

**CRIMINAL CODE TASK FORCE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Karen Mayne

---

---

**LONG TITLE**

**Committee Note:**

The Criminal Code Evaluation Task Force recommended this bill.

Membership: 6 legislators 9 non-legislators

Legislative Vote: 6 voting for 0 voting against 0 absent

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 5 absent

**General Description:**

This bill modifies criminal offenses and penalties in the Utah Code.

**Highlighted Provisions:**

This bill:

► modifies the definition of "health professional" as the term relates to certain sexual offenses;

► modifies certain criminal offenses and penalties relating to:

- dealing in material harmful to minors between a young adult and adolescent;
- obstruction of alcoholic beverage control investigations;
- registration as a sex offender;
- rendering a dead body unavailable for postmortem investigation;
- repeated violations of the Minimum Wage Act; and
- theft;

► repeals the criminal offenses of adultery and sodomy;



- 28           ▶ provides immunity from prosecution for the offenses of prostitution and sexual
- 29 solicitation under certain circumstances; and
- 30           ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 **AMENDS:**

- 37           **26-2-18.5**, as enacted by Laws of Utah 2009, Chapter 223
- 38           **31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283
- 39           **32B-4-505**, as enacted by Laws of Utah 2010, Chapter 276
- 40           **34-40-204**, as last amended by Laws of Utah 1997, Chapter 375
- 41           **53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3
- 42           **62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322
- 43           **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397
- 44           **76-5-403**, as last amended by Laws of Utah 2013, Chapter 81
- 45           **76-5-404**, as last amended by Laws of Utah 2018, Chapter 192
- 46           **76-5-406**, as last amended by Laws of Utah 2018, Chapter 176
- 47           **76-5-407**, as last amended by Laws of Utah 2000, Chapter 128
- 48           **76-6-412**, as last amended by Laws of Utah 2018, Chapter 265
- 49           **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282
- 50           **76-7-305**, as last amended by Laws of Utah 2018, Chapter 282
- 51           **76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345
- 52           **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433
- 53           **76-10-1313**, as last amended by Laws of Utah 2018, Chapter 308
- 54           **77-41-107**, as last amended by Laws of Utah 2015, Chapter 210

55 **REPEALS:**

- 56           **76-7-103**, as last amended by Laws of Utah 1991, Chapter 241



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

59 Section 1. Section **26-2-18.5** is amended to read:

60 **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

61 (1) As used in this section:

62 (a) "Medical examiner" [~~is as~~] means the same as that term is defined in Section

63 26-4-2.

64 (b) "Unavailable for postmortem investigation" [~~is as~~] means the same as that term is

65 defined in Section 26-4-2.

66 (2) It is unlawful for a person to engage in any conduct that makes a dead body  
67 unavailable for postmortem investigation, unless, before engaging in that conduct, the person  
68 obtains a permit from the medical examiner to render the dead body unavailable for  
69 postmortem investigation, under Section 26-4-29[-], if the person intends to make the body  
70 unavailable for postmortem investigation.

71 (3) A person who violates Subsection (2) is guilty of a [~~class B misdemeanor~~] third  
72 degree felony.

73 (4) If a person engages in conduct that constitutes both a violation of this section and a  
74 violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 [~~supersede~~]  
75 supersede the provisions and penalties of this section.

76 Section 2. Section **31A-22-726** is amended to read:

77 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**  
78 **insurance exchange.**

79 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

80 (a) that is necessary to avert:

81 (i) the death of the woman on whom the abortion is performed; or

82 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

83 of the woman on whom the abortion is performed;

84 (b) of a fetus that has a defect that is documented by a physician or physicians to be

85 uniformly diagnosable and uniformly lethal; or

86 (c) where the woman is pregnant as a result of:

87 (i) rape, as described in Section 76-5-402;

88 (ii) rape of a child, as described in Section 76-5-402.1; or

89 (iii) incest, as described in Subsection 76-5-406[(10)] (2)(j) or Section 76-7-102.

90 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the  
91 coverage is a type of permitted abortion coverage.

92 [~~(3) A person may not offer a health benefit plan that provides coverage for an abortion  
93 in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform  
94 Act, unless the coverage is a type of permitted abortion coverage.~~]

95 [(4)] (3) A person may not offer a health benefit plan that provides coverage for an  
96 abortion in a health insurance exchange created under the federal Patient Protection and  
97 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion  
98 coverage.

99 Section 3. Section **32B-4-505** is amended to read:

100 **32B-4-505. Obstructing a search, official proceeding, or investigation.**

101 (1) A person who is in the premises or has charge over premises may not refuse or fail  
102 to admit to the premises or obstruct the entry of any of the following who demands entry when  
103 acting under this title:

- 104 (a) a commissioner;
- 105 (b) an authorized representative of the commission or department; or
- 106 (c) a law enforcement officer.

107 (2) A person who is in the premises or has charge of the premises may not interfere  
108 with any of the following who is conducting an investigation under this title at the premises:

- 109 (a) a commissioner;
- 110 (b) an authorized representative of the commission or department; or
- 111 (c) a law enforcement officer.

112 (3) A person is guilty of a [~~second degree felony~~] class A misdemeanor if, believing  
113 that an official proceeding or investigation is pending or about to be instituted under this title,  
114 that person:

- 115 (a) alters, destroys, conceals, or removes a record with a purpose to impair [its] the  
116 record's verity or availability in the proceeding or investigation; or
- 117 (b) makes, presents, or uses anything that the person knows to be false with a purpose  
118 to deceive any of the following who may be engaged in a proceeding or investigation under this  
119 title:

- 120 (i) a commissioner;

- 121 (ii) an authorized representative of the commission or department;
- 122 (iii) a law enforcement officer; or
- 123 (iv) other person.

124 Section 4. Section **34-40-204** is amended to read:

125 **34-40-204. Criminal penalty -- Enforcement.**

126 (1) [~~(a) Repeated violation of this chapter is a class B misdemeanor.~~]

127 [~~(b) "Repeated violations" does not include~~] As used in this section, "violation"  
128 includes separate violations as to individual employees arising out of the same investigation or  
129 enforcement action.

130 (2) (a) A violation of this chapter is an infraction.

131 (b) A second violation of this chapter is a class C misdemeanor.

132 (c) A third or subsequent violation of this chapter is a class B misdemeanor.

133 [~~(2) Upon the third violation by the same employer within a three-year period, the~~]

134 (3) Upon an employer's violation of this section, the commission may prosecute a  
135 criminal action in the name of the state.

136 [~~(3)~~] (4) The county attorney, district attorney, or attorney general shall provide  
137 assistance in prosecutions under this section at the request of the commission.

138 Section 5. Section **53G-6-707** is amended to read:

139 **53G-6-707. Interstate compact students -- Inclusion in attendance count --**  
140 **Foreign exchange students -- Annual report -- Requirements for exchange student**  
141 **agencies.**

142 (1) A school district or charter school may include the following students in the  
143 district's or school's membership and attendance count for the purpose of apportionment of  
144 state money:

145 (a) a student enrolled under an interstate compact, established between the State Board  
146 of Education and the state education authority of another state, under which a student from one  
147 compact state would be permitted to enroll in a public school in the other compact state on the  
148 same basis as a resident student of the receiving state; or

149 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact  
150 on Placement of Children.

151 (2) A school district or charter school may:

152 (a) enroll foreign exchange students that do not qualify for state money; and  
153 (b) pay for the costs of those students with other funds available to the school district  
154 or charter school.

155 (3) Due to the benefits to all students of having the opportunity to become familiar  
156 with individuals from diverse backgrounds and cultures, school districts are encouraged to  
157 enroll foreign exchange students, as provided in Subsection (2), particularly in schools with  
158 declining or stable enrollments where the incremental cost of enrolling the foreign exchange  
159 student may be minimal.

160 (4) The board shall make an annual report to the Legislature on the number of  
161 exchange students and the number of interstate compact students sent to or received from  
162 public schools outside the state.

163 (5) (a) A local school board or charter school governing board shall require each  
164 approved exchange student agency to provide it with a sworn affidavit of compliance prior to  
165 the beginning of each school year.

166 (b) The affidavit shall include the following assurances:

167 (i) that the agency has complied with all applicable policies of the board;

168 (ii) that a household study, including a background check of all adult residents, has  
169 been made of each household where an exchange student is to reside, and that the study was of  
170 sufficient scope to provide reasonable assurance that the exchange student will receive proper  
171 care and supervision in a safe environment;

172 (iii) that host parents have received training appropriate to their positions, including  
173 information about enhanced criminal penalties under Subsection [76-5-406](#)~~(10)~~(2)(j) for  
174 persons who are in a position of special trust;

175 (iv) that a representative of the exchange student agency shall visit each student's place  
176 of residence at least once each month during the student's stay in Utah;

177 (v) that the agency will cooperate with school and other public authorities to ensure  
178 that no exchange student becomes an unreasonable burden upon the public schools or other  
179 public agencies;

180 (vi) that each exchange student will be given in the exchange student's native language  
181 names and telephone numbers of agency representatives and others who could be called at any  
182 time if a serious problem occurs; and

183 (vii) that alternate placements are readily available so that no student is required to  
184 remain in a household if conditions appear to exist which unreasonably endanger the student's  
185 welfare.

186 (6) (a) A local school board or charter school governing board shall provide each  
187 approved exchange student agency with a list of names and telephone numbers of individuals  
188 not associated with the agency who could be called by an exchange student in the event of a  
189 serious problem.

190 (b) The agency shall make a copy of the list available to each of its exchange students  
191 in the exchange student's native language.

192 (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school  
193 shall enroll a foreign exchange student if the foreign exchange student:

- 194 (a) is sponsored by an agency approved by the State Board of Education;
- 195 (b) attends the same school during the same time period that another student from the  
196 school is:

- 197 (i) sponsored by the same agency; and
- 198 (ii) enrolled in a school in a foreign country; and
- 199 (c) is enrolled in the school for one year or less.

200 Section 6. Section 62A-15-602 is amended to read:

201 **62A-15-602. Definitions.**

202 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of  
203 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah  
204 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part  
205 12, Essential Treatment and Intervention Act:

- 206 (1) "Adult" means an individual 18 years of age or older.
- 207 (2) "Approved treatment facility or program" means a treatment provider that meets the  
208 standards described in Subsection 62A-15-103(2)(a)(v).
- 209 (3) "Commitment to the custody of a local mental health authority" means that an adult  
210 is committed to the custody of the local mental health authority that governs the mental health  
211 catchment area where the adult resides or is found.
- 212 (4) "Community mental health center" means an entity that provides treatment and  
213 services to a resident of a designated geographical area, that operates by or under contract with

214 a local mental health authority, and that complies with state standards for community mental  
215 health centers.

216 (5) "Designated examiner" means:

217 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as  
218 specially qualified by training or experience in the diagnosis of mental or related illness; or

219 (b) a licensed mental health professional designated by the division as specially  
220 qualified by training and who has at least five years' continual experience in the treatment of  
221 mental illness.

222 (6) "Designee" means a physician who has responsibility for medical functions  
223 including admission and discharge, an employee of a local mental health authority, or an  
224 employee of a person that has contracted with a local mental health authority to provide mental  
225 health services under Section 17-43-304.

226 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered  
227 treatment at a local substance abuse authority or an approved treatment facility or program for  
228 the treatment of an adult's substance use disorder.

229 (8) "Harmful sexual conduct" means the following conduct upon an individual without  
230 the individual's consent, including the nonconsensual circumstances described in Subsections  
231 76-5-406~~[(1) through (12)]~~ (2)(a) through (l):

232 (a) sexual intercourse;

233 (b) penetration, however slight, of the genital or anal opening of the individual;

234 (c) any sexual act involving the genitals or anus of the actor or the individual and the  
235 mouth or anus of either individual, regardless of the gender of either participant; or

236 (d) any sexual act causing substantial emotional injury or bodily pain.

237 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

238 (10) "Local substance abuse authority" means the same as that term is defined in  
239 Section 62A-15-102 and described in Section 17-43-201.

240 (11) "Mental health facility" means the Utah State Hospital or other facility that  
241 provides mental health services under contract with the division, a local mental health  
242 authority, a person that contracts with a local mental health authority, or a person that provides  
243 acute inpatient psychiatric services to a patient.

244 (12) "Mental health officer" means an individual who is designated by a local mental



245 health authority as qualified by training and experience in the recognition and identification of  
246 mental illness, to:

- 247 (a) apply for and provide certification for a temporary commitment; or
- 248 (b) assist in the arrangement of transportation to a designated mental health facility.

249 (13) "Mental illness" means:

250 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,  
251 behavioral, or related functioning; or

252 (b) the same as that term is defined in:

253 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders  
254 published by the American Psychiatric Association; or

255 (ii) the current edition of the International Statistical Classification of Diseases and  
256 Related Health Problems.

257 (14) "Patient" means an individual who is:

258 (a) under commitment to the custody or to the treatment services of a local mental  
259 health authority; or

260 (b) undergoing essential treatment and intervention.

261 (15) "Physician" means an individual who is:

262 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

263 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical  
264 Practice Act.

265 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of  
266 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
267 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

268 (17) "Substantial danger" means that due to mental illness, an individual is at serious  
269 risk of:

270 (a) suicide;

271 (b) serious bodily self-injury;

272 (c) serious bodily injury because the individual is incapable of providing the basic  
273 necessities of life, including food, clothing, or shelter;

274 (d) causing or attempting to cause serious bodily injury to another individual; or

275 (e) engaging in harmful sexual conduct.

276 (18) "Treatment" means psychotherapy, medication, including the administration of  
277 psychotropic medication, or other medical treatments that are generally accepted medical or  
278 psychosocial interventions for the purpose of restoring the patient to an optimal level of  
279 functioning in the least restrictive environment.

280 Section 7. Section **76-3-406** is amended to read:

281 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**  
282 **offense, or hospitalization may not be granted.**

283 (1) Notwithstanding Sections **76-3-201** and **77-18-1** and Title 77, Chapter 16a,  
284 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section  
285 **76-5-406.5**, probation may not be granted, the execution or imposition of sentence may not be  
286 suspended, the court may not enter a judgment for a lower category of offense, and  
287 hospitalization may not be ordered, the effect of which would in any way shorten the prison  
288 sentence for ~~[any person]~~ an individual who commits a capital felony or a first degree felony  
289 involving:

290 (a) Section **76-5-202**, aggravated murder;

291 (b) Section **76-5-203**, murder;

292 (c) Section **76-5-301.1**, child kidnaping;

293 (d) Section **76-5-302**, aggravated kidnaping;

294 (e) Section **76-5-402**, rape, if the ~~[person]~~ individual is sentenced under Subsection  
295 **76-5-402(3)(b)**, (3)(c), or (4);

296 (f) Section **76-5-402.1**, rape of a child;

297 (g) Section **76-5-402.2**, object rape, if the ~~[person]~~ individual is sentenced under  
298 Subsection **76-5-402.2(1)(b)**, (1)(c), or (2);

299 (h) Section **76-5-402.3**, object rape of a child;

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

302 (j) Section **76-5-403.1**, sodomy on a child;

303 (k) Section **76-5-404**, forcible sexual abuse, if the ~~[person]~~ individual is sentenced  
304 under Subsection **76-5-404(2)(b)** or (3);

305 (l) Subsections **76-5-404.1(4)** and (5), aggravated sexual abuse of a child;

306 (m) Section **76-5-405**, aggravated sexual assault; or

307 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

308 (2) The provisions of this section do not apply if the sentencing court finds that the  
309 defendant was under the age of 18 at the time of the offense and could have been adjudicated in  
310 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the  
311 offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

312 Section 8. Section 76-5-403 is amended to read:

313 **76-5-403. Forcible sodomy.**

314 (1) ~~[A person commits sodomy when the actor engages in any sexual act with a person~~  
315 ~~who is 14 years of age or older involving the genitals of one person and mouth or anus of~~  
316 ~~another person, regardless of the sex of either participant.] As used in this section, "sodomy"~~  
317 means engaging in any sexual act with an individual who is 14 years of age or older involving  
318 the genitals of one individual and the mouth or anus of another individual, regardless of the sex  
319 of either participant.

320 (2) ~~[A person]~~ An individual commits forcible sodomy when the actor commits  
321 sodomy upon another without the other's consent.

322 ~~[(3) Sodomy is a class B misdemeanor.]~~

323 ~~[(4)]~~ (3) Forcible sodomy is a first degree felony, punishable by a term of  
324 imprisonment of:

325 (a) except as provided in Subsection ~~[(4)]~~ (3)(b) or (c), not less than five years and  
326 which may be for life;

327 (b) except as provided in Subsection ~~[(4)]~~ (3)(c) or ~~[(5)]~~ (4), 15 years and which may  
328 be for life, if the trier of fact finds that:

329 (i) during the course of the commission of the forcible sodomy the defendant caused  
330 serious bodily injury to another; or

331 (ii) at the time of the commission of the rape, the defendant was younger than 18 years  
332 of age and was previously convicted of a grievous sexual offense; or

333 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
334 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

335 ~~[(5)]~~ (4) If, when imposing a sentence under Subsection ~~[(4)]~~ (3)(b), a court finds that a  
336 lesser term than the term described in Subsection ~~[(4)]~~ (3)(b) is in the interests of justice and  
337 states the reasons for this finding on the record, the court may impose a term of imprisonment

338 of not less than:

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

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

341 ~~[(6)]~~ (5) The provisions of Subsection ~~[(5)]~~ (4) do not apply when ~~[a person]~~ an  
342 individual is sentenced under Subsection ~~[(4)]~~ (3)(a) or (c).

343 ~~[(7)]~~ (6) Imprisonment under Subsection ~~[(4)]~~ (3)(b), ~~[(4)]~~ (3)(c), or ~~[(5)]~~ (4) is  
344 mandatory in accordance with Section 76-3-406.

345 Section 9. Section 76-5-404 is amended to read:

346 **76-5-404. Forcible sexual abuse.**

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

354 (2) Forcible sexual abuse is:

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

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

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

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

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

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

369 Section 10. Section ~~76-5-406~~ is amended to read:

370 **76-5-406. Sexual offenses against the victim without consent of victim --**

371 **Circumstances.**

372 (1) As used in this section:

373 (a) "Health professional" means an individual who is licensed or who holds the  
374 individual out to be licensed, or who otherwise provides professional physical or mental health  
375 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,  
376 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,  
377 social service worker, clinical social worker, certified social worker, marriage and family  
378 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse  
379 specialist, or substance abuse counselor.

380 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
381 member of the clergy.

382 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

383 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of  
384 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a  
385 child, [~~sodomy, attempted sodomy,~~] forcible sodomy, attempted forcible sodomy, sodomy on a  
386 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,  
387 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,  
388 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the  
389 victim under any of the following circumstances:

390 ~~[(1)]~~ (a) the victim expresses lack of consent through words or conduct;

391 ~~[(2)]~~ (b) the actor overcomes the victim through the actual application of physical force  
392 or violence;

393 ~~[(3)]~~ (c) the actor is able to overcome the victim through concealment or by the  
394 element of surprise;

395 ~~[(4)]~~ ~~(a)~~ ~~(i)~~ (d) (i) the actor coerces the victim to submit by threatening to retaliate in  
396 the immediate future against the victim or any other person, and the victim perceives at the  
397 time that the actor has the ability to execute this threat; or

398 (ii) the actor coerces the victim to submit by threatening to retaliate in the future  
399 against the victim or any other person, and the victim believes at the time that the actor has the

400 ability to execute this threat;

401 ~~[(b) as used in this Subsection (4), "to retaliate" includes threats of physical force,~~  
402 ~~kidnapping, or extortion;]~~

403 ~~[(5)] (e)~~ the actor knows the victim is unconscious, unaware that the act is occurring, or  
404 physically unable to resist;

405 ~~[(6)] (f)~~ the actor knows or reasonably should know that the victim has a mental  
406 disease or defect, which renders the victim unable to:

407 ~~[(a)] (i)~~ appraise the nature of the act;

408 ~~[(b)] (ii)~~ resist the act;

409 ~~[(c)] (iii)~~ understand the possible consequences to the victim's health or safety; or

410 ~~[(d)] (iv)~~ appraise the nature of the relationship between the actor and the victim[-];

411 ~~[(7)] (g)~~ the actor knows that the victim submits or participates because the victim  
412 erroneously believes that the actor is the victim's spouse;

413 ~~[(8)] (h)~~ the actor intentionally impaired the power of the victim to appraise or control  
414 his or her conduct by administering any substance without the victim's knowledge;

415 ~~[(9)] (i)~~ the victim is younger than 14 years of age;

416 ~~[(10)] (j)~~ the victim is younger than 18 years of age and at the time of the offense the  
417 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a  
418 position of special trust in relation to the victim as defined in Section [76-5-404.1](#);

419 ~~[(11)] (k)~~ the victim is 14 years of age or older, but younger than 18 years of age, and  
420 the actor is more than three years older than the victim and entices or coerces the victim to  
421 submit or participate, under circumstances not amounting to the force or threat required under  
422 Subsection ~~[(2) or (4)] (2)(b) or (d)~~; or

423 ~~[(12)] (l)~~ the actor is a health professional or religious counselor, ~~[as those terms are~~  
424 ~~defined in this Subsection (12);]~~ the act is committed under the guise of providing professional  
425 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed  
426 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment  
427 to the extent that resistance by the victim could not reasonably be expected to have been  
428 manifested~~[-; for purposes of this Subsection (12);]~~

429 ~~[(a) "health professional" means an individual who is licensed or who holds himself or~~  
430 ~~herself out to be licensed, or who otherwise provides professional physical or mental health~~

431 ~~services, diagnosis, treatment, or counseling including, but not limited to, a physician,~~  
432 ~~osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,~~  
433 ~~social service worker, clinical social worker, certified social worker, marriage and family~~  
434 ~~therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse~~  
435 ~~specialist, or substance abuse counselor, and]~~

436 ~~[(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized~~  
437 ~~member of the clergy].~~

438 Section 11. Section 76-5-407 is amended to read:

439 **76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to**  
440 **constitute offense.**

441 (1) The provisions of this part do not apply to consensual conduct between [~~persons~~]  
442 individuals married to each other.

443 (2) In any prosecution for:

444 (a) the following offenses, any sexual penetration, however slight, is sufficient to  
445 constitute the relevant element of the offense:

446 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving  
447 sexual intercourse;

448 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section  
449 76-5-401.2, involving sexual intercourse; or

450 (iii) rape, a violation of Section 76-5-402; or

451 (b) the following offenses, any touching, however slight, is sufficient to constitute the  
452 relevant element of the offense:

453 (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving  
454 acts of sodomy;

455 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section  
456 76-5-401.2, involving acts of sodomy;

457 [~~(iii) sodomy, a violation of Subsection 76-5-403(1);~~]

458 [~~(iv)~~] (iii) forcible sodomy, a violation of Subsection 76-5-403(2);

459 [~~(v)~~] (iv) rape of a child, a violation of Section 76-5-402.1; or

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

461 (3) In any prosecution for the following offenses, any touching, even if accomplished

462 through clothing, is sufficient to constitute the relevant element of the offense:

463 (a) sodomy on a child, a violation of Section 76-5-403.1; or

464 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section  
465 76-5-404.1.

466 Section 12. Section 76-6-412 is amended to read:

467 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

468 (1) Theft of property and services as provided in this chapter is punishable:

469 (a) as a second degree felony if the:

470 (i) value of the property or services is or exceeds \$5,000;

471 (ii) property stolen is a firearm or an operable motor vehicle; or

472 (iii) property is stolen from the person of another;

473 (b) as a third degree felony if:

474 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

475 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice

476 before convicted of any of the following offenses, if each prior offense was committed within

477 10 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the

478 current conviction is based and at least one of those convictions is for a class A misdemeanor:

479 (A) any theft, any robbery, or any burglary with intent to commit theft;

480 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

481 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

482 ~~[(iii) in a case not amounting to a second degree felony, the property taken is a stallion,~~

483 ~~mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,~~

484 ~~poultry, or a fur-bearing animal raised for commercial purposes; or]~~

485 ~~[(iv)]~~ (iii) (A) the value of property or services is or exceeds \$500 but is less than

486 \$1,500;

487 (B) the theft occurs on a property where the offender has committed any theft within

488 the past five years; and

489 (C) the offender has received written notice from the merchant prohibiting the offender

490 from entering the property pursuant to Subsection 78B-3-108(4);

491 ~~[(iv)]~~ (iv) the actor has been previously convicted of a felony violation of any of the

492 offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was



493 committed within 10 years before the date of the current conviction or the date of the offense  
 494 upon which the current conviction is based;

495 (c) as a class A misdemeanor if:

496 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

497 (ii) (A) the value of property or services is less than \$500;

498 (B) the theft occurs on a property where the offender has committed any theft within  
 499 the past five years; and

500 (C) the offender has received written notice from the merchant prohibiting the offender  
 501 from entering the property pursuant to Subsection 78B-3-108(4); or

502 (iii) the actor has been twice before convicted of any of the offenses listed in  
 503 Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10  
 504 years [øf] before the date of the current conviction or the date of the offense upon which the  
 505 current conviction is based; or

506 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and  
 507 the theft is not an offense under Subsection (1)(c).

508 (2) Any individual who violates Subsection 76-6-408(1) or Subsection 76-6-413(1), or  
 509 commits theft of [~~property described in Subsection 76-6-412(1)(b)(iii)] a stallion, mare, colt,  
 510 gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a  
 511 fur-bearing animal raised for commercial purposes, is civilly liable for three times the amount  
 512 of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney  
 513 fees.~~

514 Section 13. Section 76-7-302 is amended to read:

515 **76-7-302. Circumstances under which abortion authorized.**

516 (1) As used in this section, "viable" means that the unborn child has reached a stage of  
 517 fetal development when the unborn child is potentially able to live outside the womb, as  
 518 determined by the attending physician to a reasonable degree of medical certainty.

519 (2) An abortion may be performed in this state only by a physician.

520 (3) An abortion may be performed in this state only under the following circumstances:

521 (a) the unborn child is not viable; or

522 (b) the unborn child is viable, if:

523 (i) the abortion is necessary to avert:

- 524 (A) the death of the woman on whom the abortion is performed; or
- 525 (B) a serious risk of substantial and irreversible impairment of a major bodily function
- 526 of the woman on whom the abortion is performed;
- 527 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
- 528 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
- 529 lethal; or
- 530 (iii) (A) the woman is pregnant as a result of:
- 531 (I) rape, as described in Section 76-5-402;
- 532 (II) rape of a child, as described in Section 76-5-402.1; or
- 533 (III) incest, as described in Subsection 76-5-406~~[(10)]~~ (2)(j) or Section 76-7-102; and
- 534 (B) before the abortion is performed, the physician who performs the abortion:
- 535 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
- 536 law enforcement; and
- 537 (II) complies with the requirements of Section 62A-4a-403.
- 538 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
- 539 necessary to perform the abortion in another location due to a medical emergency.

540 Section 14. Section 76-7-305 is amended to read:

541 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**  
542 **-- Exceptions.**

- 543 (1) A person may not perform an abortion, unless, before performing the abortion, the
- 544 physician who will perform the abortion obtains a voluntary and informed written consent from
- 545 the woman on whom the abortion is performed, that is consistent with:
- 546 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
- 547 Current Opinions; and
- 548 (b) the provisions of this section.
- 549 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
- 550 informed only if, at least 72 hours before the abortion:
- 551 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
- 552 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
- 553 physician's assistant presents the information module to the pregnant woman;
- 554 (b) the pregnant woman views the entire information module and presents evidence to

555 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire  
556 information module;

557 (c) after receiving the evidence described in Subsection (2)(b), the individual described  
558 in Subsection (2)(a):

559 (i) documents that the pregnant woman viewed the entire information module;

560 (ii) gives the pregnant woman, upon her request, a copy of the documentation  
561 described in Subsection (2)(c)(i); and

562 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician  
563 who is to perform the abortion, upon request of that physician or the pregnant woman;

564 (d) after the pregnant woman views the entire information module, the physician who  
565 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse  
566 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or  
567 physician's assistant, in a face-to-face consultation in any location in the state, orally informs  
568 the woman of:

569 (i) the nature of the proposed abortion procedure;

570 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the  
571 fetus;

572 (iii) the risks and alternatives to the abortion procedure or treatment;

573 (iv) the options and consequences of aborting a medication-induced abortion, if the  
574 proposed abortion procedure is a medication-induced abortion;

575 (v) the probable gestational age and a description of the development of the unborn  
576 child at the time the abortion would be performed;

577 (vi) the medical risks associated with carrying her child to term; and

578 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant  
579 woman, upon her request; and

580 (e) after the pregnant woman views the entire information module, a staff member of  
581 the abortion clinic or hospital provides to the pregnant woman:

582 (i) on a document that the pregnant woman may take home:

583 (A) the address for the department's website described in Section [76-7-305.5](#); and

584 (B) a statement that the woman may request, from a staff member of the abortion clinic  
585 or hospital where the woman viewed the information module, a printed copy of the material on

586 the department's website; and

587 (ii) a printed copy of the material on the department's website described in Section  
588 76-7-305.5, if requested by the pregnant woman.

589 (3) Before performing an abortion, the physician who is to perform the abortion shall:

590 (a) in a face-to-face consultation, provide the information described in Subsection  
591 (2)(d), unless the attending physician or referring physician is the individual who provided the  
592 information required under Subsection (2)(d); and

593 (b) (i) obtain from the pregnant woman a written certification that the information  
594 required to be provided under Subsection (2) and this Subsection (3) was provided in  
595 accordance with the requirements of Subsection (2) and this Subsection (3); and

596 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

597 (4) When a serious medical emergency compels the performance of an abortion, the  
598 physician shall inform the woman prior to the abortion, if possible, of the medical indications  
599 supporting the physician's judgment that an abortion is necessary.

600 (5) If an ultrasound is performed on a woman before an abortion is performed, the  
601 individual who performs the ultrasound, or another qualified individual, shall:

602 (a) inform the woman that the ultrasound images will be simultaneously displayed in a  
603 manner to permit her to:

604 (i) view the images, if she chooses to view the images; or

605 (ii) not view the images, if she chooses not to view the images;

606 (b) simultaneously display the ultrasound images in order to permit the woman to:

607 (i) view the images, if she chooses to view the images; or

608 (ii) not view the images, if she chooses not to view the images;

609 (c) inform the woman that, if she desires, the person performing the ultrasound, or  
610 another qualified person shall provide a detailed description of the ultrasound images,  
611 including:

612 (i) the dimensions of the unborn child;

613 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

614 (iii) the presence of external body parts or internal organs, if present and viewable; and

615 (d) provide the detailed description described in Subsection ~~[(6)]~~ (5)(c), if the woman  
616 requests it.

617 (6) The information described in Subsections (2), (3), and (5) is not required to be  
618 provided to a pregnant woman under this section if the abortion is performed for a reason  
619 described in:

620 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician  
621 concur, in writing, that the abortion is necessary to avert:

622 (i) the death of the woman on whom the abortion is performed; or

623 (ii) a serious risk of substantial and irreversible impairment of a major bodily function  
624 of the woman on whom the abortion is performed; or

625 (b) Subsection 76-7-302(3)(b)(ii).

626 (7) In addition to the criminal penalties described in this part, a physician who violates  
627 the provisions of this section:

628 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;  
629 and

630 (b) shall be subject to:

631 (i) suspension or revocation of the physician's license for the practice of medicine and  
632 surgery in accordance with Section 58-67-401 or 58-68-401; and

633 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

634 (8) A physician is not guilty of violating this section for failure to furnish any of the  
635 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

636 (a) the physician can demonstrate by a preponderance of the evidence that the  
637 physician reasonably believed that furnishing the information would have resulted in a severely  
638 adverse effect on the physical or mental health of the pregnant woman;

639 (b) in the physician's professional judgment, the abortion was necessary to avert:

640 (i) the death of the woman on whom the abortion is performed; or

641 (ii) a serious risk of substantial and irreversible impairment of a major bodily function  
642 of the woman on whom the abortion is performed;

643 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections  
644 76-5-402 and 76-5-402.1;

645 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406~~(10)~~  
646 (2)(j) and Section 76-7-102; or

647 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

648 (9) A physician who complies with the provisions of this section and Section  
649 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain  
650 informed consent under Section 78B-3-406.

651 (10) (a) The department shall provide an ultrasound, in accordance with the provisions  
652 of Subsection (5)(b), at no expense to the pregnant woman.

653 (b) A local health department shall refer a pregnant woman who requests an ultrasound  
654 described in Subsection (10)(a) to the department.

655 (11) A physician is not guilty of violating this section if:

656 (a) the information described in Subsection (2) is provided less than 72 hours before  
657 the physician performs the abortion; and

658 (b) in the physician's professional judgment, the abortion was necessary in a case  
659 where:

660 (i) a ruptured membrane, documented by the attending or referring physician, will  
661 cause a serious infection; or

662 (ii) a serious infection, documented by the attending or referring physician, will cause a  
663 ruptured membrane.

664 Section 15. Section 76-10-1206 is amended to read:

665 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for**  
666 **Internet service providers and hosting companies.**

667 (1) A person is guilty of dealing in material harmful to minors when, knowing or  
668 believing that [~~a person~~] an individual is a minor, or having negligently failed to determine the  
669 proper age of a minor, the person intentionally:

670 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or [~~a~~  
671 ~~person the actor~~] an individual whom the person believes to be a minor, any material harmful  
672 to minors;

673 (b) produces, performs, or directs any performance, before a minor or [~~a person the~~  
674 ~~actor~~] an individual whom the person believes to be a minor, that is harmful to minors; or

675 (c) participates in any performance, before a minor or [~~a person the actor~~] an individual  
676 whom the person believes to be a minor, that is harmful to minors.

677 (2) (a) [~~Each~~] Except as provided in Subsection (2)(b), each separate offense under this  
678 section committed by a person 18 years of age or older is a third degree felony punishable by:

679 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article  
680 exhibited up to the maximum allowed by law; and

681 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

682 (b) Each separate offense under this section committed by a person 18 years of age or  
683 older against a minor 16 years of age or older, but younger than 18 years of age, is a class A  
684 misdemeanor if the person is less than seven years older than the minor at the time of the  
685 offense.

686 [~~(b)~~] (c) Each separate offense under this section committed by a person 16 or 17 years  
687 of age is a class A misdemeanor.

688 [~~(c)~~] (d) Each separate offense under this section committed by a person younger than  
689 16 years of age is a class B misdemeanor.

690 [~~(d)~~] (e) Subsection (2)(a) supersedes Section 77-18-1.

691 (3) (a) [~~H~~] Except for a defendant described in Subsection (2)(b), if a defendant 18  
692 years of age or older has been previously convicted or adjudicated to be under the jurisdiction  
693 of the juvenile court under this section, each separate subsequent offense is a second degree  
694 felony punishable by:

695 (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article  
696 exhibited up to the maximum allowed by law; and

697 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

698 (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years  
699 of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile  
700 court under this section, each separate subsequent offense is a third degree felony.

701 (c) Subsection (3)(a) supersedes Section 77-18-1.

702 (d) (i) This section does not apply to an Internet service provider, as defined in Section  
703 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec.  
704 2510, a telecommunications service, information service, or mobile service as defined in 47  
705 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or  
706 a cable operator as defined in 47 U.S.C. Sec. 522, if:

707 (A) the distribution of pornographic material by the Internet service provider occurs  
708 only incidentally through the provider's function of:

709 (I) transmitting or routing data from one person to another person; or

710 (II) providing a connection between one person and another person;

711 (B) the provider does not intentionally aid or abet in the distribution of the  
712 pornographic material; and

713 (C) the provider does not knowingly receive from or through a person who distributes  
714 the pornographic material a fee greater than the fee generally charged by the provider, as a  
715 specific condition for permitting the person to distribute the pornographic material.

716 (ii) This section does not apply to a hosting company, as defined in Section  
717 76-10-1230, if:

718 (A) the distribution of pornographic material by the hosting company occurs only  
719 incidentally through the hosting company's function of providing data storage space or data  
720 caching to a person;

721 (B) the hosting company does not intentionally engage, aid, or abet in the distribution  
722 of the pornographic material; and

723 (C) the hosting company does not knowingly receive from or through a person who  
724 distributes the pornographic material a fee greater than the fee generally charged by the  
725 provider, as a specific condition for permitting the person to distribute, store, or cache the  
726 pornographic material.

727 (4) A service provider, as defined in Section 76-10-1230, is not negligent under this  
728 section if it complies with Section 76-10-1231.

729 (5) A person 18 years of age or older who knowingly solicits, requests, commands,  
730 encourages, or intentionally aids another person younger than 18 years of age to engage in  
731 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the  
732 penalties under Subsection (2)(a).

733 Section 16. Section 76-10-1302 is amended to read:

734 **76-10-1302. Prostitution.**

735 (1) An individual is guilty of prostitution when the individual:

736 (a) engages, offers, or agrees to engage in any sexual activity with another individual  
737 for a fee, or the functional equivalent of a fee;

738 (b) takes steps in arranging a meeting through any form of advertising, agreeing to  
739 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee  
740 or the functional equivalent of a fee; or



741 (c) loiters in or within view of any public place for the purpose of being hired to  
742 engage in sexual activity.

743 (2) (a) Except as provided in Subsection (2)(b) [~~or~~] and Section 76-10-1309,  
744 prostitution is a class B misdemeanor.

745 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second  
746 time, and on all subsequent convictions, of a subsequent offense of prostitution under this  
747 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of  
748 a class A misdemeanor.

749 (3) (a) As used in this Subsection (3):

750 (i) "Child" means the same as that term is defined in Section 76-10-1301.

751 (ii) "Child engaged in prostitution" means a child who engages in conduct described in  
752 Subsection (1).

753 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to  
754 commit or engage in any sexual activity with another person for a fee or the functional  
755 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

756 (iv) "Division" means the Division of Child and Family Services created in Section  
757 62A-4a-103.

758 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

759 (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law  
760 enforcement officer shall:

761 (i) conduct an investigation;

762 (ii) refer the child to the division;

763 (iii) if an arrest is made, bring the child to a receiving center, if available; and

764 (iv) contact the child's parent or guardian, if practicable.

765 (c) When law enforcement has referred the child to the division under Subsection  
766 (3)(b)(ii):

767 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child  
768 and Family Services; and

769 (ii) the child may not be subjected to delinquency proceedings under Title 62A,  
770 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

771 (4) A prosecutor may not prosecute an individual for a violation of Subsection (1) if

772 the individual engages in a violation of Subsection (1) at or near the time the individual  
773 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the  
774 following offenses, and the individual reports the offense or attempt to law enforcement in  
775 good faith:

776 (a) assault, Section [76-5-102](#);

777 (b) aggravated assault, Section [76-5-103](#);

778 (c) mayhem, Section [76-5-105](#);

779 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse  
780 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;

781 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or  
782 aggravated human trafficking, human smuggling or aggravated human smuggling, or human  
783 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and  
784 Smuggling;

785 (f) rape, Section [76-5-402](#);

786 (g) rape of a child, Section [76-5-402.1](#);

787 (h) object rape, Section [76-5-402.2](#);

788 (i) object rape of a child, Section [76-5-402.3](#);

789 (j) forcible sodomy, Section [76-5-403](#);

790 (k) sodomy on a child, Section [76-5-403.1](#);

791 (l) forcible sexual abuse, Section [76-5-404](#);

792 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);

793 (n) aggravated sexual assault, Section [76-5-405](#);

794 (o) sexual exploitation of a minor, Section [76-5b-201](#);

795 (p) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);

796 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,

797 Burglary and Criminal Trespass;

798 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or

799 (s) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b).

800 Section 17. Section **76-10-1313** is amended to read:

801 **76-10-1313. Sexual solicitation -- Penalty.**

802 (1) An individual is guilty of sexual solicitation when the individual:

803 (a) offers or agrees to commit any sexual activity with another individual for a fee, or  
804 the functional equivalent of a fee;

805 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another  
806 individual to commit any sexual activity; or

807 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee  
808 or to pay another individual to commit any sexual activity for a fee or the functional equivalent  
809 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any  
810 of the following acts:

811 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the  
812 female breast below the top of the areola;

813 (ii) masturbation;

814 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the  
815 female breast; or

816 (iv) any act of lewdness.

817 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's  
818 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in  
819 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

820 (3) ~~[(a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).]~~

821 ~~[(b) An]~~ Except as provided in Section [76-10-1309](#) and Subsections (4) and (5), an  
822 individual who is convicted ~~[a second time]~~ of sexual solicitation under this section or under a  
823 local ordinance adopted in compliance with Section [76-10-1307](#) is guilty of a class A  
824 misdemeanor~~[-, except as provided in Section [76-10-1309](#)].~~

825 (4) An individual who is convicted a third time under this section or a local ordinance  
826 adopted in compliance with Section [76-10-1307](#) is guilty of a third degree felony.

827 (5) If an individual commits an act of sexual solicitation and the individual solicited is  
828 a child, the offense is a third degree felony if the solicitation does not amount to human  
829 trafficking or human smuggling, a violation of Section [76-5-308](#), or aggravated human  
830 trafficking or aggravated human smuggling, a violation of Section [76-5-310](#).

831 (6) A prosecutor may not prosecute an individual for a violation of Subsection (1) if  
832 the individual engages in a violation of Subsection (1) at or near the time the individual  
833 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses

834 described in Subsection 76-10-1302(4), and the individual reports the offense or attempt to law  
835 enforcement in good faith.

836 Section 18. Section 77-41-107 is amended to read:

837 **77-41-107. Penalties.**

838 (1) An offender who knowingly fails to register under this chapter or provides false or  
839 incomplete information is guilty of:

840 (a) a third degree felony and shall be sentenced to serve a term of incarceration for not  
841 less than [90] 30 days and also at least one year of probation if:

842 (i) the offender is required to register for a felony conviction or adjudicated delinquent  
843 for what would be a felony if the juvenile were an adult of an offense listed in Subsection  
844 77-41-102(9)(a) or (17)(a); or

845 (ii) the offender is required to register for the offender's lifetime under Subsection  
846 77-41-105(3)(c); or

847 (b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for  
848 not fewer than [90] 30 days and also at least one year of probation if the offender is required to  
849 register for a misdemeanor conviction or is adjudicated delinquent for what would be a  
850 misdemeanor if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or  
851 (17)(a).

852 (2) (a) Neither the court nor the Board of Pardons and Parole may release [~~a person~~] an  
853 individual who violates this chapter from serving the term required under Subsection (1).

854 (b) This Subsection (2) supersedes any other provision of the law contrary to this  
855 chapter.

856 (3) The offender shall register for an additional year for every year in which the  
857 offender does not comply with the registration requirements of this chapter.

858 **Section 19. Repealer.**

859 This bill repeals:

860 Section 76-7-103, **Adultery.**