

HB0077S04 compared with HB0077S03

~~text~~ shows text that was in HB0077S03 but was deleted in HB0077S04.

Inserted text shows text that was not in HB0077S03 but was inserted into HB0077S04.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

LONG TITLE

General Description:

This bill ~~removes the term "indecent liberties" from~~ modifies sexual offenses in the Utah Code.

Highlighted Provisions:

This bill:

- ▶ ~~removes the term "~~defines "takes indecent liberties" ~~from~~in certain sexual offenses;
- ▶ modifies certain sexual offenses; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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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

76-9-702, as last amended by Laws of Utah 2015, Chapter 210

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

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

ENACTS:

76-5-416, Utah Code Annotated 1953

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

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

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

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

(2) ~~[A person]~~ An individual commits sexual abuse of a minor if the ~~[person]~~ individual is four years or more older than the minor or holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the ~~[person]~~ individual touches the anus, buttocks, pubic area, or any part of the genitals of the minor, or touches the breast of a female minor, ~~ff~~ or otherwise takes indecent liberties with the minor, ~~[or causes a minor to take indecent liberties with the actor or another person,]~~ with the intent to

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cause substantial emotional or bodily pain to any [person] individual or with the intent to arouse or gratify the sexual desire of any [person] individual regardless of the sex of any participant.

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

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

(i) is 18 years of age or older;

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

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

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

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

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

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

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

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

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

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

(i) has sexual intercourse with the minor;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is 18 years of age or older;

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

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

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

76-5-404. Forcible sexual abuse.

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

(2) Forcible sexual abuse is:

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

(b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.

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

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

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

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

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

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

(1) As used in this section:

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

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

(c) "Position of special trust" means:

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- (i) an adoptive parent;
- (ii) an athletic manager who is an adult;
- (iii) an aunt;
- (iv) a babysitter;
- (v) a coach;
- (vi) a cohabitant of a parent if the cohabitant is an adult;
- (vii) a counselor;
- (viii) a doctor or physician;
- (ix) an employer;
- (x) a foster parent;
- (xi) a grandparent;
- (xii) a legal guardian;
- (xiii) a natural parent;
- (xiv) a recreational leader who is an adult;
- (xv) a religious leader;
- (xvi) a sibling or a stepsibling who is an adult;
- (xvii) a scout leader who is an adult;
- (xviii) a stepparent;
- (xix) a teacher or any other ~~[person]~~ individual employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;
- (xx) an uncle;
- (xxi) a youth leader who is an adult; or
- (xxii) any ~~[person]~~ individual in a position of authority, other than those ~~[persons]~~ individuals listed in Subsections (1)(c)(i) through (xxi), which enables the ~~[person]~~ individual to exercise undue influence over the child.

(2) ~~[A person]~~ An individual commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of any child, the breast of a female child, ~~ff~~ or otherwise takes indecent liberties with a child, ~~[or causes a child to take indecent liberties with the actor or another]~~ with intent to cause substantial emotional or bodily pain to any ~~[person]~~ individual or with the intent to arouse or

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gratify the sexual desire of any [~~person~~] individual regardless of the sex of any participant.

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

(4) [~~A person~~] An individual commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

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

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

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

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

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

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

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

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and

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which may be for life;

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

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

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

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

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

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

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

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

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

(9) Imprisonment under this section is mandatory in accordance with Section 76-3-406. Section 5. Section **76-5-412** is amended to read:

76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Actor" means:

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

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

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

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

(b) "Person in custody" means [~~a person~~] an individual, either an adult 18 years of age

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or older, or a minor younger than 18 years of age, who is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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regardless of the sex of any participant.

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

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

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

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

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

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

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

(a) touching the anus, buttocks, pubic area, or any part of the genitals of a person in custody; ~~or~~

(b) touching the breast of a female person in custody ~~or~~; ~~or~~ or

~~or~~ (c) otherwise taking indecent liberties with a person in custody ~~or~~.

~~[(d) causing a person in custody to take indecent liberties with the actor or another person.]~~

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

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

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

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

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

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

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

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- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

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

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

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

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

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

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

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

(1) As used in this section:

(a) "Actor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

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

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

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

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

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

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

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

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one [~~person~~] individual and the mouth or anus of another [~~person~~] individual, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part

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of the human body, with the intent to cause substantial emotional or bodily pain to any [person] individual, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any [person] individual, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

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

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

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

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

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

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

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

(b) touching the breast of a female youth receiving state services ~~or~~; ~~or~~ or

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

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

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

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

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

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

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

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- (e) Section 76-5-402.3, object rape of a child;
- (f) Section 76-5-403, forcible sodomy;
- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

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

- (i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the youth receiving state services.
- (b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

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

Section 7. Section 76-5-416 is enacted to read:

76-5-416. Indecent liberties -- Definition.

As used in this part, "takes indecent liberties" means:

- (1) touching the actor's genitals, anus, buttocks, pubic area, or female breast against any part of the body of the victim;
- (2) causing the victim to touch the actor's or another's genitals, pubic area, anus, buttocks, or female breast;
- (3) simulating or pretending to engage in sexual intercourse with the victim, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or
- (4) causing the victim to simulate or pretend to engage in sexual intercourse with the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.

Section 8. Section 76-9-702 is amended to read:

76-9-702. Lewdness.

- (1) A person is guilty of lewdness if the person under circumstances not amounting to

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rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, sexual abuse of a minor, unlawful sexual conduct with a 16- or 17-year-old, custodial sexual relations or misconduct under Sections 76-5-412 or 76-5-413, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

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

(c) masturbates; or

(d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

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

(ii) the person has been previously convicted two or more times of violating Subsection (1); or

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(17), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Section ~~77~~9. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

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(1) (a) "Abuse" means:

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

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

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

(ii) that a child's natural parent:

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

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

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

(b) "Abuse" does not include:

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

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

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

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

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

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

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

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

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

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

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(7) "Child placement agency" means:

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

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

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

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

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

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

(10) "Court" means the juvenile court.

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

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

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

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

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

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

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

(16) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

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

(18) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a

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specific population or has been rated as effective by a standardized program evaluation tool.

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

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

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

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

- (a) marriage;
- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another person, agency, or institution.

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

(24) "Harm" means:

- (a) physical or developmental injury or damage;
- (b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;
- (c) sexual abuse; or
- (d) sexual exploitation.

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

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

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

(26) "Intake probation" means a period of court monitoring that does not include field

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supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(27) "Intellectual disability" means:

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

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

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

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

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

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

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

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

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

(29) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss;

(c) lost wages; or

(d) medical expenses.

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

(31) "Minor" means:

(a) a child; or

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

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

(ii) under the jurisdiction of the juvenile court.

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

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

~~— [(b)]~~ takes indecent liberties with a child ~~;~~ or as defined in Section 76-5-416.

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

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

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

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

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

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

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

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

(b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

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

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

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

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

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

(a) the assigned probation officer; and

(b) (i) the minor; or

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

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

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

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

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

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

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

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

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

(i) the responsibility for support;

(ii) the right to consent to adoption;

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- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

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

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

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

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

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

(47) "Sexual abuse" means:

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

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

- (i) there is an indication of force or coercion;
- (ii) the children are related, as described in Subsection (25);
- (iii) there have been repeated incidents of sexual contact between the two children,

unless the children are 14 years of age or older; or

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

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the ~~[person]~~ individual who engages in the conduct is actually charged with, or convicted of, the offense:

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

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- (ii) child bigamy, Section 76-7-101.5;
- (iii) incest, Section 76-7-102;
- (iv) lewdness, Section 76-9-702;
- (v) sexual battery, Section 76-9-702.1;
- (vi) lewdness involving a child, Section 76-9-702.5; or
- (vii) voyeurism, Section 76-9-702.7.

(48) "Sexual exploitation" means knowingly:

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

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

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

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

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

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

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

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

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

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

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

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

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

(55) "Therapist" means:

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

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

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

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

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

(c) without taking:

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

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

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

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

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

Section ~~8~~10. Section **78B-2-308** is amended to read:

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

Window for revival of time barred claims.

(1) The Legislature finds that:

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

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

(c) often the abuse is compounded by the fact that the perpetrator is a member of the victim's family and when such abuse comes out, the victim is further stymied by the family's wish to avoid public embarrassment;

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

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

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

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

(2) As used in this section:

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

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

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

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

~~— [;(ii)]~~ or takes indecent liberties with a child~~;~~; as defined in Section 76-5-416.

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

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

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

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

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

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sexually abused.

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

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

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

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

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

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

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

(a) intentionally perpetrated the sexual abuse;

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

(c) negligently permitted the sexual abuse to occur.

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

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

(a) any claim that has been litigated to finality on the merits in a court of competent jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the expiration of the statute of limitations does not constitute a claim that has been litigated to finality on the merits; and

(b) any claim where a written settlement agreement was entered into between a victim and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress,

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or unconscionability. There is a rebuttable presumption that a settlement agreement signed by the victim when the victim was not represented by an attorney admitted to practice law in this state at the time of the settlement was the result of fraud, duress, or unconscionability.