

Senator Todd Weiler proposes the following substitute bill:

**CRIMINAL CODE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill removes the term "indecent liberties" from the Utah Code.

**Highlighted Provisions:**

This bill:

- ▶ removes the term "indecent liberties" from sexual offenses; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-401.1**, as last amended by Laws of Utah 2016, Chapter 372

**76-5-401.2**, as last amended by Laws of Utah 2014, Chapter 135

**76-5-404**, as last amended by Laws of Utah 2010, Chapter 218

**76-5-404.1**, as last amended by Laws of Utah 2014, Chapters 135 and 141

**76-5-412**, as last amended by Laws of Utah 2017, Chapter 65

**76-5-413**, as last amended by Laws of Utah 2017, Chapter 330



26 **78A-6-105**, as last amended by Laws of Utah 2017, Chapters 181, 330, and 401

27 **78B-2-308**, as last amended by Laws of Utah 2016, Chapter 379



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

30 Section 1. Section **76-5-401.1** is amended to read:

31 **76-5-401.1. Sexual abuse of a minor.**

32 (1) For purposes of this section "minor" is ~~[a person]~~ an individual who is 14 years of  
33 age or older, but younger than 16 years of age, at the time the sexual activity described in this  
34 section occurred.

35 (2) ~~[A person]~~ An individual commits sexual abuse of a minor if the ~~[person]~~  
36 individual is four years or more older than the minor or holds a relationship of special trust as  
37 an adult teacher, employee, or volunteer, as described in Subsection **76-5-404.1**(1)(c)(xix) and,  
38 under circumstances not amounting to rape, in violation of Section **76-5-402**, object rape, in  
39 violation of Section **76-5-402.2**, forcible sodomy, in violation of Section **76-5-403**, aggravated  
40 sexual assault, in violation of Section **76-5-405**, unlawful sexual activity with a minor, in  
41 violation of Section **76-5-401**, or an attempt to commit any of those offenses, the ~~[person]~~  
42 individual touches the anus, buttocks, or any part of the genitals of the minor, or touches the  
43 breast of a female minor, ~~[or otherwise takes indecent liberties with the minor, or causes a~~  
44 ~~minor to take indecent liberties with the actor or another person,]~~ with the intent to cause  
45 substantial emotional or bodily pain to any ~~[person]~~ individual or with the intent to arouse or  
46 gratify the sexual desire of any ~~[person]~~ individual regardless of the sex of any participant.

47 (3) (a) Except under Subsection (3)(b), a violation of this section is a class A  
48 misdemeanor and is not subject to registration under Subsection **77-41-102**(17)(a)(iv) on a first  
49 offense if the offender was younger than 21 years of age at the time of the offense.

50 (b) A violation of this section is a third degree felony if the actor at the time of the  
51 commission of the offense:

52 (i) is 18 years of age or older;

53 (ii) held a position of special trust as a teacher or a volunteer at a school, as that  
54 position is defined in Subsection **76-5-404.1**(1)(c)(xix); and

55 (iii) committed the offense against an individual who at the time of the offense was  
56 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

57 Section 2. Section 76-5-401.2 is amended to read:

58 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

59 (1) As used in this section, "minor" means ~~[a person]~~ an individual who is 16 years of  
60 age or older, but younger than 18 years of age, at the time the sexual conduct described in  
61 Subsection (2) occurred.

62 (2) (a) ~~[A person]~~ An individual commits unlawful sexual conduct with a minor if,  
63 under circumstances not amounting to an offense listed under Subsection (3), ~~[a person]~~ an  
64 individual who is:

65 (i) seven or more years older but less than 10 years older than the minor at the time of  
66 the sexual conduct engages in any conduct listed in Subsection (2)(b), and the ~~[person]~~  
67 individual knew or reasonably should have known the age of the minor;

68 (ii) 10 or more years older than the minor at the time of the sexual conduct and engages  
69 in any conduct listed in Subsection (2)(b); or

70 (iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as  
71 described in Subsection 76-5-404.1(1)(c)(xix).

72 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the ~~[person]~~  
73 individual:

74 (i) has sexual intercourse with the minor;

75 (ii) engages in any sexual act with the minor involving the genitals of one ~~[person]~~  
76 individual and the mouth or anus of another ~~[person]~~ individual, regardless of the sex of either  
77 participant;

78 (iii) causes the penetration, however slight, of the genital or anal opening of the minor  
79 by any foreign object, substance, instrument, or device, including a part of the human body,  
80 with the intent to cause substantial emotional or bodily pain to any ~~[person]~~ individual or with  
81 the intent to arouse or gratify the sexual desire of any ~~[person]~~ individual, regardless of the sex  
82 of any participant; or

83 (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the  
84 breast of a female minor, ~~[or otherwise takes indecent liberties with the minor, or causes a~~  
85 ~~minor to take indecent liberties with the actor or another person,]~~ with the intent to cause  
86 substantial emotional or bodily pain to any ~~[person]~~ individual or with the intent to arouse or  
87 gratify the sexual desire of any ~~[person]~~ individual regardless of the sex of any participant.

88 (3) The offenses referred to in Subsection (2) are:

89 (a) (i) rape, in violation of Section 76-5-402;

90 (ii) object rape, in violation of Section 76-5-402.2;

91 (iii) forcible sodomy, in violation of Section 76-5-403;

92 (iv) forcible sexual abuse, in violation of Section 76-5-404; or

93 (v) aggravated sexual assault, in violation of Section 76-5-405; or

94 (b) an attempt to commit any offense under Subsection (3)(a).

95 (4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

96 (5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under  
97 Subsection (5)(b).

98 (b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time  
99 of the commission of the offense:

100 (i) is 18 years of age or older;

101 (ii) held a position of special trust as a teacher or a volunteer at a school, as that  
102 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

103 (iii) committed the offense against an individual who at the time of the offense was  
104 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

105 Section 3. Section 76-5-404 is amended to read:

106 **76-5-404. Forcible sexual abuse.**

107 (1) ~~[A person]~~ An individual commits forcible sexual abuse if the victim is 14 years of  
108 age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted  
109 rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or  
110 touches the breast of a female, ~~[or otherwise takes indecent liberties with another, or causes  
111 another to take indecent liberties with the actor or another,]~~ with intent to cause substantial  
112 emotional or bodily pain to any ~~[person]~~ individual or with the intent to arouse or gratify the  
113 sexual desire of any ~~[person]~~ individual, without the consent of the other, regardless of the sex  
114 of any participant.

115 (2) Forcible sexual abuse is:

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

118 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a

119 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that  
120 during the course of the commission of the forcible sexual abuse the defendant caused serious  
121 bodily injury to another.

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

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

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

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

130 Section 4. Section 76-5-404.1 is amended to read:

131 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

132 (1) As used in this section:

133 (a) "Adult" means an individual 18 years of age or older.

134 (b) "Child" means an individual under the age of 14.

135 (c) "Position of special trust" means:

136 (i) an adoptive parent;

137 (ii) an athletic manager who is an adult;

138 (iii) an aunt;

139 (iv) a babysitter;

140 (v) a coach;

141 (vi) a cohabitant of a parent if the cohabitant is an adult;

142 (vii) a counselor;

143 (viii) a doctor or physician;

144 (ix) an employer;

145 (x) a foster parent;

146 (xi) a grandparent;

147 (xii) a legal guardian;

148 (xiii) a natural parent;

149 (xiv) a recreational leader who is an adult;

- 150 (xv) a religious leader;
- 151 (xvi) a sibling or a stepsibling who is an adult;
- 152 (xvii) a scout leader who is an adult;
- 153 (xviii) a stepparent;
- 154 (xix) a teacher or any other ~~[person]~~ individual employed by or volunteering at a public
- 155 or private elementary school or secondary school, and who is 18 years of age or older;
- 156 (xx) an uncle;
- 157 (xxi) a youth leader who is an adult; or
- 158 (xxii) any ~~[person]~~ individual in a position of authority, other than those ~~[persons]~~
- 159 individuals listed in Subsections (1)(c)(i) through (xxi), which enables the ~~[person]~~ individual
- 160 to exercise undue influence over the child.

161 (2) ~~[A person]~~ An individual commits sexual abuse of a child if, under circumstances

162 not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to

163 commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the

164 breast of a female child, ~~[or otherwise takes indecent liberties with a child, or causes a child to~~

165 ~~take indecent liberties with the actor or another]~~ with intent to cause substantial emotional or

166 bodily pain to any ~~[person]~~ individual or with the intent to arouse or gratify the sexual desire of

167 any ~~[person]~~ individual regardless of the sex of any participant.

168 (3) Sexual abuse of a child is a second degree felony.

169 (4) ~~[A person]~~ An individual commits aggravated sexual abuse of a child when in

170 conjunction with the offense described in Subsection (2) any of the following circumstances

171 have been charged and admitted or found true in the action for the offense:

172 (a) the offense was committed by the use of a dangerous weapon as defined in Section

173 [76-1-601](#), or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or

174 was committed during the course of a kidnapping;

175 (b) the accused caused bodily injury or severe psychological injury to the victim during

176 or as a result of the offense;

177 (c) the accused was a stranger to the victim or made friends with the victim for the

178 purpose of committing the offense;

179 (d) the accused used, showed, or displayed pornography or caused the victim to be

180 photographed in a lewd condition during the course of the offense;

181 (e) the accused, prior to sentencing for this offense, was previously convicted of any  
182 sexual offense;

183 (f) the accused committed the same or similar sexual act upon two or more victims at  
184 the same time or during the same course of conduct;

185 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if  
186 committed in Utah would constitute an offense described in this chapter, and were committed  
187 at the same time, or during the same course of conduct, or before or after the instant offense;

188 (h) the offense was committed by [~~a person~~] an individual who occupied a position of  
189 special trust in relation to the victim;

190 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or  
191 sexual acts by the victim with any other [~~person~~] individual, or sexual performance by the  
192 victim before any other [~~person~~] individual, human trafficking, or human smuggling; or

193 (j) the accused caused the penetration, however slight, of the genital or anal opening of  
194 the child by any part or parts of the human body other than the genitals or mouth.

195 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of  
196 imprisonment of:

197 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and  
198 which may be for life;

199 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact  
200 finds that during the course of the commission of the aggravated sexual abuse of a child the  
201 defendant caused serious bodily injury to another; or

202 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
203 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous  
204 sexual offense.

205 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a  
206 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and  
207 states the reasons for this finding on the record, the court may impose a term of imprisonment  
208 of not less than:

209 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

210 (b) for purposes of Subsection (5)(a) or (b):

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

212 (ii) six years and which may be for life.

213 (7) The provisions of Subsection (6) do not apply when [~~a person~~] an individual is  
214 sentenced under Subsection (5)(c).

215 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18  
216 years of age at the time of the offense.

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

218 Section 5. Section 76-5-412 is amended to read:

219 **76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions**

220 **-- Penalties -- Defenses.**

221 (1) As used in this section:

222 (a) "Actor" means:

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

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

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

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

228 (b) "Person in custody" means [~~a person~~] an individual, either an adult 18 years of age  
229 or older, or a minor younger than 18 years of age, who is:

230 (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the  
231 custody of the Department of Corrections created under Section 64-13-2, but who is being  
232 housed at the Utah State Hospital established under Section 62A-15-601 or other medical  
233 facility;

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

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

237 (c) "Private provider or contractor" means any person or entity that contracts with the  
238 Department of Corrections or with a county jail to provide services or functions that are part of  
239 the operation of the Department of Corrections or a county jail under state or local law.

240 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts  
241 under Subsection (3):

242 (i) under circumstances not amounting to commission of, or an attempt to commit, an



243 offense under Subsection (6); and

244 (ii) (A) the actor knows that the individual is a person in custody; or

245 (B) a reasonable person in the actor's position should have known under the  
246 circumstances that the individual was a person in custody.

247 (b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody  
248 is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

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

252 (3) Acts referred to in Subsection (2)(a) are:

253 (a) having sexual intercourse with a person in custody;

254 (b) engaging in any sexual act with a person in custody involving the genitals of one  
255 [person] individual and the mouth or anus of another [person] individual, regardless of the sex  
256 of either participant; or

257 (c) causing the penetration, however slight, of the genital or anal opening of a person in  
258 custody by any foreign object, substance, instrument, or device, including a part of the human  
259 body, with the intent to cause substantial emotional or bodily pain to any [person] individual,  
260 regardless of the sex of any participant.

261 (4) (a) An actor commits custodial sexual misconduct if the actor commits any of the  
262 acts under Subsection (5):

263 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
264 offense under Subsection (6); and

265 (ii) (A) the actor knows that the individual is a person in custody; or

266 (B) a reasonable person in the actor's position should have known under the  
267 circumstances that the individual was a person in custody.

268 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in  
269 custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree  
270 felony.

271 (c) If the act committed under this Subsection (4) amounts to an offense subject to a  
272 greater penalty under another provision of state law than is provided under this Subsection (4),  
273 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

274 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with  
275 the intent to cause substantial emotional or bodily pain to any [person] individual or with the  
276 intent to arouse or gratify the sexual desire of any [person] individual, regardless of the sex of  
277 any participant:

- 278 (a) touching the anus, buttocks, or any part of the genitals of a person in custody; or
- 279 (b) touching the breast of a female person in custody[;];
- 280 [~~(c) otherwise taking indecent liberties with a person in custody; or~~]
- 281 [~~(d) causing a person in custody to take indecent liberties with the actor or another~~
- 282 ~~person.]~~

283 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

- 284 (a) Section 76-5-401, unlawful sexual activity with a minor;
- 285 (b) Section 76-5-402, rape;
- 286 (c) Section 76-5-402.1, rape of a child;
- 287 (d) Section 76-5-402.2, object rape;
- 288 (e) Section 76-5-402.3, object rape of a child;
- 289 (f) Section 76-5-403, forcible sodomy;
- 290 (g) Section 76-5-403.1, sodomy on a child;
- 291 (h) Section 76-5-404, forcible sexual abuse;
- 292 (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- 293 (j) Section 76-5-405, aggravated sexual assault.

294 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations  
295 under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to  
296 commit either of these offenses, if the person in custody is younger than 18 years of age, that  
297 the actor:

- 298 (i) mistakenly believed the person in custody to be 18 years of age or older at the time  
299 of the alleged offense; or
- 300 (ii) was unaware of the true age of the person in custody.
- 301 (b) Consent of the person in custody is not a defense to any violation or attempted  
302 violation of Subsection (2) or (4).

303 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)  
304 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

305 Section 6. Section 76-5-413 is amended to read:

306 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**  
307 **services -- Definitions -- Penalties -- Defenses.**

308 (1) As used in this section:

309 (a) "Actor" means:

310 (i) ~~[a person]~~ an individual employed by the Department of Human Services, as created  
311 in Section 62A-1-102, or an employee of a private provider or contractor; or

312 (ii) ~~[a person]~~ an individual employed by the juvenile court of the state, or an employee  
313 of a private provider or contractor.

314 (b) "Department" means the Department of Human Services created in Section  
315 62A-1-102.

316 (c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

317 (d) "Private provider or contractor" means any ~~[person]~~ individual or entity that  
318 contracts with the:

319 (i) department to provide services or functions that are part of the operation of the  
320 department; or

321 (ii) juvenile court to provide services or functions that are part of the operation of the  
322 juvenile court.

323 (e) "Youth receiving state services" means ~~[a person]~~ an individual:

324 (i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

325 (A) in the custody of the department under Subsection 78A-6-117(2)(c); or

326 (B) receiving services from any division of the department if any portion of the costs of  
327 these services is covered by public money as defined in Section 76-8-401; or

328 (ii) younger than 21 years of age who is:

329 (A) in the custody of the Division of Juvenile Justice Services, or the Division of Child  
330 and Family Services; or

331 (B) under the jurisdiction of the juvenile court.

332 (2) (a) An actor commits custodial sexual relations with a youth receiving state

333 services if the actor commits any of the acts under Subsection (3):

334 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
335 offense under Subsection (6); and

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

337 (B) a reasonable person in the actor's position should have known under the

338 circumstances that the individual was a youth receiving state services.

339 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving

340 state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second

341 degree felony.

342 (c) If the act committed under this Subsection (2) amounts to an offense subject to a

343 greater penalty under another provision of state law than is provided under this Subsection (2),

344 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

345 (3) Acts referred to in Subsection (2)(a) are:

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

347 (b) engaging in any sexual act with a youth receiving state services involving the

348 genitals of one [person] individual and the mouth or anus of another [person] individual,

349 regardless of the sex of either participant; or

350 (c) causing the penetration, however slight, of the genital or anal opening of a youth

351 receiving state services by any foreign object, substance, instrument, or device, including a part

352 of the human body, with the intent to cause substantial emotional or bodily pain to any [person]

353 individual, regardless of the sex of any participant or with the intent to arouse or gratify the

354 sexual desire of any [person] individual, regardless of the sex of any participant.

355 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state

356 services if the actor commits any of the acts under Subsection (5):

357 (i) under circumstances not amounting to commission of, or an attempt to commit, an

358 offense under Subsection (6); and

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

360 (B) a reasonable person in the actor's position should have known under the

361 circumstances that the individual was a youth receiving state services.

362 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth

363 receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a

364 third degree felony.

365 (c) If the act committed under this Subsection (4) amounts to an offense subject to a

366 greater penalty under another provision of state law than is provided under this Subsection (4),

367 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

368 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with  
369 the intent to cause substantial emotional or bodily pain to any [person] individual or with the  
370 intent to arouse or gratify the sexual desire of any [person] individual, regardless of the sex of  
371 any participant:

372 (a) touching the anus, buttocks, or any part of the genitals of a youth receiving state  
373 services; or

374 (b) touching the breast of a female youth receiving state services[;].

375 [~~(c) otherwise taking indecent liberties with a youth receiving state services; or]~~

376 [~~(d) causing a youth receiving state services to take indecent liberties with the actor or~~  
377 ~~another person.~~]

378 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

379 (a) Section 76-5-401, unlawful sexual activity with a minor;

380 (b) Section 76-5-402, rape;

381 (c) Section 76-5-402.1, rape of a child;

382 (d) Section 76-5-402.2, object rape;

383 (e) Section 76-5-402.3, object rape of a child;

384 (f) Section 76-5-403, forcible sodomy;

385 (g) Section 76-5-403.1, sodomy on a child;

386 (h) Section 76-5-404, forcible sexual abuse;

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

388 (j) Section 76-5-405, aggravated sexual assault.

389 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations  
390 with a youth receiving state services under Subsection (2) or custodial sexual misconduct with  
391 a youth receiving state services under Subsection (4), or an attempt to commit either of these  
392 offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

393 (i) mistakenly believed the youth receiving state services to be 18 years of age or older  
394 at the time of the alleged offense; or

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

396 (b) Consent of the youth receiving state services is not a defense to any violation or  
397 attempted violation of Subsection (2) or (4).

398 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)  
399 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

400 Section 7. Section 78A-6-105 is amended to read:

401 **78A-6-105. Definitions.**

402 As used in this chapter:

403 (1) (a) "Abuse" means:

404 (i) (A) nonaccidental harm of a child;

405 (B) threatened harm of a child;

406 (C) sexual exploitation;

407 (D) sexual abuse; or

408 (E) human trafficking of a child in violation of Section 76-5-308.5; or

409 (ii) that a child's natural parent:

410 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
411 child;

412 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
413 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

414 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
415 recklessly causing the death of another parent of the child.

416 (b) "Abuse" does not include:

417 (i) reasonable discipline or management of a child, including withholding privileges;

418 (ii) conduct described in Section 76-2-401; or

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

420 (A) in self-defense;

421 (B) in defense of others;

422 (C) to protect the child; or

423 (D) to remove a weapon in the possession of a child for any of the reasons described in  
424 Subsections (1)(b)(iii)(A) through (C).

425 (2) "Abused child" means a child who has been subjected to abuse.

426 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
427 alleged in the petition have been proved. A finding of not competent to proceed pursuant to  
428 Section 78A-6-1302 is not an adjudication.

429 (4) "Adult" means [~~a person~~] an individual 18 years of age or over, except that [~~a~~  
430 ~~person~~] an individual 18 years or over under the continuing jurisdiction of the juvenile court  
431 pursuant to Section 78A-6-120 shall be referred to as a minor.

432 (5) "Board" means the Board of Juvenile Court Judges.

433 (6) "Child" means [~~a person~~] an individual under 18 years of age.

434 (7) "Child placement agency" means:

435 (a) a private agency licensed to receive a child for placement or adoption under this  
436 code; or

437 (b) a private agency that receives a child for placement or adoption in another state,  
438 which agency is licensed or approved where such license or approval is required by law.

439 (8) "Clandestine laboratory operation" means the same as that term is defined in  
440 Section 58-37d-3.

441 (9) "Commit" means, unless specified otherwise:

442 (a) with respect to a child, to transfer legal custody; and

443 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

444 (10) "Court" means the juvenile court.

445 (11) "Criminogenic risk factors" means evidence-based factors that are associated with  
446 a minor's likelihood of reoffending.

447 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if  
448 committed by an adult.

449 (13) "Dependent child" includes a child who is homeless or without proper care  
450 through no fault of the child's parent, guardian, or custodian.

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

453 (15) "Detention" means home detention and secure detention as defined in Section  
454 62A-7-101 for the temporary care of a minor who requires secure custody in a physically  
455 restricting facility:

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

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

458 (16) "Detention risk assessment tool" means an evidence-based tool established under  
459 Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in

460 court or reoffending pre-adjudication and designed to assist in making detention  
461 determinations.

462 (17) "Division" means the Division of Child and Family Services.

463 (18) "Evidence-based" means a program or practice that has had multiple randomized  
464 control studies or a meta-analysis demonstrating that the program or practice is effective for a  
465 specific population or has been rated as effective by a standardized program evaluation tool.

466 (19) "Formal probation" means a minor is under field supervision by the probation  
467 department or other agency designated by the court and subject to return to the court in  
468 accordance with Section 78A-6-123 on and after July 1, 2018.

469 (20) "Formal referral" means a written report from a peace officer or other person  
470 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
471 case must be reviewed.

472 (21) "Group rehabilitation therapy" means psychological and social counseling of one  
473 or more ~~[persons]~~ individuals in the group, depending upon the recommendation of the  
474 therapist.

475 (22) "Guardianship of the person" includes the authority to consent to:

476 (a) marriage;

477 (b) enlistment in the armed forces;

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

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

480 (23) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

481 (24) "Harm" means:

482 (a) physical or developmental injury or damage;

483 (b) emotional damage that results in a serious impairment in the child's growth,  
484 development, behavior, or psychological functioning;

485 (c) sexual abuse; or

486 (d) sexual exploitation.

487 (25) (a) "Incest" means engaging in sexual intercourse with ~~[a person]~~ an individual  
488 whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,  
489 aunt, nephew, niece, or first cousin.

490 (b) The relationships described in Subsection (25)(a) include:



- 491 (i) blood relationships of the whole or half blood, without regard to legitimacy;
- 492 (ii) relationships of parent and child by adoption; and
- 493 (iii) relationships of stepparent and stepchild while the marriage creating the
- 494 relationship of a stepparent and stepchild exists.

495 (26) "Intake probation" means a period of court monitoring that does not include field  
496 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to  
497 return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

498 (27) "Intellectual disability" means:

499 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or  
500 below on an individually administered IQ test, for infants, a clinical judgment of significantly  
501 subaverage intellectual functioning;

502 (b) concurrent deficits or impairments in present adaptive functioning, the [person's]  
503 individual's effectiveness in meeting the standards expected for the [person's] individual's age  
504 by the [person's] individual's cultural group, in at least two of the following areas:  
505 communication, self-care, home living, social/interpersonal skills, use of community resources,  
506 self-direction, functional academic skills, work, leisure, health, and safety; and

507 (c) the onset is before the [person] individual reaches the age of 18 years.

508 (28) "Legal custody" means a relationship embodying the following rights and duties:

509 (a) the right to physical custody of the minor;

510 (b) the right and duty to protect, train, and discipline the minor;

511 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
512 medical care;

513 (d) the right to determine where and with whom the minor shall live; and

514 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

515 (29) "Material loss" means an uninsured:

516 (a) property loss;

517 (b) out-of-pocket monetary loss;

518 (c) lost wages; or

519 (d) medical expenses.

520 (30) "Mental disorder" means a serious emotional and mental disturbance that severely  
521 limits a minor's development and welfare over a significant period of time.

522 (31) "Minor" means:

523 (a) a child; or

524 (b) ~~[a person]~~ an individual who is:

525 (i) at least 18 years of age and younger than 21 years of age; and

526 (ii) under the jurisdiction of the juvenile court.

527 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or  
528 families of minors experiencing behavioral health or psychiatric emergencies.

529 (33) "Molestation" means that ~~[a person]~~ an individual, with the intent to arouse or  
530 gratify the sexual desire of any ~~[person:(a)]~~ individual touches the anus ~~[or any part of the~~  
531 ~~genitals of a child;], buttocks, or genitalia of any child, or the breast of a female child.~~

532 ~~[(b) takes indecent liberties with a child; or]~~

533 ~~[(c) causes a child to take indecent liberties with the perpetrator or another.]~~

534 (34) "Natural parent" means a minor's biological or adoptive parent, and includes the  
535 minor's noncustodial parent.

536 (35) (a) "Neglect" means action or inaction causing:

537 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
538 Relinquishment of a Newborn Child;

539 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,  
540 guardian, or custodian;

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

544 (iv) a child to be at risk of being neglected or abused because another child in the same  
545 home is neglected or abused; or

546 (v) abandonment of a child through an unregulated custody transfer.

547 (b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii),  
548 means that, after receiving a notice of compulsory education violation under Section

549 [53A-11-101.5](#), the parent or guardian fails to make a good faith effort to ensure that the child  
550 receives an appropriate education.

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

553 (d) (i) Notwithstanding Subsection (35)(a), a health care decision made for a child by  
554 the child's parent or guardian does not constitute neglect unless the state or other party to the  
555 proceeding shows, by clear and convincing evidence, that the health care decision is not  
556 reasonable and informed.

557 (ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising  
558 the right to obtain a second health care opinion and from pursuing care and treatment pursuant  
559 to the second health care opinion, as described in Section [78A-6-301.5](#).

560 (36) "Neglected child" means a child who has been subjected to neglect.

561 (37) "Nonjudicial adjustment" means closure of the case by the assigned probation  
562 officer without judicial determination upon the consent in writing of:

563 (a) the assigned probation officer; and

564 (b) (i) the minor; or

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

566 (38) "Not competent to proceed" means that a minor, due to a mental disorder,  
567 intellectual disability, or related condition as defined, lacks the ability to:

568 (a) understand the nature of the proceedings against them or of the potential disposition  
569 for the offense charged; or

570 (b) consult with counsel and participate in the proceedings against them with a  
571 reasonable degree of rational understanding.

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

573 (40) "Probation" means a legal status created by court order following an adjudication  
574 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is  
575 permitted to remain in the minor's home under prescribed conditions.

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

580 (42) "Related condition" means a condition closely related to intellectual disability in  
581 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah  
582 Administrative Code.

583 (43) (a) "Residual parental rights and duties" means those rights and duties remaining

584 with the parent after legal custody or guardianship, or both, have been vested in another person  
585 or agency, including:

- 586 (i) the responsibility for support;
- 587 (ii) the right to consent to adoption;
- 588 (iii) the right to determine the child's religious affiliation; and
- 589 (iv) the right to reasonable parent-time unless restricted by the court.

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

- 592 (i) marriage;
- 593 (ii) enlistment; and
- 594 (iii) major medical, surgical, or psychiatric treatment.

595 (44) "Secure facility" means any facility operated by or under contract with the  
596 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for  
597 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection  
598 [78A-6-117\(2\)\(d\)](#).

599 (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a  
600 child.

601 (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
602 child.

603 (47) "Sexual abuse" means:

604 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an  
605 adult directed towards a child;

606 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation  
607 committed by a child towards another child if:

- 608 (i) there is an indication of force or coercion;
- 609 (ii) the children are related, as described in Subsection (25);
- 610 (iii) there have been repeated incidents of sexual contact between the two children,  
611 unless the children are 14 years of age or older; or

612 (iv) there is a disparity in chronological age of four or more years between the two  
613 children; or

614 (c) engaging in any conduct with a child that would constitute an offense under any of

615 the following, regardless of whether the [person] individual who engages in the conduct is  
616 actually charged with, or convicted of, the offense:

617 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the  
618 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

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

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

621 (iv) lewdness, Section 76-9-702;

622 (v) sexual battery, Section 76-9-702.1;

623 (vi) lewdness involving a child, Section 76-9-702.5; or

624 (vii) voyeurism, Section 76-9-702.7.

625 (48) "Sexual exploitation" means knowingly:

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

627 (i) pose in the nude for the purpose of sexual arousal of any [person] individual; or

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

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

632 (i) in the nude, for the purpose of sexual arousal of any [person] individual; or

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

634 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,  
635 sexual exploitation of a minor, regardless of whether the [person] individual who engages in  
636 the conduct is actually charged with, or convicted of, the offense.

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

639 (50) "Status offense" means a violation of the law that would not be a violation but for  
640 the age of the offender.

641 (51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or  
642 substances.

643 (52) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

644 (53) "Supported" means the same as that term is defined in Section 62A-4a-101.

645 (54) "Termination of parental rights" means the permanent elimination of all parental

646 rights and duties, including residual parental rights and duties, by court order.

647 (55) "Therapist" means:

648 (a) [~~a person~~] an individual employed by a state division or agency for the purpose of  
649 conducting psychological treatment and counseling of a minor in its custody; or

650 (b) any other [~~person~~] individual licensed or approved by the state for the purpose of  
651 conducting psychological treatment and counseling.

652 (56) "Unregulated custody transfer" means the placement of a child:

653 (a) with [~~a person~~] an individual who is not the child's parent, step-parent, grandparent,  
654 adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and  
655 with whom the child is familiar, or a member of the child's federally recognized tribe;

656 (b) with the intent of severing the child's existing parent-child or guardian-child  
657 relationship; and

658 (c) without taking:

659 (i) reasonable steps to ensure the safety of the child and permanency of the placement;  
660 and

661 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or  
662 guardianship to the [~~person~~] individual taking custody of the child.

663 (57) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

664 (58) "Validated risk and needs assessment" means an evidence-based tool that assesses  
665 a minor's risk of reoffending and a minor's criminogenic needs.

666 (59) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

667 Section 8. Section **78B-2-308** is amended to read:

668 **78B-2-308. Legislative findings -- Civil actions for sexual abuse of a child --**

669 **Window for revival of time barred claims.**

670 (1) The Legislature finds that:

671 (a) child sexual abuse is a crime that hurts the most vulnerable in our society and  
672 destroys lives;

673 (b) research over the last 30 years has shown that it takes decades for children and  
674 adults to pull their lives back together and find the strength to face what happened to them;

675 (c) often the abuse is compounded by the fact that the perpetrator is a member of the  
676 victim's family and when such abuse comes out, the victim is further stymied by the family's

677 wish to avoid public embarrassment;

678 (d) even when the abuse is not committed by a family member, the perpetrator is rarely  
679 a stranger and, if in a position of authority, often brings pressure to bear on the victim to ensure  
680 silence;

681 (e) in 1992, when the Legislature enacted the statute of limitations requiring victims to  
682 sue within four years of majority, society did not understand the long-lasting effects of abuse  
683 on the victim and that it takes decades for the healing necessary for a victim to seek redress;

684 (f) the Legislature, as the policy-maker for the state, may take into consideration  
685 advances in medical science and understanding in revisiting policies and laws shown to be  
686 harmful to the citizens of this state rather than beneficial; and

687 (g) the Legislature has the authority to change old laws in the face of new information,  
688 and set new policies within the limits of due process, fairness, and justice.

689 (2) As used in this section:

690 (a) "Child" means ~~[a person]~~ an individual under 18 years of age.

691 (b) "Discovery" means when ~~[a person]~~ a victim knows or reasonably should know that  
692 the injury or illness was caused by the intentional or negligent sexual abuse.

693 (c) "Injury or illness" means either a physical injury or illness or a psychological injury  
694 or illness. A psychological injury or illness need not be accompanied by physical injury or  
695 illness.

696 (d) "Molestation" means that ~~[a person]~~ an individual, with the intent to arouse or  
697 gratify the sexual desire of any ~~[person:(i)]~~ individual touches the anus, buttocks, or genitalia of  
698 any child, or the breast of a female child[;].

699 ~~[(ii) takes indecent liberties with a child; or]~~

700 ~~[(iii) causes a child to take indecent liberties with the perpetrator or another person.]~~

701 (e) "Negligently" means a failure to act to prevent the child sexual abuse from further  
702 occurring or to report the child sexual abuse to law enforcement when the adult who could act  
703 knows or reasonably should know of the child sexual abuse and is the victim's parent,  
704 stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister,  
705 uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any ~~[person]~~  
706 individual cohabiting in the child's home.

707 (f) "Perpetrator" means an individual who has committed an act of sexual abuse.

708 (g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or  
709 molestation by an adult directed towards a child.

710 (h) "Victim" means an individual who was intentionally or negligently sexually abused.  
711 It does not include individuals whose claims are derived through another individual who was  
712 sexually abused.

713 (3) (a) A victim may file a civil action against a perpetrator for intentional or negligent  
714 sexual abuse suffered as a child at any time.

715 (b) A victim may file a civil action against a non-perpetrator for intentional or  
716 negligent sexual abuse suffered as a child:

717 (i) within four years after the ~~[person]~~ individual attains the age of 18 years; or

718 (ii) if a victim discovers sexual abuse only after attaining the age of 18 years, that  
719 ~~[person]~~ individual may bring a civil action for such sexual abuse within four years after  
720 discovery of the sexual abuse, whichever period expires later.

721 (4) The victim need not establish which act in a series of continuing sexual abuse  
722 incidents caused the injury complained of, but may compute the date of discovery from the date  
723 of discovery of the last act by the same perpetrator which is part of a common scheme or plan  
724 of sexual abuse.

725 (5) The knowledge of a custodial parent or guardian may not be imputed to ~~[a person]~~  
726 an individual under the age of 18 years.

727 (6) A civil action may be brought only against a living ~~[person]~~ individual who:

728 (a) intentionally perpetrated the sexual abuse;

729 (b) would be criminally responsible for the sexual abuse in accordance with Section  
730 76-2-202; or

731 (c) negligently permitted the sexual abuse to occur.

732 (7) A civil action against ~~[a person listed]~~ an individual described in Subsection (6)(a)  
733 or (b) for sexual abuse that was time barred as of July 1, 2016, may be brought within 35 years  
734 of the victim's 18th birthday, or within three years of the effective date of this Subsection (7),  
735 whichever is longer.

736 (8) A civil action may not be brought as provided in Subsection (7) for:

737 (a) any claim that has been litigated to finality on the merits in a court of competent  
738 jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the



739 expiration of the statute of limitations does not constitute a claim that has been litigated to  
740 finality on the merits; and

741 (b) any claim where a written settlement agreement was entered into between a victim  
742 and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress,  
743 or unconscionability. There is a rebuttable presumption that a settlement agreement signed by  
744 the victim when the victim was not represented by an attorney admitted to practice law in this  
745 state at the time of the settlement was the result of fraud, duress, or unconscionability.