffering, or distress inflicted knowingly or
970 intentionally.

971 (j) "Informed consent" means:

972 (i) a written expression by the person or authorized by the person, stating that the
973 person fully understands the potential risks and benefits of the withdrawal of food, water,
974 medication, medical services, shelter, cooling, heating, or other services necessary to maintain
975 minimum physical or mental health, and that the person desires that the services be withdrawn.

976 A written expression is valid only if the person is of sound mind when the consent is given, and
977 the consent is witnessed by at least two individuals who do not benefit from the withdrawal of
978 services; or

979 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
980 heating, or other services necessary to maintain minimum physical or mental health, as
981 permitted by court order.

982 (k) "Intimidation" means communication conveyed through verbal or nonverbal
983 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
984 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

985 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from
986 having contact with another person by:

987 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
988 contrary to the express wishes of the vulnerable adult, including communicating to a visitor
989 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
990 knowing that communication to be false;

991 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult
992 from meeting with a visitor; or

993 (C) making false or misleading statements to the vulnerable adult in order to induce the
994 vulnerable adult to refuse to receive communication from visitors or other family members.

995 (ii) The term "isolation" does not include an act intended to protect the physical or
996 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
997 instructions of a physician or other professional advisor of the vulnerable adult.

998 (m) "Lacks capacity to consent" means an impairment by reason of mental illness,
999 developmental disability, organic brain disorder, physical illness or disability, chronic use of
1000 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
1001 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
1002 concerning the adult's person or property.

1003 (n) "Neglect" means:

1004 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
1005 care, or dental or other health care, or failure to provide protection from health and safety
1006 hazards or maltreatment;

1007 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
1008 with the degree of care that a reasonable person in a like position would exercise;

1009 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed

1010 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1011 heating, or other services necessary to maintain the vulnerable adult's well being;

1012 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that
1013 results or could result in physical injury or physical harm; or

1014 (v) abandonment by a caretaker.

1015 (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
1016 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
1017 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot
1018 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a
1019 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,
1020 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
1021 injury to any internal organ, or any other physical condition that imperils the health or welfare
1022 of the vulnerable adult and is not a serious physical injury as defined in this section.

1023 (p) "Position of trust and confidence" means the position of a person who:

1024 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable
1025 adult;

1026 (ii) is a joint tenant or tenant in common with a vulnerable adult;

1027 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
1028 court-appointed or voluntary guardian, trustee, attorney, or conservator; or

1029 (iv) is a caretaker of a vulnerable adult.

1030 (q) "Serious physical injury" means any physical injury or set of physical injuries that:

1031 (i) seriously impairs a vulnerable adult's health;

1032 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

1033 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

1034 (iv) creates a reasonable risk of death.

1035 ~~[(r) "Sexual exploitation" means the production, distribution, possession, or possession~~
1036 ~~with the intent to distribute material or a live performance depicting a nude or partially nude~~
1037 ~~vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any~~

1038 ~~person.]~~

1039 ~~(s)~~ (r) "Undue influence" occurs when a person uses the person's role, relationship, or
1040 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
1041 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
1042 deceptively over the decision making of the vulnerable adult.

1043 ~~(t)~~ (s) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older
1044 who has a mental or physical impairment which substantially affects that person's ability to:

- 1045 (i) provide personal protection;
- 1046 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- 1047 (iii) obtain services necessary for health, safety, or welfare;
- 1048 (iv) carry out the activities of daily living;
- 1049 (v) manage the adult's own resources; or
- 1050 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
1051 neglect, or exploitation.

1052 (2) Under any circumstances likely to produce death or serious physical injury, any
1053 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
1054 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
1055 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the
1056 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
1057 vulnerable adult as follows:

- 1058 (a) if done intentionally or knowingly, the offense is a second degree felony;
- 1059 (b) if done recklessly, the offense is third degree felony; and
- 1060 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1061 (3) Under circumstances other than those likely to produce death or serious physical
1062 injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse,
1063 or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's
1064 person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to
1065 be placed in a situation where the adult's person or health is endangered, is guilty of the offense

1066 of abuse of a vulnerable adult as follows:

1067 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

1068 (b) if done recklessly, the offense is a class B misdemeanor; and

1069 (c) if done with criminal negligence, the offense is a class C misdemeanor.

1070 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the
1071 person:

1072 (i) is in a position of trust and confidence, or has a business relationship, with the
1073 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
1074 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
1075 credit, assets, or other property with the intent to temporarily or permanently deprive the
1076 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of
1077 someone other than the vulnerable adult;

1078 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and
1079 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
1080 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to
1081 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his
1082 property for the benefit of someone other than the vulnerable adult;

1083 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
1084 profit or advantage of someone other than the vulnerable adult;

1085 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
1086 for the profit or advantage of someone other than the vulnerable adult; or

1087 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
1088 furtherance of any criminal activity[~~;~~ or].

1089 [~~(vi) commits sexual exploitation of a vulnerable adult.~~]

1090 (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

1091 (i) if done intentionally or knowingly and the aggregate value of the resources used or
1092 the profit made is or exceeds \$5,000, the offense is a second degree felony;

1093 (ii) if done intentionally or knowingly and the aggregate value of the resources used or

1094 the profit made is less than \$5,000 or cannot be determined, the offense is a third degree
1095 felony;

1096 (iii) if done recklessly, the offense is a class A misdemeanor; or

1097 (iv) if done with criminal negligence, the offense is a class B misdemeanor.

1098 (5) It does not constitute a defense to a prosecution for any violation of this section that
1099 the accused did not know the age of the victim.

1100 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason
1101 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1102 medical care.

1103 Section 12. Section **76-5-112.5** is amended to read:

1104 **76-5-112.5. Endangerment of a child or vulnerable adult.**

1105 (1) As used in this section:

1106 (a) (i) "Chemical substance" means:

1107 (A) a substance intended to be used as a precursor in the manufacture of a controlled
1108 substance;

1109 (B) a substance intended to be used in the manufacture of a controlled substance; or

1110 (C) any fumes or by-product resulting from the manufacture of a controlled substance.

1111 (ii) Intent under this Subsection (1)(a) may be demonstrated by:

1112 (A) the use, quantity, or manner of storage of the substance; or

1113 (B) the proximity of the substance to other precursors or to manufacturing equipment.

1114 (b) "Child" means a human being who is under 18 years of age.

1115 (c) "Controlled substance" is as defined in Section 58-37-2.

1116 (d) "Drug paraphernalia" is as defined in Section 58-37a-3.

1117 (e) "Exposed to" means that the child or vulnerable adult:

1118 (i) is able to access or view an unlawfully possessed:

1119 (A) controlled substance; or

1120 (B) chemical substance;

1121 (ii) has the reasonable capacity to access drug paraphernalia; or

1122 (iii) is able to smell an odor produced during, or as a result of, the manufacture or
1123 production of a controlled substance.

1124 (f) "Prescription" is as defined in Section 58-37-2.

1125 (g) "Vulnerable adult" is as defined in Subsection 76-5-111(1)[(†)].

1126 (2) Unless a greater penalty is otherwise provided by law:

1127 (a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the
1128 third degree if the person knowingly or intentionally causes or permits a child or a vulnerable
1129 adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical
1130 substance, or drug paraphernalia;

1131 (b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second
1132 degree, if:

1133 (i) the person engages in the conduct described in Subsection (2)(a); and

1134 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable
1135 adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or

1136 (c) a person is guilty of a felony of the first degree, if:

1137 (i) the person engages in the conduct described in Subsection (2)(a); and

1138 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable
1139 adult dies.

1140 (3) It is an affirmative defense to a violation of this section that the controlled
1141 substance:

1142 (a) was obtained by lawful prescription; and

1143 (b) is used or possessed by the person to whom it was lawfully prescribed.

1144 (4) The penalties described in this section are separate from, and in addition to, the
1145 penalties and enhancements described in Title 58, Occupations and Professions.

1146 Section 13. Section **76-5b-101** is enacted to read:

1147 **CHAPTER 5b. SEXUAL EXPLOITATION ACT**

1148 **Part 1. General Provisions**

1149 **76-5b-101. Title.**

1150 This chapter is known as the "Sexual Exploitation Act."

1151 Section 14. Section **76-5b-102**, which is renumbered from Section 76-5a-1 is
1152 renumbered and amended to read:

1153 ~~[76-5a-1].~~ **76-5b-102. Legislative determinations -- Purpose of chapter.**

1154 (1) The Legislature of Utah determines that:

1155 (a) the sexual exploitation of ~~[minors]~~ a minor is excessively harmful to ~~[their]~~ the
1156 minor's physiological, emotional, social, and mental development; ~~[that minors]~~

1157 (b) the sexual exploitation of a vulnerable adult who lacks the capacity to consent to
1158 sexual exploitation can result in excessive harm to the vulnerable adult's physiological,
1159 emotional, and social well-being;

1160 (c) a minor cannot intelligently and knowingly consent to sexual exploitation; ~~[that]~~

1161 (d) regardless of whether it is classified as legally obscene, material that sexually
1162 exploits ~~[minors]~~ a minor, or a vulnerable adult who does not have the capacity to consent to
1163 sexual exploitation, is not protected by the First Amendment of the United States Constitution
1164 or by the First or Fifteenth sections of Article I of the Utah Constitution and may be prohibited;
1165 and ~~[that]~~

1166 (e) prohibition of and punishment for the distribution, possession, possession with
1167 intent to distribute, and production of materials that sexually exploit ~~[minors]~~ a minor, or a
1168 vulnerable adult who lacks the capacity to consent to sexual exploitation, is necessary and
1169 justified to eliminate the market for those materials and to reduce the harm to the minor or
1170 vulnerable adult inherent in the perpetuation of the record of ~~[his]~~ the minor's or vulnerable
1171 adult's sexually exploitive activities.

1172 (2) It is the purpose of this chapter to prohibit the production, possession, possession
1173 with intent to distribute, and distribution of materials ~~[which]~~ that sexually exploit ~~[minors]~~ a
1174 minor, or a vulnerable adult who lacks capacity to consent to sexual exploitation, regardless of
1175 whether the materials are classified as legally obscene.

1176 Section 15. Section **76-5b-103**, which is renumbered from Section 76-5a-2 is
1177 renumbered and amended to read:

1178 ~~[76-5a-2].~~ 76-5b-103. Definitions.

1179 As used in this chapter:

1180 (1) "Child pornography" means any visual depiction, including any live performance,
1181 photograph, film, video, picture, or computer or computer-generated image or picture, whether
1182 made or produced by electronic, mechanical, or other means, of sexually explicit conduct,
1183 where:

1184 (a) the production of the visual depiction involves the use of a minor engaging in
1185 sexually explicit conduct;

1186 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

1187 (c) the visual depiction has been created, adapted, or modified to appear that an
1188 identifiable minor is engaging in sexually explicit conduct.

1189 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,
1190 providing, giving, granting admission to, or otherwise transferring or presenting child
1191 pornography or vulnerable adult pornography with or without consideration.

1192 (3) "Identifiable minor"~~[(a)]~~ means a person:

1193 ~~[(i)(A)]~~ (a) (i) who was a minor at the time the visual depiction was created, adapted,
1194 or modified; or

1195 ~~[(B)]~~ (ii) whose image as a minor was used in creating, adapting, or modifying the
1196 visual depiction; and

1197 ~~[(ii)]~~ (b) who is recognizable as an actual person by the person's face, likeness, or other
1198 distinguishing characteristic, such as a birthmark, or other recognizable feature~~[, and]~~.

1199 ~~[(b) does not require proof of the actual identity of the identifiable minor.]~~

1200 (4) "Identifiable vulnerable adult" means a person:

1201 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,
1202 or modified; or

1203 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the
1204 visual depiction; and

1205 (b) who is recognizable as an actual person by the person's face, likeness, or other

1206 distinguishing characteristic, such as a birthmark, or other recognizable feature.

1207 (5) "Lacks capacity to consent" is as defined in Subsection 76-5-111(1).

1208 ~~[(4)]~~ (6) "Live performance" means any act, play, dance, pantomime, song, or other
1209 activity performed by live actors in person.

1210 ~~[(5)]~~ (7) "Minor" means a person younger than 18 years of age.

1211 ~~[(6)]~~ (8) "Nudity or partial nudity" means any state of dress or undress in which the
1212 human genitals, pubic region, buttocks, or the female breast, at a point below the top of the
1213 areola, is less than completely and opaquely covered.

1214 ~~[(7)]~~ (9) "Produce" means:

1215 (a) the photographing, filming, taping, directing, producing, creating, designing, or
1216 composing of child pornography or vulnerable adult pornography; or

1217 (b) the securing or hiring of persons to engage in the ~~[production of child pornography]~~
1218 photographing, filming, taping, directing, producing, creating, designing, or composing of child
1219 pornography or vulnerable adult pornography.

1220 ~~[(8)]~~ (10) "Sexually explicit conduct" means actual or simulated:

1221 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
1222 whether between persons of the same or opposite sex;

1223 (b) masturbation;

1224 (c) bestiality;

1225 (d) sadistic or masochistic activities;

1226 (e) lascivious exhibition of the genitals or pubic area of any person;

1227 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
1228 arousal of any person;

1229 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

1230 (h) the explicit representation of the defecation or urination functions.

1231 ~~[(9)]~~ (11) "Simulated sexually explicit conduct" means a feigned or pretended act of
1232 sexually explicit conduct which duplicates, within the perception of an average person, the
1233 appearance of an actual act of sexually explicit conduct.

1234 (12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

1235 (13) "Vulnerable adult pornography" means any visual depiction, including any live
1236 performance, photograph, film, video, picture, or computer or computer-generated image or
1237 picture, whether made or produced by electronic, mechanical, or other means, of sexually
1238 explicit conduct, where:

1239 (a) the production of the visual depiction involves the use of a vulnerable adult
1240 engaging in sexually explicit conduct;

1241 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

1242 or

1243 (c) the visual depiction has been created, adapted, or modified to appear that an
1244 identifiable vulnerable adult is engaging in sexually explicit conduct.

1245 Section 16. Section **76-5b-201**, which is renumbered from Section 76-5a-3 is
1246 renumbered and amended to read:

1247 **Part 2. Sexual Exploitation**

1248 ~~[76-5a-3].~~ **76-5b-201. Sexual exploitation of a minor -- Offenses.**

1249 (1) A person is guilty of sexual exploitation of a minor:

1250 (a) when the person:

1251 (i) knowingly produces, possesses, or possesses with intent to distribute child
1252 pornography; or

1253 (ii) intentionally distributes or views child pornography; or

1254 (b) if the person is a minor's parent or legal guardian and knowingly consents to or
1255 permits ~~[that]~~ the minor to be sexually exploited ~~[under]~~ as described in Subsection (1)(a).

1256 (2) Sexual exploitation of a minor is a ~~[felony of the]~~ second degree felony.

1257 (3) It is a separate offense under this section:

1258 (a) for each minor depicted~~[, and if more than one minor is depicted in the child~~
1259 ~~pornography in violation of this section, the depiction of each individual minor]~~ in the child
1260 pornography ~~[is a separate offense]~~; and

1261 (b) for each time the same minor is depicted in different child pornography.

1262 (4) It is an affirmative defense to a charge of violating this section that no person under
1263 18 years of age was actually depicted in the visual depiction or used in producing or advertising
1264 the visual depiction.

1265 (5) In proving a violation of this section in relation to an identifiable minor, proof of
1266 the actual identity of the identifiable minor is not required.

1267 [~~5~~](6) This section may not be construed to impose criminal or civil liability on:

1268 (a) any entity or an employee, director, officer, or agent of an entity when acting within
1269 the scope of employment, for the good faith performance of:

1270 (i) reporting or data preservation duties required under any federal or state law; or

1271 (ii) implementing a policy of attempting to prevent the presence of child pornography
1272 on any tangible or intangible property, or of detecting and reporting the presence of child
1273 pornography on the property; or

1274 (b) any law enforcement officer acting within the scope of a criminal investigation.

1275 Section 17. Section **76-5b-202** is enacted to read:

1276 **76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.**

1277 (1) A person is guilty of sexual exploitation of a vulnerable adult if the person:

1278 (a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute
1279 material that the person knows is vulnerable adult pornography; or

1280 (B) intentionally distributes or views material that the person knows is vulnerable adult
1281 pornography; and

1282 (ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult
1283 pornography lacks capacity to consent to the conduct described in Subsection (1)(a); or

1284 (b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the
1285 vulnerable adult to be, sexually exploited as described in Subsection (1)(a).

1286 (2) Sexual exploitation of a vulnerable adult is a third degree felony.

1287 (3) It is a separate offense under this section:

1288 (a) for each vulnerable adult depicted in the vulnerable adult pornography; and

1289 (b) for each time the same vulnerable adult is depicted in different vulnerable adult

1290 pornography.

1291 (4) It is an affirmative defense to a charge of violating this section that no vulnerable
1292 adult was actually depicted in the visual depiction or used in producing or advertising the
1293 visual depiction.

1294 (5) In proving a violation of this section in relation to an identifiable vulnerable adult,
1295 proof of the actual identity of the identifiable vulnerable adult is not required.

1296 (6) This section may not be construed to impose criminal or civil liability on:

1297 (a) any entity or an employee, director, officer, or agent of an entity, when acting
1298 within the scope of employment, for the good faith performance of:

1299 (i) reporting or data preservation duties required under any federal or state law; or

1300 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult
1301 pornography on any tangible or intangible property, or of detecting and reporting the presence
1302 of vulnerable adult pornography on the property; or

1303 (b) any law enforcement officer acting within the scope of a criminal investigation.

1304 Section 18. Section **76-5b-301**, which is renumbered from Section 76-5a-4 is
1305 renumbered and amended to read:

1306 **Part 3. Miscellaneous**

1307 **~~[76-5a-4].~~ 76-5b-301. Determination whether material violates chapter.**

1308 (1) In determining whether material is in violation of this chapter, the material need not
1309 be considered as a whole, but may be examined by the trier of fact in part only.

1310 (2) It is not an element of the offense of sexual exploitation of a minor that the material
1311 appeal to the prurient interest in sex of the average person nor that prohibited conduct need be
1312 portrayed in a patently offensive manner.

1313 (3) It is not an element of the offense of sexual exploitation of a vulnerable adult that
1314 the material appeal to the prurient interest in sex of the average person nor that prohibited
1315 conduct need be portrayed in a patently offensive manner.

1316 Section 19. Section **76-5b-302** is enacted to read:

1317 **76-5b-302. Lack of knowledge of age not a defense.**

1318 It is not a defense to an offense described in this chapter that the accused did not know
1319 the age of the victim.

1320 Section 20. Section **76-9-702.5** is amended to read:

1321 **76-9-702.5. Lewdness involving a child.**

1322 (1) A person is guilty of lewdness involving a child if the person under circumstances
1323 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a
1324 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,
1325 intentionally or knowingly does any of the following to, or in the presence of a child who is
1326 under 14 years of age:

1327 (a) performs an act of sexual intercourse or sodomy;

1328 (b) exposes his or her genitals, the female breast below the top of the areola, the
1329 buttocks, the anus, or the pubic area:

1330 (i) in a public place; or

1331 (ii) in a private place:

1332 (A) under circumstances the person should know will likely cause affront or alarm; or

1333 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

1334 (c) masturbates;

1335 (d) under circumstances not amounting to sexual exploitation of a child under Section
1336 [~~76-5a-3~~] 76-5b-201, causes a child under the age of 14 years to expose his or her genitals,
1337 anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of
1338 the actor or the child; or

1339 (e) performs any other act of lewdness.

1340 (2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection
1341 (2)(b).

1342 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

1343 (i) the person is a sex offender as defined in Section 77-27-21.7; or

1344 (ii) the person has previously been convicted of a violation of this section.

1345 Section 21. Section **76-10-1602 (Superseded 07/01/11)** is amended to read:

1346 **76-10-1602 (Superseded 07/01/11). Definitions.**

1347 As used in this part:

1348 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
1349 business trust, association, or other legal entity, and any union or group of individuals
1350 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1351 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
1352 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
1353 have the same or similar purposes, results, participants, victims, or methods of commission, or
1354 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
1355 demonstrate continuing unlawful conduct and be related either to each other or to the
1356 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
1357 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
1358 activity as defined by this part shall have occurred within five years of the commission of the
1359 next preceding act alleged as part of the pattern.

1360 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
1361 interest in property, including state, county, and local governmental entities.

1362 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
1363 command, encourage, or intentionally aid another person to engage in conduct which would
1364 constitute any offense described by the following crimes or categories of crimes, or to attempt
1365 or conspire to engage in an act which would constitute any of those offenses, regardless of
1366 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
1367 or a felony:

1368 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
1369 Recording Practices Act;

1370 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
1371 Code, Sections 19-1-101 through 19-7-109;

1372 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
1373 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources

- 1374 Code of Utah, or Section 23-20-4;
- 1375 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
- 1376 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;
- 1377 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
- 1378 Offenses;
- 1379 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
- 1380 Land Sales Practices Act;
- 1381 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 1382 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
- 1383 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 1384 Clandestine Drug Lab Act;
- 1385 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 1386 Securities Act;
- 1387 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah
- 1388 Procurement Code;
- 1389 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 1390 (k) a threat of terrorism, Section 76-5-107.3;
- 1391 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 1392 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 1393 (n) sexual exploitation of a minor, Section [~~76-5a-3~~] 76-5b-201;
- 1394 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 1395 (p) causing a catastrophe, Section 76-6-105;
- 1396 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1397 (r) burglary of a vehicle, Section 76-6-204;
- 1398 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1399 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1400 (u) theft, Section 76-6-404;
- 1401 (v) theft by deception, Section 76-6-405;

- 1402 (w) theft by extortion, Section 76-6-406;
- 1403 (x) receiving stolen property, Section 76-6-408;
- 1404 (y) theft of services, Section 76-6-409;
- 1405 (z) forgery, Section 76-6-501;
- 1406 (aa) fraudulent use of a credit card, Sections [~~76-6-506.1, 76-6-506.2, and 76-6-506.4~~
- 1407 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- 1408 (bb) deceptive business practices, Section 76-6-507;
- 1409 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 1410 criticism of goods, Section 76-6-508;
- 1411 (dd) bribery of a labor official, Section 76-6-509;
- 1412 (ee) defrauding creditors, Section 76-6-511;
- 1413 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1414 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1415 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1416 (ii) making a false credit report, Section 76-6-517;
- 1417 (jj) criminal simulation, Section 76-6-518;
- 1418 (kk) criminal usury, Section 76-6-520;
- 1419 (ll) fraudulent insurance act, Section 76-6-521;
- 1420 (mm) retail theft, Section 76-6-602;
- 1421 (nn) computer crimes, Section 76-6-703;
- 1422 (oo) identity fraud, Section 76-6-1102;
- 1423 (pp) mortgage fraud, Section 76-6-1203;
- 1424 (qq) sale of a child, Section 76-7-203;
- 1425 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1426 (ss) threats to influence official or political action, Section 76-8-104;
- 1427 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 1428 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
- 1429 76-8-106;

- 1430 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 1431 (ww) obstruction of justice, Section 76-8-306;
- 1432 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1433 (yy) false or inconsistent material statements, Section 76-8-502;
- 1434 (zz) false or inconsistent statements, Section 76-8-503;
- 1435 (aaa) written false statements, Section 76-8-504;
- 1436 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1437 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1438 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1439 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 1440 76-8-1205;
- 1441 (fff) unemployment insurance fraud, Section 76-8-1301;
- 1442 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 1443 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 1444 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 1445 parts, Section 76-10-306;
- 1446 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 1447 device, Section 76-10-307;
- 1448 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 1449 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 1450 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 1451 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 1452 76-10-1002;
- 1453 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 1454 Section 76-10-1003;
- 1455 (ooo) sales in containers bearing registered trademark of substituted articles, Section
- 1456 76-10-1004;
- 1457 (ppp) selling or dealing with article bearing registered trademark or service mark with

1458 intent to defraud, Section 76-10-1006;
1459 (qqq) gambling, Section 76-10-1102;
1460 (rrr) gambling fraud, Section 76-10-1103;
1461 (sss) gambling promotion, Section 76-10-1104;
1462 (ttt) possessing a gambling device or record, Section 76-10-1105;
1463 (uuu) confidence game, Section 76-10-1109;
1464 (vvv) distributing pornographic material, Section 76-10-1204;
1465 (www) inducing acceptance of pornographic material, Section 76-10-1205;
1466 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
1467 (yyy) distribution of pornographic films, Section 76-10-1222;
1468 (zzz) indecent public displays, Section 76-10-1228;
1469 (aaaa) prostitution, Section 76-10-1302;
1470 (bbbb) aiding prostitution, Section 76-10-1304;
1471 (cccc) exploiting prostitution, Section 76-10-1305;
1472 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
1473 (eeee) communications fraud, Section 76-10-1801;
1474 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money
1475 Laundering and Currency Transaction Reporting Act;
1476 (gggg) vehicle compartment for contraband, Section 76-10-2801;
1477 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
1478 this state; and
1479 (iiii) any act illegal under the laws of the United States and enumerated in Title 18,
1480 Section 1961 (1)(B), (C), and (D) of the United States Code.
1481 Section 22. Section **76-10-1602 (Effective 07/01/11)** is amended to read:
1482 **76-10-1602 (Effective 07/01/11). Definitions.**
1483 As used in this part:
1484 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
1485 business trust, association, or other legal entity, and any union or group of individuals

1486 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1487 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
1488 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
1489 have the same or similar purposes, results, participants, victims, or methods of commission, or
1490 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
1491 demonstrate continuing unlawful conduct and be related either to each other or to the
1492 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
1493 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
1494 activity as defined by this part shall have occurred within five years of the commission of the
1495 next preceding act alleged as part of the pattern.

1496 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
1497 interest in property, including state, county, and local governmental entities.

1498 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
1499 command, encourage, or intentionally aid another person to engage in conduct which would
1500 constitute any offense described by the following crimes or categories of crimes, or to attempt
1501 or conspire to engage in an act which would constitute any of those offenses, regardless of
1502 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
1503 or a felony:

1504 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
1505 Recording Practices Act;

1506 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
1507 Code, Sections 19-1-101 through 19-7-109;

1508 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
1509 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
1510 Code of Utah, or Section 23-20-4;

1511 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
1512 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

1513 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal

- 1514 Offenses and Procedure Act;
- 1515 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
- 1516 Land Sales Practices Act;
- 1517 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 1518 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
- 1519 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 1520 Clandestine Drug Lab Act;
- 1521 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 1522 Securities Act;
- 1523 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah
- 1524 Procurement Code;
- 1525 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 1526 (k) a threat of terrorism, Section 76-5-107.3;
- 1527 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 1528 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 1529 (n) sexual exploitation of a minor, Section [~~76-5a-3~~] 76-5b-201;
- 1530 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 1531 (p) causing a catastrophe, Section 76-6-105;
- 1532 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1533 (r) burglary of a vehicle, Section 76-6-204;
- 1534 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1535 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1536 (u) theft, Section 76-6-404;
- 1537 (v) theft by deception, Section 76-6-405;
- 1538 (w) theft by extortion, Section 76-6-406;
- 1539 (x) receiving stolen property, Section 76-6-408;
- 1540 (y) theft of services, Section 76-6-409;
- 1541 (z) forgery, Section 76-6-501;

- 1542 (aa) fraudulent use of a credit card, Sections [~~76-6-506.1, 76-6-506.2, and 76-6-506.4]~~
1543 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- 1544 (bb) deceptive business practices, Section 76-6-507;
- 1545 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
1546 criticism of goods, Section 76-6-508;
- 1547 (dd) bribery of a labor official, Section 76-6-509;
- 1548 (ee) defrauding creditors, Section 76-6-511;
- 1549 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1550 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1551 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1552 (ii) making a false credit report, Section 76-6-517;
- 1553 (jj) criminal simulation, Section 76-6-518;
- 1554 (kk) criminal usury, Section 76-6-520;
- 1555 (ll) fraudulent insurance act, Section 76-6-521;
- 1556 (mm) retail theft, Section 76-6-602;
- 1557 (nn) computer crimes, Section 76-6-703;
- 1558 (oo) identity fraud, Section 76-6-1102;
- 1559 (pp) mortgage fraud, Section 76-6-1203;
- 1560 (qq) sale of a child, Section 76-7-203;
- 1561 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1562 (ss) threats to influence official or political action, Section 76-8-104;
- 1563 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 1564 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
1565 76-8-106;
- 1566 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 1567 (ww) obstruction of justice, Section 76-8-306;
- 1568 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1569 (yy) false or inconsistent material statements, Section 76-8-502;

- 1570 (zz) false or inconsistent statements, Section 76-8-503;
- 1571 (aaa) written false statements, Section 76-8-504;
- 1572 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1573 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1574 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1575 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 1576 76-8-1205;
- 1577 (fff) unemployment insurance fraud, Section 76-8-1301;
- 1578 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 1579 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 1580 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 1581 parts, Section 76-10-306;
- 1582 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 1583 device, Section 76-10-307;
- 1584 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 1585 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 1586 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 1587 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 1588 76-10-1002;
- 1589 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 1590 Section 76-10-1003;
- 1591 (ooo) sales in containers bearing registered trademark of substituted articles, Section
- 1592 76-10-1004;
- 1593 (ppp) selling or dealing with article bearing registered trademark or service mark with
- 1594 intent to defraud, Section 76-10-1006;
- 1595 (qqq) gambling, Section 76-10-1102;
- 1596 (rrr) gambling fraud, Section 76-10-1103;
- 1597 (sss) gambling promotion, Section 76-10-1104;

- 1598 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 1599 (uuu) confidence game, Section 76-10-1109;
- 1600 (vvv) distributing pornographic material, Section 76-10-1204;
- 1601 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 1602 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 1603 (yyy) distribution of pornographic films, Section 76-10-1222;
- 1604 (zzz) indecent public displays, Section 76-10-1228;
- 1605 (aaaa) prostitution, Section 76-10-1302;
- 1606 (bbbb) aiding prostitution, Section 76-10-1304;
- 1607 (cccc) exploiting prostitution, Section 76-10-1305;
- 1608 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
- 1609 (eeee) communications fraud, Section 76-10-1801;
- 1610 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money
- 1611 Laundering and Currency Transaction Reporting Act;
- 1612 (gggg) vehicle compartment for contraband, Section 76-10-2801;
- 1613 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
- 1614 this state; and
- 1615 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
- 1616 Sec. 1961 (1)(B), (C), and (D).
- 1617 Section 23. Section **77-22-2.5** is amended to read:
- 1618 **77-22-2.5. Administrative subpoenas for criminal investigations for records**
- 1619 **concerning an electronic communications system or service or remote computing service**
- 1620 **-- Content -- Fee for providing information.**
- 1621 (1) As used in this section:
- 1622 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
- 1623 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
- 1624 radio, electromagnetic, photoelectronic, or photooptical system.
- 1625 (ii) "Electronic communication" does not include:

- 1626 (A) any wire or oral communication;
- 1627 (B) any communication made through a tone-only paging device;
- 1628 (C) any communication from a tracking device; or
- 1629 (D) electronic funds transfer information stored by a financial institution in a
- 1630 communications system used for the electronic storage and transfer of funds.
- 1631 (b) "Electronic communications service" means any service which provides for users
- 1632 the ability to send or receive wire or electronic communications.
- 1633 (c) "Electronic communications system" means any wire, radio, electromagnetic,
- 1634 photooptical, or photoelectronic facilities for the transmission of wire or electronic
- 1635 communications, and any computer facilities or related electronic equipment for the electronic
- 1636 storage of the communication.
- 1637 (d) "Internet service provider" has the same definition as in Section 76-10-1230.
- 1638 (e) "Prosecutor" has the same definition as in Section 77-22-2.
- 1639 (f) "Sexual offense against a minor" means:
- 1640 (i) sexual exploitation of a minor as defined in Section [~~76-5a-3~~] 76-5b-201 or
- 1641 attempted sexual exploitation of a minor;
- 1642 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
- 1643 of Title 76, Chapter 5, Part 4, Sexual Offenses; or
- 1644 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
- 1645 Section 76-10-1206.
- 1646 (g) "Remote computing service" means the provision to the public of computer storage
- 1647 or processing services by means of an electronic communications system.
- 1648 (2) When a law enforcement agency is investigating a sexual offense against a minor,
- 1649 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
- 1650 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
- 1651 service or remote computing service has been used in the commission of a criminal offense, the
- 1652 prosecutor may issue an administrative subpoena, consistent with 18 U.S.C. 2703 and 18
- 1653 U.S.C. 2702, to the electronic communications system or service or remote computing service

1654 provider that owns or controls the Internet protocol address, websites, email address, or service
1655 to a specific telephone number, requiring the production of the following information, if
1656 available, upon providing in the subpoena the Internet protocol address, email address,
1657 telephone number, or other identifier, and the dates and times the address, telephone number,
1658 or other identifier was suspected of being used in the commission of the offense:

- 1659 (a) names;
- 1660 (b) addresses;
- 1661 (c) local and long distance telephone connections;
- 1662 (d) records of session times and durations;
- 1663 (e) length of service, including the start date and types of service utilized;
- 1664 (f) telephone or other instrument subscriber numbers or other subscriber identifiers,
1665 including any temporarily assigned network address; and
- 1666 (g) means and sources of payment for the service, including any credit card or bank
1667 account numbers.

1668 (3) A subpoena issued under this section shall state that the electronic communications
1669 system or service or remote computing service provider shall produce any records under
1670 Subsections (2)(a) through (g) that are reasonably relevant to the investigation of the suspected
1671 criminal activity or offense as described in the subpoena.

1672 (4) (a) An electronic communications system or service or remote computing service
1673 provider that provides information in response to a subpoena issued under this section may
1674 charge a fee, not to exceed the actual cost, for providing the information.

1675 (b) The law enforcement agency conducting the investigation shall pay the fee.

1676 (5) The electronic communications system or service or remote computing service
1677 provider served with or responding to the subpoena may not disclose the subpoena to the
1678 account holder identified pursuant to the subpoena.

1679 (6) If the electronic communications system or service or remote computing service
1680 provider served with the subpoena does not own or control the Internet protocol address,
1681 websites, or email address, or provide service for the telephone number that is the subject of

1682 the subpoena, the provider shall:

1683 (a) notify the investigating law enforcement agency that it does not have the
1684 information; and

1685 (b) provide to the investigating law enforcement agency any information the provider
1686 knows, through reasonable effort, that it has regarding how to locate the Internet service
1687 provider that does own or control the Internet protocol address, websites, or email address, or
1688 provide service for the telephone number.

1689 (7) There is no cause of action against any provider or wire or electronic
1690 communication service, or its officers, employees, agents, or other specified persons, for
1691 providing information, facilities, or assistance in accordance with the terms of the
1692 administrative subpoena issued under this section or statutory authorization.

1693 (8) (a) An administrative subpoena issued under this section is subject to the provisions
1694 of Title 77, Chapter 23b, Access to Electronic Communications.

1695 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
1696 Access to Electronic Communications, apply to providers and subscribers subject to an
1697 administrative subpoena issued under this section.

1698 (9) Every prosecutorial agency shall annually on or before June 30 report to the
1699 Commission on Criminal and Juvenile Justice the number of administrative subpoenas issued
1700 by the agency during the previous calendar year.

1701 (10) State and local prosecutorial and law enforcement agencies shall annually on or
1702 before June 30 report to the Commission on Criminal and Juvenile Justice the number of
1703 administrative subpoenas the agency requested that any federal law enforcement agency issue
1704 during the prior calendar year.

1705 Section 24. Section **77-27-21.5** is amended to read:

1706 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
1707 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

1708 (1) As used in this section:

1709 (a) "Business day" means a day on which state offices are open for regular business.

- 1710 (b) "Department" means the Department of Corrections.
- 1711 (c) "Division" means the Division of Juvenile Justice Services.
- 1712 (d) "Employed" or "carries on a vocation" includes employment that is full time or part
1713 time, whether financially compensated, volunteered, or for the purpose of government or
1714 educational benefit.
- 1715 (e) "Indian Country" means:
- 1716 (i) all land within the limits of any Indian reservation under the jurisdiction of the
1717 United States government, regardless of the issuance of any patent, and includes rights-of-way
1718 running through the reservation;
- 1719 (ii) all dependent Indian communities within the borders of the United States whether
1720 within the original or subsequently acquired territory, and whether or not within the limits of a
1721 state; and
- 1722 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to
1723 have not been extinguished, including rights-of-way running through the allotments.
- 1724 (f) "Jurisdiction" means any state, Indian Country, United States Territory, or any
1725 property under the jurisdiction of the United States military.
- 1726 (g) "Kidnap offender" means any person other than a natural parent of the victim who:
- 1727 (i) has been convicted in this state of a violation of:
- 1728 (A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;
- 1729 (B) Section 76-5-301.1, child kidnapping;
- 1730 (C) Section 76-5-302, aggravated kidnapping; or
- 1731 (D) attempting, soliciting, or conspiring to commit any felony offense listed in
1732 Subsections (1)(g)(i)(A) through (C);
- 1733 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
1734 commit a crime in another jurisdiction, including any state, federal, or military court that is
1735 substantially equivalent to the offenses listed in Subsection (1)(g)(i) and who is:
- 1736 (A) a Utah resident; or
- 1737 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of

1738 10 or more days, regardless of whether or not the offender intends to permanently reside in this
1739 state;

1740 (iii) (A) is required to register as an offender in any other jurisdiction, or who is
1741 required to register as an offender by any state, federal, or military court; and

1742 (B) in any 12 month period, is in this state for a total of 10 or more days, regardless of
1743 whether or not the offender intends to permanently reside in this state;

1744 (iv) is a nonresident regularly employed or working in this state, or who is a student in
1745 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any
1746 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
1747 required to register in the person's state of residence;

1748 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
1749 one or more offenses listed in Subsection (1)(g); or

1750 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection
1751 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the
1752 division's custody 30 days prior to the person's 21st birthday.

1753 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
1754 minor's noncustodial parent.

1755 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
1756 offender as defined in Subsection (1)(n).

1757 (j) "Online identifier" or "Internet identifier":

1758 (i) means any electronic mail, chat, instant messenger, social networking, or similar
1759 name used for Internet communication; and

1760 (ii) does not include date of birth, Social Security number, PIN number, or Internet
1761 passwords.

1762 (k) "Primary residence" means the location where the offender regularly resides, even
1763 if the offender intends to move to another location or return to another location at any future
1764 date.

1765 (l) "Register" means to comply with the requirements of this section and administrative

1766 rules of the department made under this section.

1767 (m) "Secondary residence" means any real property that the offender owns or has a
1768 financial interest in, or any location where, in any 12 month period, the offender stays
1769 overnight a total of 10 or more nights when not staying at the offender's primary residence.

1770 (n) "Sex offender" means any person:

1771 (i) convicted in this state of:

1772 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

1773 (B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

1774 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

1775 (D) Section 76-5-401.1, sexual abuse of a minor;

1776 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

1777 (F) Section 76-5-402, rape;

1778 (G) Section 76-5-402.1, rape of a child;

1779 (H) Section 76-5-402.2, object rape;

1780 (I) Section 76-5-402.3, object rape of a child;

1781 (J) a felony violation of Section 76-5-403, forcible sodomy;

1782 (K) Section 76-5-403.1, sodomy on a child;

1783 (L) Section 76-5-404, forcible sexual abuse;

1784 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

1785 (N) Section 76-5-405, aggravated sexual assault;

1786 (O) Section [~~76-5a-3~~] 76-5b-201, sexual exploitation of a minor;

1787 (P) Section 76-7-102, incest;

1788 (Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense
1789 four or more times;

1790 (R) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the
1791 offense four or more times;

1792 (S) any combination of convictions of Subsection 76-9-702(1), lewdness, and of
1793 Subsection 76-9-702(3), sexual battery, that total four or more convictions;

1794 (T) Section 76-9-702.5, lewdness involving a child;
1795 (U) Section 76-10-1306, aggravated exploitation of prostitution; or
1796 (V) attempting, soliciting, or conspiring to commit any felony offense listed in
1797 Subsection (1)(n)(i);
1798 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
1799 commit a crime in another jurisdiction, including any state, federal, or military court that is
1800 substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:
1801 (A) a Utah resident; or
1802 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
1803 10 or more days, regardless of whether the offender intends to permanently reside in this state;
1804 (iii) (A) who is required to register as an offender in any other jurisdiction, or who is
1805 required to register as an offender by any state, federal, or military court; and
1806 (B) who, in any 12 month period, is in the state for a total of 10 or more days,
1807 regardless of whether or not the offender intends to permanently reside in this state;
1808 (iv) who is a nonresident regularly employed or working in this state or who is a
1809 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or
1810 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
1811 required to register in the person's jurisdiction of residence;
1812 (v) who is found not guilty by reason of insanity in this state, or in any other
1813 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or
1814 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
1815 (1)(n)(i) and who has been committed to the division for secure confinement and remains in the
1816 division's custody 30 days prior to the person's 21st birthday.
1817 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
1818 any jurisdiction.
1819 (2) The department, to assist in investigating kidnapping and sex-related crimes, and in
1820 apprehending offenders, shall:
1821 (a) develop and operate a system to collect, analyze, maintain, and disseminate

1822 information on offenders and sex and kidnap offenses;

1823 (b) make information listed in Subsection (27) available to the public; and

1824 (c) share information provided by an offender under this section that may not be made
1825 available to the public under Subsection (27), but only:

1826 (i) for the purposes under this Subsection (2); or

1827 (ii) in accordance with Section 63G-2-206.

1828 (3) Any law enforcement agency shall, in the manner prescribed by the department,
1829 inform the department of:

1830 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),
1831 within three business days; and

1832 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or
1833 (n), within five business days.

1834 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),
1835 the convicting court shall within three business days forward a copy of the judgment and
1836 sentence to the department.

1837 (5) An offender in the custody of the department shall be registered by agents of the
1838 department upon:

1839 (a) placement on probation;

1840 (b) commitment to a secure correctional facility operated by or under contract to the
1841 department;

1842 (c) release from confinement to parole status, termination or expiration of sentence, or
1843 escape;

1844 (d) entrance to and release from any community-based residential program operated by
1845 or under contract to the department; or

1846 (e) termination of probation or parole.

1847 (6) An offender who is not in the custody of the department and who is confined in a
1848 correctional facility not operated by or under contract to the department shall be registered with
1849 the department by the sheriff of the county in which the offender is confined, upon:

- 1850 (a) commitment to the correctional facility; and
1851 (b) release from confinement.
- 1852 (7) An offender in the custody of the division shall be registered with the department
1853 by the division prior to release from custody.
- 1854 (8) An offender committed to a state mental hospital shall be registered with the
1855 department by the hospital upon admission and upon discharge.
- 1856 (9) (a) (i) A municipal or county law enforcement agency shall register an offender
1857 who resides within the agency's jurisdiction and is not under the supervision of the Division of
1858 Adult Probation and Parole within the department.
- 1859 (ii) In order to conduct offender registration under this section, the agency shall ensure
1860 the agency staff responsible for registration:
- 1861 (A) has received initial training by the department and has been certified by the
1862 department as qualified and authorized to conduct registrations and enter offender registration
1863 information into the registry database; and
1864 (B) certify annually with the department.
- 1865 (b) (i) When the department receives offender registration information regarding a
1866 change of an offender's primary residence location, the department shall within five days
1867 electronically notify the law enforcement agencies that have jurisdiction over the area where:
- 1868 (A) the residence that the offender is leaving is located; and
1869 (B) the residence to which the offender is moving is located.
- 1870 (ii) The department shall provide notification under this Subsection (9)(b) if the
1871 offender's change of address is between law enforcement agency jurisdictions, or is within one
1872 jurisdiction.
- 1873 (c) The department shall make available to offenders required to register under this
1874 section the name of the agency, whether it is a local law enforcement agency or the department,
1875 that the offender should contact to register, the location for registering, and the requirements of
1876 registration.
- 1877 (10) An offender convicted by any other jurisdiction is required to register under

1878 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10
1879 days of entering the state, regardless of the offender's length of stay.

1880 (11) (a) An offender required to register under Subsection (1)(g) or (n) who is under
1881 supervision by the department shall register with Division of Adult Probation and Parole.

1882 (b) An offender required to register under Subsection (1)(g) or (n) who is no longer
1883 under supervision by the department shall register with the police department or sheriff's office
1884 that has jurisdiction over the area where the offender resides.

1885 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for
1886 the duration of the sentence and for 10 years after termination of sentence or custody of the
1887 division, register every year during the month of the offender's birth, during the month that is
1888 the sixth month after the offender's birth month, and also within three business days of every
1889 change of the offender's primary residence, any secondary residences, place of employment,
1890 vehicle information, or educational information required to be submitted under Subsection
1891 (14).

1892 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in
1893 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
1894 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

1895 (i) register for the time period, and in the frequency, required by the jurisdiction where
1896 the offender was convicted if that jurisdiction's registration period or registration frequency
1897 requirement for the offense that the offender was convicted of is greater than the 10 years from
1898 completion of the sentence registration period that is required under Subsection (12)(a), or is
1899 more frequent than every six months; or

1900 (ii) register in accordance with the requirements of Subsection (12)(a), if the
1901 jurisdiction's registration period or frequency requirement for the offense that the offender was
1902 convicted of is less than the registration period required under Subsection (12)(a), or is less
1903 frequent than every six months.

1904 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
1905 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the

1906 offender's birth, during the month that is the sixth month after the offender's birth month, and
1907 also within three business days of every change of the offender's primary residence, any
1908 secondary residences, place of employment, vehicle information, or educational information
1909 required to be submitted under Subsection (14).

1910 (B) This registration requirement is not subject to exemptions and may not be
1911 terminated or altered during the offender's lifetime.

1912 (ii) Offenses referred to in Subsection (12)(c)(i) are:

1913 (A) any offense listed in Subsection (1)(g) or (n) if, at the time of the conviction, the
1914 offender has previously been convicted of an offense listed in Subsection (1)(g) or (n) or has
1915 previously been required to register as a sex offender for an offense committed as a juvenile;

1916 (B) a conviction for any of the following offenses, including attempting, soliciting, or
1917 conspiring to commit any felony of:

1918 (I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
1919 the victim;

1920 (II) Section 76-5-402, rape;

1921 (III) Section 76-5-402.1, rape of a child;

1922 (IV) Section 76-5-402.2, object rape;

1923 (V) Section 76-5-402.3, object rape of a child;

1924 (VI) Section 76-5-403.1, sodomy on a child;

1925 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

1926 (VIII) Section 76-5-405, aggravated sexual assault;

1927 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;

1928 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
1929 of the victim;

1930 (E) Section 76-5-403, forcible sodomy;

1931 (F) Section 76-5-404.1, sexual abuse of a child; or

1932 (G) Section [~~76-5a-3~~] 76-5b-201, sexual exploitation of a minor.

1933 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a

1934 secure facility or in a state mental hospital is not required to register during the period of
1935 confinement.

1936 (e) An offender who is required to register under this Subsection (12) shall surrender
1937 the offender's license, certificate, or identification card as required under Subsection
1938 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
1939 provided under Section 53-3-205 or 53-3-804.

1940 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
1941 section shall register for an additional five years subsequent to the registration period otherwise
1942 required under this section.

1943 (13) An agency in the state that registers an offender on probation, an offender who has
1944 been released from confinement to parole status or termination, or an offender whose sentence
1945 has expired shall inform the offender of the duty to comply with:

1946 (a) the continuing registration requirements of this section during the period of
1947 registration required in Subsection (12), including:

1948 (i) notification to the state agencies in the states where the registrant presently resides
1949 and plans to reside when moving across state lines;

1950 (ii) verification of address at least every 60 days pursuant to a parole agreement for
1951 lifetime parolees; and

1952 (iii) notification to the out-of-state agency where the offender is living, whether or not
1953 the offender is a resident of that state; and

1954 (b) the driver license certificate or identification card surrender requirement under
1955 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
1956 53-3-804.

1957 (14) An offender shall provide the department or the registering entity with the
1958 following information:

1959 (a) all names and aliases by which the offender is or has been known;

1960 (b) the addresses of the offender's primary and secondary residences;

1961 (c) a physical description, including the offender's date of birth, height, weight, eye and

- 1962 hair color;
- 1963 (d) the make, model, color, year, plate number, and vehicle identification number of
- 1964 any vehicle or vehicles the offender owns or regularly drives;
- 1965 (e) a current photograph of the offender;
- 1966 (f) a set of fingerprints, if one has not already been provided;
- 1967 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
- 1968 already been provided;
- 1969 (h) telephone numbers and any other designations used by the offender for routing or
- 1970 self-identification in telephonic communications from fixed locations or cellular telephones;
- 1971 (i) Internet identifiers and the addresses the offender uses for routing or
- 1972 self-identification in Internet communications or postings;
- 1973 (j) the name and Internet address of all websites on which the offender is registered
- 1974 using an online identifier, including all online identifiers used to access those websites;
- 1975 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 1976 (l) if the offender is an alien, all documents establishing the offender's immigration
- 1977 status;
- 1978 (m) all professional licenses that authorize the offender to engage in an occupation or
- 1979 carry out a trade or business, including any identifiers, such as numbers;
- 1980 (n) each educational institution in Utah at which the offender is employed, carries on a
- 1981 vocation, or is a student, and any change of enrollment or employment status of the offender at
- 1982 any educational institution;
- 1983 (o) the name and the address of any place where the offender is employed or will be
- 1984 employed;
- 1985 (p) the name and the address of any place where the offender works as a volunteer or
- 1986 will work as a volunteer; and
- 1987 (q) the offender's Social Security number.
- 1988 (15) The department shall:
- 1989 (a) provide the following additional information when available:

1990 (i) the crimes the offender has been convicted of or adjudicated delinquent for;
1991 (ii) a description of the offender's primary and secondary targets; and
1992 (iii) any other relevant identifying information as determined by the department;
1993 (b) maintain the Sex Offender and Kidnap Offender Notification and Registration
1994 website; and
1995 (c) ensure that the registration information collected regarding an offender's enrollment
1996 or employment at an educational institution is:
1997 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
1998 where the institution is located if the educational institution is an institution of higher
1999 education; or
2000 (B) promptly made available to the district superintendent of the school district where
2001 the offender is enrolled if the educational institution is an institution of primary education; and
2002 (ii) entered into the appropriate state records or data system.
2003 (16) (a) An offender who knowingly fails to register under this section or provides
2004 false or incomplete information is guilty of:
2005 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
2006 less than 90 days and also at least one year of probation if:
2007 (A) the offender is required to register for a felony conviction or adjudicated delinquent
2008 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
2009 (1)(g)(i) or (n)(i); or
2010 (B) the offender is required to register for the offender's lifetime under Subsection
2011 (12)(c); or
2012 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
2013 not fewer than 90 days and also at least one year of probation if the offender is required to
2014 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
2015 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).
2016 (b) Neither the court nor the Board of Pardons and Parole may release a person who
2017 violates this section from serving the term required under Subsection (16)(a). This Subsection

2018 (16)(b) supersedes any other provision of the law contrary to this section.

2019 (c) The offender shall register for an additional year for every year in which the
2020 offender does not comply with the registration requirements of this section.

2021 (17) Notwithstanding Title 63G, Chapter 2, Government Records Access and
2022 Management Act, information under Subsection (15) that is collected and released under
2023 Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

2024 (18) (a) If an offender is to be temporarily sent outside a secure facility in which the
2025 offender is confined on any assignment, including, without limitation, firefighting or disaster
2026 control, the official who has custody of the offender shall, within a reasonable time prior to
2027 removal from the secure facility, notify the local law enforcement agencies where the
2028 assignment is to be filled.

2029 (b) This Subsection (18) does not apply to any person temporarily released under guard
2030 from the institution in which the person is confined.

2031 (19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted
2032 of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to
2033 register as required under this section.

2034 (20) Notwithstanding Section 42-1-1, an offender:

2035 (a) may not change the offender's name:

2036 (i) while under the jurisdiction of the department; and

2037 (ii) until the registration requirements of this statute have expired; and

2038 (b) may not change the offender's name at any time, if registration is for life under
2039 Subsection (12)(c).

2040 (21) The department may make administrative rules necessary to implement this
2041 section, including:

2042 (a) the method for dissemination of the information; and

2043 (b) instructions to the public regarding the use of the information.

2044 (22) Any information regarding the identity or location of a victim shall be redacted by
2045 the department from information provided under Subsections (14) and (15).

2046 (23) This section does not create or impose any duty on any person to request or obtain
2047 information regarding any offender from the department.

2048 (24) The department shall maintain a Sex Offender and Kidnap Offender Notification
2049 and Registration website on the Internet, which shall contain a disclaimer informing the public:

2050 (a) the information contained on the site is obtained from offenders and the department
2051 does not guarantee its accuracy or completeness;

2052 (b) members of the public are not allowed to use the information to harass or threaten
2053 offenders or members of their families; and

2054 (c) harassment, stalking, or threats against offenders or their families are prohibited and
2055 doing so may violate Utah criminal laws.

2056 (25) The Sex Offender and Kidnap Offender Notification and Registration website
2057 shall be indexed by both the surname of the offender and by postal codes.

2058 (26) The department shall construct the Sex Offender Notification and Registration
2059 website so that users, before accessing registry information, must indicate that they have read
2060 the disclaimer, understand it, and agree to comply with its terms.

2061 (27) The Sex Offender and Kidnap Offender Notification and Registration website
2062 shall include the following registry information:

2063 (a) all names and aliases by which the offender is or has been known, but not including
2064 any online or Internet identifiers;

2065 (b) the addresses of the offender's primary, secondary, and temporary residences;

2066 (c) a physical description, including the offender's date of birth, height, weight, and eye
2067 and hair color;

2068 (d) the make, model, color, year, and plate number of any vehicle or vehicles the
2069 offender owns or regularly drives;

2070 (e) a current photograph of the offender;

2071 (f) a list of all professional licenses that authorize the offender to engage in an
2072 occupation or carry out a trade or business;

2073 (g) each educational institution in Utah at which the offender is employed, carries on a

2074 vocation, or is a student;

2075 (h) a list of places where the offender works as a volunteer; and

2076 (i) the crimes listed in Subsections (1)(g) and(n) that the offender has been convicted of
2077 or for which the offender has been adjudicated delinquent in juvenile court.

2078 (28) The department, its personnel, and any individual or entity acting at the request or
2079 upon the direction of the department are immune from civil liability for damages for good faith
2080 compliance with this section and will be presumed to have acted in good faith by reporting
2081 information.

2082 (29) The department shall redact information that, if disclosed, could reasonably
2083 identify a victim.

2084 (30) (a) Each offender required to register under Subsection (12) shall, in the month of
2085 the offender's birth:

2086 (i) pay to the department an annual fee of \$100 each year the offender is subject to the
2087 registration requirements of this section; and

2088 (ii) pay to the registering agency, if it is an agency other than the Department of
2089 Corrections, an annual fee of not more than \$25, which may be assessed by that agency for
2090 providing registration.

2091 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility
2092 or in a state mental hospital is not required to pay the annual fee.

2093 (c) The department shall deposit fees under this Subsection (30) in the General Fund as
2094 a dedicated credit, to be used by the department for maintaining the offender registry under this
2095 section and monitoring offender registration compliance, including the costs of:

2096 (i) data entry;

2097 (ii) processing registration packets;

2098 (iii) updating registry information;

2099 (iv) ensuring offender compliance with registration requirements under this section;

2100 and

2101 (v) apprehending offenders who are in violation of the offender registration

2102 requirements under this section.

2103 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), an offender is not required
2104 to provide the department with:

2105 (a) the offender's online identifier and password used exclusively for the offender's
2106 employment on equipment provided by an employer and used to access the employer's private
2107 network; or

2108 (b) online identifiers for the offender's financial accounts, including any bank,
2109 retirement, or investment accounts.

2110 Section 25. Section **77-36-1** is amended to read:

2111 **77-36-1. Definitions.**

2112 As used in this chapter:

2113 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.

2114 (2) "Department" means the Department of Public Safety.

2115 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
2116 3, Divorce.

2117 (4) "Domestic violence" means any criminal offense involving violence or physical
2118 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
2119 commit a criminal offense involving violence or physical harm, when committed by one
2120 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
2121 any of the following offenses by one cohabitant against another:

2122 (a) aggravated assault, as described in Section 76-5-103;

2123 (b) assault, as described in Section 76-5-102;

2124 (c) criminal homicide, as described in Section 76-5-201;

2125 (d) harassment, as described in Section 76-5-106;

2126 (e) electronic communication harassment, as described in Section 76-9-201;

2127 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
2128 76-5-301, 76-5-301.1, and 76-5-302;

2129 (g) mayhem, as described in Section 76-5-105;

- 2130 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
2131 [~~Title 76, Chapter 5a~~] Section 76-5b-201, Sexual Exploitation of [~~Children~~] a Minor;
- 2132 (i) stalking, as described in Section 76-5-106.5;
- 2133 (j) unlawful detention, as described in Section 76-5-304;
- 2134 (k) violation of a protective order or ex parte protective order, as described in Section
2135 76-5-108;
- 2136 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
2137 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 2138 (m) possession of a deadly weapon with intent to assault, as described in Section
2139 76-10-507;
- 2140 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
2141 person, building, or vehicle, as described in Section 76-10-508;
- 2142 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
2143 conduct is the result of a plea agreement in which the defendant was originally charged with
2144 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction
2145 of disorderly conduct as a domestic violence offense, in the manner described in this
2146 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
2147 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.
2148 Section 921 et seq.; or
- 2149 (p) child abuse as described in Section 76-5-109.1.
- 2150 (5) "Jail release agreement" means a written agreement:
- 2151 (a) specifying and limiting the contact a person arrested for a domestic violence offense
2152 may have with an alleged victim or other specified individuals; and
- 2153 (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5
2154 (1).
- 2155 (6) "Jail release court order" means a written court order:
- 2156 (a) specifying and limiting the contact a person arrested for a domestic violence offense
2157 may have with an alleged victim or other specified individuals; and

- 2158 (b) specifying other conditions of release from jail as required in Subsection
2159 77-36-2.5(1).
- 2160 (7) "Marital status" means married and living together, divorced, separated, or not
2161 married.
- 2162 (8) "Married and living together" means a man and a woman whose marriage was
2163 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- 2164 (9) "Not married" means any living arrangement other than married and living together,
2165 divorced, or separated.
- 2166 (10) "Pretrial protective order" means a written order:
- 2167 (a) specifying and limiting the contact a person who has been charged with a domestic
2168 violence offense may have with an alleged victim or other specified individuals; and
- 2169 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(2)(c),
2170 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.
- 2171 (11) "Sentencing protective order" means a written order of the court as part of
2172 sentencing in a domestic violence case that limits the contact a person who has been convicted
2173 of a domestic violence offense may have with a victim or other specified individuals pursuant
2174 to Sections 77-36-5 and 77-36-5.1.
- 2175 (12) "Separated" means a man and a woman who have had their marriage solemnized
2176 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.
- 2177 (13) "Victim" means a cohabitant who has been subjected to domestic violence.
- 2178 Section 26. Section **78A-6-105** is amended to read:
- 2179 **78A-6-105. Definitions.**
- 2180 As used in this chapter:
- 2181 (1) (a) "Abuse" means:
- 2182 (i) nonaccidental harm of a child;
- 2183 (ii) threatened harm of a child;
- 2184 (iii) sexual exploitation; or
- 2185 (iv) sexual abuse.

- 2186 (b) "Abuse" does not include:
- 2187 (i) reasonable discipline or management of a child, including withholding privileges;
- 2188 (ii) conduct described in Section 76-2-401; or
- 2189 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 2190 (A) in self-defense;
- 2191 (B) in defense of others;
- 2192 (C) to protect the child; or
- 2193 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 2194 Subsections (1)(b)(iii)(A) through (C).
- 2195 (2) "Abused child" means a child who has been subjected to abuse.
- 2196 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 2197 alleged in the petition have been proved.
- 2198 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
- 2199 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
- 2200 be referred to as a minor.
- 2201 (5) "Board" means the Board of Juvenile Court Judges.
- 2202 (6) "Child" means a person under 18 years of age.
- 2203 (7) "Child placement agency" means:
- 2204 (a) a private agency licensed to receive a child for placement or adoption under this
- 2205 code; or
- 2206 (b) a private agency that receives a child for placement or adoption in another state,
- 2207 which agency is licensed or approved where such license or approval is required by law.
- 2208 (8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 2209 (9) "Commit" means, unless specified otherwise:
- 2210 (a) with respect to a child, to transfer legal custody; and
- 2211 (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- 2212 (10) "Court" means the juvenile court.
- 2213 (11) "Dependent child" includes a child who is homeless or without proper care

2214 through no fault of the child's parent, guardian, or custodian.

2215 (12) "Deprivation of custody" means transfer of legal custody by the court from a
2216 parent or the parents or a previous legal custodian to another person, agency, or institution.

2217 (13) "Detention" means home detention and secure detention as defined in Section
2218 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
2219 restricting facility:

2220 (a) pending court disposition or transfer to another jurisdiction; or

2221 (b) while under the continuing jurisdiction of the court.

2222 (14) "Division" means the Division of Child and Family Services.

2223 (15) "Formal referral" means a written report from a peace officer or other person
2224 informing the court that a minor is or appears to be within the court's jurisdiction and that a
2225 petition may be filed.

2226 (16) "Group rehabilitation therapy" means psychological and social counseling of one
2227 or more persons in the group, depending upon the recommendation of the therapist.

2228 (17) "Guardianship of the person" includes the authority to consent to:

2229 (a) marriage;

2230 (b) enlistment in the armed forces;

2231 (c) major medical, surgical, or psychiatric treatment; or

2232 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

2233 (18) "Habitual truant" is as defined in Section 53A-11-101.

2234 (19) "Harm" means:

2235 (a) physical, emotional, or developmental injury or damage;

2236 (b) sexual abuse; or

2237 (c) sexual exploitation.

2238 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
2239 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
2240 nephew, niece, or first cousin.

2241 (b) The relationships described in Subsection (20)(a) include:

- 2242 (i) blood relationships of the whole or half blood, without regard to legitimacy;
- 2243 (ii) relationships of parent and child by adoption; and
- 2244 (iii) relationships of stepparent and stepchild while the marriage creating the
- 2245 relationship of a stepparent and stepchild exists.
- 2246 (21) "Legal custody" means a relationship embodying the following rights and duties:
- 2247 (a) the right to physical custody of the minor;
- 2248 (b) the right and duty to protect, train, and discipline the minor;
- 2249 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
- 2250 medical care;
- 2251 (d) the right to determine where and with whom the minor shall live; and
- 2252 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2253 (22) "Minor" means:
- 2254 (a) a child; or
- 2255 (b) a person who is:
- 2256 (i) at least 18 years of age and younger than 21 years of age; and
- 2257 (ii) under the jurisdiction of the juvenile court.
- 2258 (23) "Molestation" means that a person, with the intent to arouse or gratify the sexual
- 2259 desire of any person:
- 2260 (a) touches the anus or any part of the genitals of a child;
- 2261 (b) takes indecent liberties with a child; or
- 2262 (c) causes a child to take indecent liberties with the perpetrator or another.
- 2263 (24) "Natural parent" means a minor's biological or adoptive parent, and includes the
- 2264 minor's noncustodial parent.
- 2265 (25) (a) "Neglect" means:
- 2266 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
- 2267 Relinquishment of a Newborn Child;
- 2268 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
- 2269 guardian, or custodian;

2270 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
2271 subsistence, education, or medical care, or any other care necessary for the child's health,
2272 safety, morals, or well-being; or

2273 (iv) a child at risk of being neglected or abused because another child in the same home
2274 is neglected or abused.

2275 (b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii),
2276 means that, after receiving a notice of compulsory education violation under Section
2277 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
2278 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
2279 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
2280 education.

2281 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
2282 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

2283 (d) (i) Notwithstanding Subsection (25)(a), a health care decision made for a child by
2284 the child's parent or guardian does not constitute neglect unless the state or other party to the
2285 proceeding shows, by clear and convincing evidence, that the health care decision is not
2286 reasonable and informed.

2287 (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising
2288 the right to obtain a second health care opinion.

2289 (26) "Neglected child" means a child who has been subjected to neglect.

2290 (27) "Nonjudicial adjustment" means closure of the case by the assigned probation
2291 officer without judicial determination upon the consent in writing of:

2292 (a) the assigned probation officer; and

2293 (b) (i) the minor; or

2294 (ii) the minor and the minor's parent, legal guardian, or custodian.

2295 (28) "Physical abuse" means abuse that results in physical injury or damage to a child.

2296 (29) "Probation" means a legal status created by court order following an adjudication
2297 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is

2298 permitted to remain in the minor's home under prescribed conditions and under supervision by
2299 the probation department or other agency designated by the court, subject to return to the court
2300 for violation of any of the conditions prescribed.

2301 (30) "Protective supervision" means a legal status created by court order following an
2302 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
2303 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
2304 dependency is provided by the probation department or other agency designated by the court.

2305 (31) (a) "Residual parental rights and duties" means those rights and duties remaining
2306 with the parent after legal custody or guardianship, or both, have been vested in another person
2307 or agency, including:

- 2308 (i) the responsibility for support;
- 2309 (ii) the right to consent to adoption;
- 2310 (iii) the right to determine the child's religious affiliation; and
- 2311 (iv) the right to reasonable parent-time unless restricted by the court.

2312 (b) If no guardian has been appointed, "residual parental rights and duties" also include
2313 the right to consent to:

- 2314 (i) marriage;
- 2315 (ii) enlistment; and
- 2316 (iii) major medical, surgical, or psychiatric treatment.

2317 (32) "Secure facility" means any facility operated by or under contract with the
2318 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
2319 youth offenders committed to the division for custody and rehabilitation.

2320 (33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
2321 child.

2322 (34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
2323 child.

2324 (35) "Sexual abuse" means:

- 2325 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation

2326 directed towards a child; or

2327 (b) engaging in any conduct with a child that would constitute an offense under any of
2328 the following, regardless of whether the person who engages in the conduct is actually charged
2329 with, or convicted of, the offense:

2330 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

2331 (ii) child bigamy, Section 76-7-101.5;

2332 (iii) incest, Section 76-7-102;

2333 (iv) lewdness or sexual battery, Section 76-9-702;

2334 (v) lewdness involving a child, Section 76-9-702.5; or

2335 (vi) voyeurism, Section 76-9-702.7.

2336 (36) "Sexual exploitation" means knowingly:

2337 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

2338 (i) pose in the nude for the purpose of sexual arousal of any person; or

2339 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
2340 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

2341 (b) displaying, distributing, possessing for the purpose of distribution, or selling
2342 material depicting a child:

2343 (i) in the nude, for the purpose of sexual arousal of any person; or

2344 (ii) engaging in sexual or simulated sexual conduct; or

2345 (c) engaging in any conduct that would constitute an offense under [~~Title 76, Chapter~~
2346 ~~5a~~] Section 76-5b-201, Sexual Exploitation of [~~Children~~] a Minor, regardless of whether the
2347 person who engages in the conduct is actually charged with, or convicted of, the offense.

2348 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility
2349 pending court disposition or transfer to another jurisdiction.

2350 (38) "State supervision" means a disposition that provides a more intensive level of
2351 intervention than standard probation but is less intensive or restrictive than a community
2352 placement with the Division of Juvenile Justice Services.

2353 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or

2354 substances.

2355 (40) "Substantiated" is as defined in Section 62A-4a-101.

2356 (41) "Supported" is as defined in Section 62A-4a-101.

2357 (42) "Termination of parental rights" means the permanent elimination of all parental
2358 rights and duties, including residual parental rights and duties, by court order.

2359 (43) "Therapist" means:

2360 (a) a person employed by a state division or agency for the purpose of conducting
2361 psychological treatment and counseling of a minor in its custody; or

2362 (b) any other person licensed or approved by the state for the purpose of conducting
2363 psychological treatment and counseling.

2364 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.

2365 (45) "Without merit" is as defined in Section 62A-4a-101.

2366 Section 27. **Effective date.**

2367 This bill takes effect on May 10, 2011, except that the amendments to Section
2368 76-10-1602 (Effective 07/01/11) take effect on July 1, 2011.