

- 59 services by enacting custodial sexual misconduct with a youth receiving state services as a
 60 stand-alone statute;
- 61 ▶ repeals statute defining "indecent liberties" and reenacts within relevant provision;
 - 62 ▶ creates three new sections from the human trafficking and smuggling sections;
 - 63 ▶ repeals section regarding lesser included offenses of kidnapping and unlawful
 64 detention;
 - 65 ▶ removes mentally incompetent language from kidnapping statute and replaces it
 66 with dependent adult;
 - 67 ▶ adds caretaker to the list of persons without whose consent a dependent adult may
 68 not be held against their will;
 - 69 ▶ narrows the definition of conviction for custodial interference; and
 - 70 ▶ makes technical and conforming changes.

71 **Money Appropriated in this Bill:**

72 None

73 **Other Special Clauses:**

74 This bill provides revisor instructions.

74a **§→ This bill provides a coordination clause. ←§**

75 **Utah Code Sections Affected:**

76 AMENDS:

- 77 **76-1-301**, as last amended by Laws of Utah 2019, Chapter 26
- 78 **76-2-304.5**, as last amended by Laws of Utah 2016, Chapter 194
- 79 **76-2-401**, as last amended by Laws of Utah 2000, Chapter 126
- 80 **76-2-402**, as last amended by Laws of Utah 2019, Chapter 201
- 81 **76-2-404**, as last amended by Laws of Utah 2021, Chapters 150 and 260
- 82 **76-2-408**, as last amended by Laws of Utah 2021, Chapter 150
- 83 **76-3-202**, as last amended by Laws of Utah 2018, Chapter 334
- 84 **76-3-203.2**, as last amended by Laws of Utah 2011, Chapter 91
- 85 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278
- 86 **76-3-203.6**, as last amended by Laws of Utah 2020, Chapter 346
- 87 **76-3-203.7**, as last amended by Laws of Utah 2007, Chapter 339
- 88 **76-3-203.8**, as last amended by Laws of Utah 2004, Chapter 276
- 89 **76-3-203.10**, as enacted by Laws of Utah 2010, Chapter 359

183 **76-9-1003**, as last amended by Laws of Utah 2020, Chapter 108
 184 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
 185 amended by Coordination Clause, Laws of Utah 2020, Chapter 214
 186 **76-10-1306**, as last amended by Laws of Utah 2017, Chapter 433
 187 **76-10-1313**, as last amended by Laws of Utah 2020, Chapter 108
 188 **76-10-1315**, as last amended by Laws of Utah 2021, Chapter 262
 189 **76-10-1504**, as last amended by Laws of Utah 2016, Chapter 399
 190 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363

191 ENACTS:

192 **76-1-101.6**, Utah Code Annotated 1953
 193 **76-5-109.2**, Utah Code Annotated 1953
 194 **76-5-109.3**, Utah Code Annotated 1953
 195 **76-5-111.2**, Utah Code Annotated 1953
 196 **76-5-111.3**, Utah Code Annotated 1953
 197 **76-5-111.4**, Utah Code Annotated 1953
 198 **76-5-308.1**, Utah Code Annotated 1953
 199 **76-5-308.3**, Utah Code Annotated 1953
 200 **76-5-310.1**, Utah Code Annotated 1953
 201 **76-5-404.3**, Utah Code Annotated 1953
 202 **76-5-412.2**, Utah Code Annotated 1953
 203 **76-5-413.2**, Utah Code Annotated 1953

204 RENUMBERS AND AMENDS:

205 **76-1-101.5**, (Renumbered from 76-1-601, as last amended by Laws of Utah 2020,
 206 Chapter 287)
 207 **76-5-114**, (Renumbered from 76-5-109.1, as last amended by Laws of Utah 2009,
 208 Chapter 70)

209 REPEALS:

210 **76-5-210**, as enacted by Laws of Utah 2017, Chapter 454
 211 **76-5-306**, as last amended by Laws of Utah 2012, Chapter 39
 212 **76-5-416**, as last amended by Laws of Utah 2019, Chapter 378

212a **Ŝ→ Utah Code Sections Affected by Coordination Clause:**

212b **76-5-201, as last amended by Laws of Utah 2010, Chapter 13 ←Ŝ**

213

338 Section [76-5-310](#);

339 (s) aggravated exploitation of prostitution involving a child, under Section [76-10-1306](#);

340 or

341 (t) human trafficking of a child, under Section [76-5-308.5](#).

342 Section 4. Section **76-2-304.5** is amended to read:

343 **76-2-304.5. Mistake as to victim's age not a defense.**

344 (1) It is not a defense to the crime of child kidnapping, a violation of Section
 345 [76-5-301.1](#); rape of a child, a violation of Section [76-5-402.1](#); object rape of a child, a violation
 346 of Section [76-5-402.3](#); sodomy on a child, a violation of Section [76-5-403.1](#); sexual abuse of a
 347 child, a violation of Section [~~[76-5-404.1](#)~~] ~~§~~→ [~~[76-5-404.3](#)~~] [76-5-404.1](#) ←~~§~~ ; aggravated sexual
 347a abuse of a child, a
 348 violation of Subsection ~~§~~→ [~~[76-5-404.1\(4\)](#)~~] [76-5-404.3](#) ←~~§~~ ; or an attempt to commit any of these
 348a offenses, that the
 349 actor mistakenly believed the victim to be 14 years [~~of age~~] old or older at the time of the
 350 alleged offense or was unaware of the victim's true age.

351 (2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation
 352 of Section [76-5-401](#); sexual abuse of a minor, a violation of Section [76-5-401.1](#); or an attempt
 353 to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years
 354 [~~of age~~] old or older at the time of the alleged offense or was unaware of the victim's true age.

355 (3) It is not a defense to the crime of aggravated human trafficking [~~or~~], a violation of
 356 Section [76-5-310](#), aggravated human smuggling, a violation of Section [~~[76-5-310](#)~~] [76-5-310.1](#),
 357 or human trafficking of a child, a violation of Section [76-5-308.5](#), that the actor mistakenly
 358 believed the victim to be 18 years [~~of age~~] old or older at the time of the alleged offense or was
 359 unaware of the victim's true age.

360 (4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation
 361 of Subsection [76-5-401.2\(2\)\(a\)\(ii\)](#), that the actor mistakenly believed the victim to be 18 years
 362 [~~of age~~] old or older at the time of the alleged offense or was unaware of the victim's true age.

363 (5) It is not a defense to any of the following crimes that the actor mistakenly believed
 364 the victim to be 18 years [~~of age~~] old or older at the time of the alleged offense or was unaware
 365 of the victim's true age:

366 (a) patronizing a prostitute, a violation of Section [76-10-1303](#);

367 (b) aggravated exploitation of a prostitute, a violation of Section [76-10-1306](#); or

368 (c) sexual solicitation, a violation of Section [76-10-1313](#).

2446 ~~[(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse~~
 2447 ~~homicide, homicide by assault, negligent homicide, or automobile homicide.]~~

2448 (1) (a) As used in this section:

2449 (i) "Abortion" means the same as that term is defined in Section 76-7-301.

2450 (ii) "Criminal homicide" means an act causing the death of another human being,
 2451 including an unborn child at any stage of the unborn child's development.

2452 (b) The terms defined in Section 76-1-101.5 apply to this section.

2453 (2) The following are criminal homicide:

2454 (a) aggravated murder;

2455 (b) murder;

2456 (c) manslaughter;

2457 (d) child abuse ~~§~~ → **homicide** ← ~~§~~ ;

2458 ~~§~~ → **[(e) homicide];**

2459 ~~—~~ ~~(f)~~ **(e)** ← ~~§~~ homicide by assault;

2460 ~~§~~ → ~~[(g)]~~ **(f)** ← ~~§~~ negligent homicide; and

2461 ~~§~~ → ~~[(h)]~~ **(g)** ← ~~§~~ automobile homicide.

2462 ~~[(3) A person]~~ (3) Notwithstanding Subsection (2), an actor is not guilty of criminal
 2463 homicide [of an unborn child if] if:

2464 (a) the death of an unborn child is caused by an abortion;

2465 (b) the sole reason for the death of [the] an unborn child is that the [person] actor:

2466 [~~(a)~~] (i) refused to consent to:

2467 [~~(i)~~] (A) medical treatment; or

2468 [~~(ii)~~] (B) a cesarean section; or

2469 [~~(b)~~] (ii) failed to follow medical advice[.]; or

2470 ~~[(4) A woman is not guilty of criminal homicide of her own unborn child if the death~~
 2471 ~~of her unborn child:]~~

2472 (c) a woman causes the death of her own unborn child, and the death:

2473 [~~(a)~~] (i) is caused by a criminally negligent act or reckless act of the woman; and

2474 [~~(b)~~] (ii) is not caused by an intentional or knowing act of the woman.

2475 (4) The provisions governing a defense of a consensual altercation as described in
 2476 Section 76-5-104 apply to this part.

2663 [~~(c)~~ This affirmative defense reduces charges only as follows:]

2664 [~~(i)~~ aggravated murder to murder; and]

2665 [~~(ii)~~ attempted aggravated murder to attempted murder.]

2666 (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of

2667 aggravated murder, or alternatively, attempted aggravated murder, as described in this section,

2668 are proved beyond a reasonable doubt, and also finds ~~§~~ → [that introduced evidence in support of an]

2668a the ←§

2669 affirmative defense described in this Subsection (4) is not disproven beyond a reasonable

2670 doubt, the court shall enter a judgment of conviction as follows:

2671 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall

2672 enter a judgment of conviction for murder; or

2673 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the

2674 court shall enter a judgment of conviction for attempted murder.

2675 (5) (a) Any aggravating circumstance described in Subsection [~~(1)~~ or] (2) that

2676 constitutes a separate offense does not merge with the crime of aggravated murder.

2677 (b) [~~A person~~] An actor who is convicted of aggravated murder, based on an

2678 aggravating circumstance described in Subsection [~~(1)~~ or] (2) that constitutes a separate

2679 offense, may also be convicted of, and punished for, the separate offense.

2680 Section 53. Section **76-5-203** is amended to read:

2681 **76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation --**

2682 **Separate offenses.**

2683 (1) (a) As used in this section, "predicate offense" means:

2684 [~~(a)~~] (i) a clandestine drug lab violation [under Section 58-37d-4 or 58-37d-5;

2685 [~~(b)~~] (ii) aggravated child abuse, under Subsection [~~76-5-109(2)(a)~~] 76-5-109.2(3)(a),

2686 when the [~~victim~~] abused individual is younger than 18 years [~~of age~~] old;

2687 [~~(c)~~] (iii) kidnapping under Section 76-5-301;

2688 [~~(d)~~] (iv) child kidnapping under Section 76-5-301.1;

2689 [~~(e)~~] (v) aggravated kidnapping under Section 76-5-302;

2690 (vi) rape under Section 76-5-402;

2691 [~~(f)~~] (vii) rape of a child under Section 76-5-402.1;

2692 (viii) object rape under Section 76-5-402.2;

2693 [~~(g)~~] (ix) object rape of a child under Section 76-5-402.3;

2756 existing circumstances.

2757 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
2758 the viewpoint of a reasonable person under the then existing circumstances.

2759 [~~(c) This affirmative defense reduces charges only from:~~]

2760 [~~(i) murder to manslaughter; and~~]

2761 [~~(ii) attempted murder to attempted manslaughter.~~]

2762 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,
2763 or alternatively, attempted murder, as described in this section are proved beyond a reasonable
2764 doubt, and also finds ~~§~~→ [that introduced evidence in support of an] the ←~~§~~ affirmative defense
2764a described in

2765 this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment
2766 of conviction as follows:

2767 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
2768 judgment of conviction for manslaughter; or

2769 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall
2770 enter a judgment of conviction for attempted manslaughter.

2771 (5) (a) Any predicate offense [~~described in Subsection (1)] that constitutes a separate
2772 offense does not merge with the crime of murder.~~

2773 (b) [~~A person~~] An actor who is convicted of murder, based on a predicate offense
2774 [~~described in Subsection (1)] that constitutes a separate offense, may also be convicted of, and
2775 punished for, the separate offense.~~

2776 Section 54. Section **76-5-205** is amended to read:

2777 **76-5-205. Manslaughter -- Penalties.**

2778 (1) (a) As used in this section:

2779 [~~(a)~~] (i) (A) "Aid" means the act of providing the physical means.

2780 [~~(ii)~~] (B) "Aid" does not include the withholding or withdrawal of life sustaining
2781 treatment procedures to the extent allowed under Title 75, Chapter 2a, Advance Health Care
2782 Directive Act, or any other laws of this state.

2783 [~~(b)~~] (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
2784 authorized by law to administer, dispense, distribute, or prescribe medications or procedures in
2785 the course of professional practice.

2786 [~~(c)~~] (iii) "Provides" means to administer, prescribe, distribute, or dispense.

5949 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
 5950 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
 5951 (bbbb) distribution of pornographic films, Section 76-10-1222;
 5952 (cccc) indecent public displays, Section 76-10-1228;
 5953 (dddd) prostitution, Section 76-10-1302;
 5954 (eeee) aiding prostitution, Section 76-10-1304;
 5955 (ffff) exploiting prostitution, Section 76-10-1305;
 5956 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
 5957 (hhhh) communications fraud, Section 76-10-1801;
 5958 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
 5959 Currency Transaction Reporting Act;
 5960 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
 5961 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
 5962 this state; and

5963 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
 5964 Sec. 1961(1)(B), (C), and (D).

5965 Section 127. **Repealer.**

5966 This bill repeals:

5967 Section 76-5-210, **Targeting a law enforcement officer defined.**

5968 Section 76-5-306, **Lesser included offenses.**

5969 Section 76-5-416, **Indecent liberties -- Definition.**

5970 Section 128. **Revisor instructions.**

5971 The Legislature intends that the Office of Legislative Research and General Counsel, in
 5972 preparing the Utah Code database for publication, not enroll this bill if S.B. 124, Criminal
 5973 Code Recodification Cross References, does not pass.

5973a **§→ Section 129. Coordinating S.B. 123 with H.B. 29 --Technical amendment.**

5973b **If this S.B. 123 and H.B. 29, Driving Offenses Amendments, both pass and become law, it is the**
 5973c **intent of the Legislature that this coordination clause supersede the coordination clause in H.B.**

5973d **29 for Subsection 76-5-201(2) and that the Office of Legislative Research and General Counsel**

5973e **prepare the Utah Code database for publication by amending Subsection 76-5-201(2) to read:**

5973f **"(2) The following are criminal homicide:**

5973g **(a) aggravated murder;☛**

- 5973h **Ⓢ(b) murder;**
- 5973i **(c) manslaughter;**
- 5973j **(d) child abuse homicide;**
- 5973k **(e) homicide by assault;**
- 5973l **(f) negligent homicide; and**
- 5973m **(g) negligently operating a vehicle resulting in death." ←§**