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SEXUAL EXPLOITATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns the sexual exploitation of a minor.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ modifies the offense of sexual exploitation of a minor;
- ▶ creates the offense of aggravated sexual exploitation of a minor;
- ▶ imposes minimum prison sentences for the sexual exploitation of a minor under certain conditions;
- ▶ adds the offense of aggravated sexual exploitation of a minor to statutes that reference sexual exploitation of a minor, including statutes related to:
 - custody and visitation for an individual other than a parent;
 - enhancements for offenses committed in concert with three or more persons or in relation to a criminal street gang;
 - unlawful distribution of a counterfeit intimate image;
 - lewdness involving a child;
 - prostitution;
 - penalties for repeat and habitual sex offenders;
 - the Sex and Kidnap Offender Registry; and
 - adoption; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a coordination clause.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **30-5a-103**, as last amended by Laws of Utah 2021, Chapter 262

36 **31A-21-501**, as last amended by Laws of Utah 2012, Chapters 39 and 303

37 **62A-2-120**, as last amended by Laws of Utah 2021, Chapters 117, 262, and 400

38 **63M-7-502**, as last amended by Laws of Utah 2021, Chapter 260

39 **76-1-302**, as last amended by Laws of Utah 2019, Chapter 216

40 **76-3-203.1**, as last amended by Laws of Utah 2021, First Special Session, Chapter 11

41 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278

42 **76-3-407**, as last amended by Laws of Utah 2011, Chapter 320

43 **76-5b-201**, as last amended by Laws of Utah 2021, Chapter 262

44 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134

45 **76-9-702.5**, as last amended by Laws of Utah 2019, Chapter 394

46 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last

47 amended by Coordination Clause, Laws of Utah 2020, Chapter 214

48 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363

49 **77-22-2.5**, as last amended by Laws of Utah 2019, Chapters 382 and 420

50 **77-36-1**, as last amended by Laws of Utah 2021, Chapters 134 and 159

51 **77-41-102**, as last amended by Laws of Utah 2021, Chapter 2 and further amended by

52 Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2

53 **77-41-106**, as last amended by Laws of Utah 2020, Chapter 108

54 **78B-6-117**, as last amended by Laws of Utah 2021, Chapter 262

55 **80-1-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

56 ENACTS:

57 **76-5b-201.1**, Utah Code Annotated 1953

58 **Utah Code Sections Affected by Coordination Clause:**

59 [76-5b-201.1](#), Utah Code Annotated 1953



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

62 Section 1. Section **30-5a-103** is amended to read:

63 **30-5a-103. Custody and visitation for individuals other than a parent.**

64 (1) (a) In accordance with Section [62A-4a-201](#), it is the public policy of this state that a
65 parent retain the fundamental right and duty to exercise primary control over the care,
66 supervision, upbringing, and education of the parent's children.

67 (b) There is a rebuttable presumption that a parent's decisions are in the child's best
68 interests.

69 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
70 visitation rights to an individual other than a parent who, by clear and convincing evidence,
71 establishes that:

72 (a) the individual has intentionally assumed the role and obligations of a parent;

73 (b) the individual and the child have formed a substantial emotional bond and created a
74 parent-child type relationship;

75 (c) the individual substantially contributed emotionally or financially to the child's well
76 being;

77 (d) the assumption of the parental role is not the result of a financially compensated
78 surrogate care arrangement;

79 (e) the continuation of the relationship between the individual and the child is in the
80 child's best interest;

81 (f) the loss or cessation of the relationship between the individual and the child would
82 substantially harm the child; and

83 (g) the parent:

84 (i) is absent; or

85 (ii) is found by a court to have abused or neglected the child.

86 (3) A proceeding under this chapter may be commenced by filing a verified petition, or
87 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district
88 court in the county where the child:

89 (a) currently resides; or

90 (b) lived with a parent or an individual other than a parent who acted as a parent within
91 six months before the commencement of the action.

92 (4) A proceeding under this chapter may be filed in a pending divorce, parentage
93 action, or other proceeding, including a proceeding in the juvenile court involving custody of or
94 visitation with a child.

95 (5) The petition shall include detailed facts supporting the petitioner's right to file the
96 petition including the criteria set forth in Subsection (2) and residency information as set forth
97 in Section 78B-13-209.

98 (6) A proceeding under this chapter may not be filed against a parent who is actively
99 serving outside the state in any branch of the military.

100 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with
101 the rules of civil procedure on all of the following:

102 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

103 (b) any individual who has court-ordered custody or visitation rights;

104 (c) the child's guardian;

105 (d) the guardian ad litem, if one has been appointed;

106 (e) an individual or agency that has physical custody of the child or that claims to have
107 custody or visitation rights; and

108 (f) any other individual or agency that has previously appeared in any action regarding
109 custody of or visitation with the child.

110 (8) The court may order a custody evaluation to be conducted in any action brought
111 under this chapter.

112 (9) The court may enter temporary orders in an action brought under this chapter
113 pending the entry of final orders.

114 (10) Except as provided in Subsection (11), a court may not grant custody of a child
115 under this section to an individual who is not the parent of the child and who, before a custody
116 order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony
117 involving conduct that constitutes any of the following:

118 (a) child abuse, as described in Section 76-5-109;

119 (b) child abuse homicide, as described in Section 76-5-208;

120 (c) child kidnapping, as described in Section 76-5-301.1;

- 121 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 122 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 123 (f) rape of a child, as described in Section 76-5-402.1;
- 124 (g) object rape of a child, as described in Section 76-5-402.3;
- 125 (h) sodomy on a child, as described in Section 76-5-403.1;
- 126 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 127 Section 76-5-404.1;
- 128 (j) sexual exploitation of a minor, as described in Section 76-5b-201; [or]
- 129 (k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- 130 ~~[(k)]~~ (l) an offense in another state that, if committed in this state, would constitute an
- 131 offense described in this Subsection (10).
- 132 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
- 133 listed in Subsection (10) that prevents a court from granting custody except as provided in this
- 134 Subsection (11).
- 135 (b) An individual described in Subsection (10) may only be considered for custody of a
- 136 child if the following criteria are met by clear and convincing evidence:
- 137 (i) the individual is a relative, as defined in Section 80-3-102, of the child;
- 138 (ii) at least 10 years have elapsed from the day on which the individual is successfully
- 139 released from prison, jail, parole, or probation related to a disqualifying offense;
- 140 (iii) during the 10 years before the day on which the individual files a petition with the
- 141 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
- 142 an offense greater than an infraction or traffic violation that would likely impact the health,
- 143 safety, or well-being of the child;
- 144 (iv) the individual can provide evidence of successful treatment or rehabilitation
- 145 directly related to the disqualifying offense;
- 146 (v) the court determines that the risk related to the disqualifying offense is unlikely to
- 147 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
- 148 time in the future when considering all of the following:
- 149 (A) the child's age;
- 150 (B) the child's gender;
- 151 (C) the child's development;

152 (D) the nature and seriousness of the disqualifying offense;
153 (E) the preferences of a child 12 years old or older;
154 (F) any available assessments, including custody evaluations, parenting assessments,
155 psychological or mental health assessments, and bonding assessments; and
156 (G) any other relevant information;
157 (vi) the individual can provide evidence of the following:
158 (A) the relationship with the child is of long duration;
159 (B) that an emotional bond exists with the child; and
160 (C) that custody by the individual who has committed the disqualifying offense ensures
161 the best interests of the child are met;
162 (vii) (A) there is no other responsible relative known to the court who has or likely
163 could develop an emotional bond with the child and does not have a disqualifying offense; or
164 (B) if there is a responsible relative known to the court that does not have a
165 disqualifying offense, Subsection (11)(d) applies; and
166 (viii) that the continuation of the relationship between the individual with the
167 disqualifying offense and the child could not be sufficiently maintained through any type of
168 visitation if custody were given to the relative with no disqualifying offense described in
169 Subsection (11)(d).
170 (c) The individual with the disqualifying offense bears the burden of proof regarding
171 why placement with that individual is in the best interest of the child over another responsible
172 relative or equally situated individual who does not have a disqualifying offense.
173 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known
174 to the court who does not have a disqualifying offense:
175 (i) preference for custody is given to a relative who does not have a disqualifying
176 offense; and
177 (ii) before the court may place custody with the individual who has the disqualifying
178 offense over another responsible, willing, and able relative:
179 (A) an impartial custody evaluation shall be completed; and
180 (B) a guardian ad litem shall be assigned.
181 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a
182 final decision on custody has not been made and to a case filed on or after March 25, 2017.

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

184 **31A-21-501. Definitions.**

185 For purposes of this part:

186 (1) "Applicant" means:

187 (a) in the case of an individual life or accident and health policy, the person who seeks
188 to contract for insurance benefits; or

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

191 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
192 individual who is 16 years ~~[of age]~~ old or older who:

193 (a) is or was a spouse of the other party;

194 (b) is or was living as if a spouse of the other party;

195 (c) is related by blood or marriage to the other party;

196 (d) has one or more children in common with the other party; or

197 (e) resides or has resided in the same residence as the other party.

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

200 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

201 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

202 (c) Section 76-9-702, Lewdness;

203 (d) Section 76-9-702.1, Sexual battery; or

204 (e) Section 76-9-702.5, Lewdness involving a child.

205 (4) "Domestic violence" means any criminal offense involving violence or physical
206 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
207 commit a criminal offense involving violence or physical harm, when committed by one
208 cohabitant against another and includes commission or attempt to commit, any of the following
209 offenses by one cohabitant against another:

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

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

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

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

- 214 (e) electronic communication harassment, as described in Section 76-9-201;
- 215 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 216 76-5-301, 76-5-301.1, and 76-5-302;
- 217 (g) mayhem, as described in Section 76-5-105;
- 218 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 219 ~~[Section 76-5b-201]~~ Sections 76-5b-201 and 76-5b-201.1;
- 220 (i) stalking, as described in Section 76-5-106.5;
- 221 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 222 76-5-304;
- 223 (k) violation of a protective order or ex parte protective order, as described in Section
- 224 76-5-108;
- 225 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 226 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 227 (m) possession of a deadly weapon with intent to assault, as described in Section
- 228 76-10-507; or
- 229 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 230 person, building, or vehicle, as described in Section 76-10-508.

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

233 Section 3. Section 62A-2-120 is amended to read:

234 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

235 (1) As used in this section:

236 (a) (i) "Applicant" means:

237 (A) the same as that term is defined in Section 62A-2-101;

238 (B) an individual who is associated with a licensee and has or will likely have direct
239 access to a child or a vulnerable adult;

240 (C) an individual who provides respite care to a foster parent or an adoptive parent on
241 more than one occasion;

242 (D) a department contractor;

243 (E) a guardian submitting an application on behalf of an individual, other than the child
244 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and

245 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
246 who is receiving services; or

247 (F) a guardian submitting an application on behalf of an individual, other than the child
248 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is
249 a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

250 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
251 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

252 (b) "Application" means a background screening application to the office.

253 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
254 Public Safety, created in Section 53-10-201.

255 (d) "Incidental care" means occasional care, not in excess of five hours per week and
256 never overnight, for a foster child.

257 (e) "Personal identifying information" means:

258 (i) current name, former names, nicknames, and aliases;

259 (ii) date of birth;

260 (iii) physical address and email address;

261 (iv) telephone number;

262 (v) driver license or other government-issued identification;

263 (vi) social security number;

264 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
265 by the office; and

266 (viii) other information specified by the office by rule made in accordance with Title
267 63G, Chapter 3, Utah Administrative Rulemaking Act.

268 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
269 submit the following to the office:

270 (i) personal identifying information;

271 (ii) a fee established by the office under Section 63J-1-504; and

272 (iii) a disclosure form, specified by the office, for consent for:

273 (A) an initial background check upon submission of the information described under
274 this Subsection (2)(a);

275 (B) ongoing monitoring of fingerprints and registries until no longer associated with a

276 licensee for 90 days;

277 (C) a background check when the office determines that reasonable cause exists; and

278 (D) retention of personal identifying information, including fingerprints, for

279 monitoring and notification as described in Subsections (3)(d) and (4).

280 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
281 resided outside of the United States and its territories during the five years immediately
282 preceding the day on which the information described in Subsection (2)(a) is submitted to the
283 office, the office may require the applicant to submit documentation establishing whether the
284 applicant was convicted of a crime during the time that the applicant resided outside of the
285 United States or its territories.

286 (3) The office:

287 (a) shall perform the following duties as part of a background check of an applicant:

288 (i) check state and regional criminal background databases for the applicant's criminal
289 history by:

290 (A) submitting personal identifying information to the bureau for a search; or

291 (B) using the applicant's personal identifying information to search state and regional
292 criminal background databases as authorized under Section 53-10-108;

293 (ii) submit the applicant's personal identifying information and fingerprints to the
294 bureau for a criminal history search of applicable national criminal background databases;

295 (iii) search the Department of Human Services, Division of Child and Family Services'
296 Licensing Information System described in Section 62A-4a-1006;

297 (iv) search the Department of Human Services, Division of Aging and Adult Services'
298 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

299 (v) search the juvenile court records for substantiated findings of severe child abuse or
300 neglect described in Section 80-3-404; and

301 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
302 under Section 78A-6-209;

303 (b) shall conduct a background check of an applicant for an initial background check
304 upon submission of the information described under Subsection (2)(a);

305 (c) may conduct all or portions of a background check of an applicant, as provided by
306 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative

307 Rulemaking Act:

308 (i) for an annual renewal; or

309 (ii) when the office determines that reasonable cause exists;

310 (d) may submit an applicant's personal identifying information, including fingerprints,
311 to the bureau for checking, retaining, and monitoring of state and national criminal background
312 databases and for notifying the office of new criminal activity associated with the applicant;

313 (e) shall track the status of an approved applicant under this section to ensure that an
314 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
315 the applicant applies for:

316 (i) more than one license;

317 (ii) direct access to a child or a vulnerable adult in more than one human services
318 program; or

319 (iii) direct access to a child or a vulnerable adult under a contract with the department;

320 (f) shall track the status of each license and each individual with direct access to a child
321 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
322 expires or the individual's direct access to a child or a vulnerable adult ceases;

323 (g) shall adopt measures to strictly limit access to personal identifying information
324 solely to the individuals responsible for processing and entering the applications for
325 background checks and to protect the security of the personal identifying information the office
326 reviews under this Subsection (3);

327 (h) as necessary to comply with the federal requirement to check a state's child abuse
328 and neglect registry regarding any individual working in a congregate care program, shall:

329 (i) search the Department of Human Services, Division of Child and Family Services'
330 Licensing Information System described in Section [62A-4a-1006](#); and

331 (ii) require the child abuse and neglect registry be checked in each state where an
332 applicant resided at any time during the five years immediately preceding the day on which the
333 applicant submits the information described in Subsection (2)(a) to the office; and

334 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
335 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
336 checks.

337 (4) (a) With the personal identifying information the office submits to the bureau under

338 Subsection (3), the bureau shall check against state and regional criminal background databases
339 for the applicant's criminal history.

340 (b) With the personal identifying information and fingerprints the office submits to the
341 bureau under Subsection (3), the bureau shall check against national criminal background
342 databases for the applicant's criminal history.

343 (c) Upon direction from the office, and with the personal identifying information and
344 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

345 (i) maintain a separate file of the fingerprints for search by future submissions to the
346 local and regional criminal records databases, including latent prints; and

347 (ii) monitor state and regional criminal background databases and identify criminal
348 activity associated with the applicant.

349 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
350 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
351 Investigation Next Generation Identification System for the purpose of:

352 (i) being searched by future submissions to the national criminal records databases,
353 including the Federal Bureau of Investigation Next Generation Identification System and latent
354 prints; and

355 (ii) monitoring national criminal background databases and identifying criminal
356 activity associated with the applicant.

357 (e) The Bureau shall notify and release to the office all information of criminal activity
358 associated with the applicant.

359 (f) Upon notice from the office that a license has expired or an individual's direct
360 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

361 (i) discard and destroy any retained fingerprints; and

362 (ii) notify the Federal Bureau of Investigation when the license has expired or an
363 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
364 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
365 Investigation Next Generation Identification System.

366 (5) (a) After conducting the background check described in Subsections (3) and (4), the
367 office shall deny an application to an applicant who, within three years before the day on which
368 the applicant submits information to the office under Subsection (2) for a background check,

369 has been convicted of any of the following, regardless of whether the offense is a felony, a
370 misdemeanor, or an infraction:

371 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
372 animals, or bestiality;

373 (ii) a violation of any pornography law, including sexual exploitation of a minor or
374 aggravated sexual exploitation of a minor;

375 (iii) prostitution;

376 (iv) an offense included in:

377 (A) Title 76, Chapter 5, Offenses Against the Person;

378 (B) Section [76-5b-201](#), Sexual Exploitation of a Minor; [~~or~~]

379 (C) Section [76-5b-201.1](#), Aggravated Sexual Exploitation of a Minor; or

380 [~~(D)~~] (D) Title 76, Chapter 7, Offenses Against the Family;

381 (v) aggravated arson, as described in Section [76-6-103](#);

382 (vi) aggravated burglary, as described in Section [76-6-203](#);

383 (vii) aggravated robbery, as described in Section [76-6-302](#);

384 (viii) identity fraud crime, as described in Section [76-6-1102](#); or

385 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
386 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
387 through (viii).

388 (b) If the office denies an application to an applicant based on a conviction described in
389 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
390 Subsection (6).

391 (c) If the applicant will be working in a program serving only adults whose only
392 impairment is a mental health diagnosis, including that of a serious mental health disorder,
393 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
394 do not apply, and the office shall conduct a comprehensive review as described in Subsection
395 (6).

396 (6) (a) The office shall conduct a comprehensive review of an applicant's background
397 check if the applicant:

398 (i) has an open court case or a conviction for any felony offense, not described in
399 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on

400 which the applicant submits the application;

401 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
402 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
403 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
404 on which the applicant submits information to the office under Subsection (2) for a background
405 check;

406 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
407 than three years before the day on which the applicant submitted information under Subsection
408 (2)(a);

409 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
410 described in Subsection (5)(a);

411 (v) has a listing in the Department of Human Services, Division of Child and Family
412 Services' Licensing Information System described in Section [62A-4a-1006](#);

413 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
414 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
415 [62A-3-311.1](#);

416 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
417 or neglect described in Section [80-3-404](#);

418 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
419 an adult, would be a felony or misdemeanor, if the applicant is:

420 (A) under 28 years old; or

421 (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is
422 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
423 offense described in Subsection (5)(a);

424 (ix) has a pending charge for an offense described in Subsection (5)(a); or

425 (x) is an applicant described in Subsection (5)(c).

426 (b) The comprehensive review described in Subsection (6)(a) shall include an
427 examination of:

428 (i) the date of the offense or incident;

429 (ii) the nature and seriousness of the offense or incident;

430 (iii) the circumstances under which the offense or incident occurred;

- 431 (iv) the age of the perpetrator when the offense or incident occurred;
- 432 (v) whether the offense or incident was an isolated or repeated incident;
- 433 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 434 adult, including:
 - 435 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
 - 436 (B) sexual abuse;
 - 437 (C) sexual exploitation; or
 - 438 (D) negligent treatment;
- 439 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 440 treatment received, or additional academic or vocational schooling completed;
- 441 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
- 442 which the applicant is applying; and
- 443 (ix) any other pertinent information presented to or publicly available to the committee
- 444 members.
- 445 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
- 446 office shall deny an application to an applicant if the office finds that approval would likely
- 447 create a risk of harm to a child or a vulnerable adult.
- 448 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
- 449 office may not deny an application to an applicant solely because the applicant was convicted
- 450 of an offense that occurred 10 or more years before the day on which the applicant submitted
- 451 the information required under Subsection (2)(a) if:
 - 452 (i) the applicant has not committed another misdemeanor or felony offense after the
 - 453 day on which the conviction occurred; and
 - 454 (ii) the applicant has never been convicted of an offense described in Subsection
 - 455 (14)(c).
- 456 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 457 office may make rules, consistent with this chapter, to establish procedures for the
- 458 comprehensive review described in this Subsection (6).
- 459 (7) Subject to Subsection (10), the office shall approve an application to an applicant
- 460 who is not denied under Subsection (5), (6), or (14).
- 461 (8) (a) The office may conditionally approve an application of an applicant, for a

462 maximum of 60 days after the day on which the office sends written notice to the applicant
463 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

464 (i) is awaiting the results of the criminal history search of national criminal background
465 databases; and

466 (ii) would otherwise approve an application of the applicant under Subsection (7).

467 (b) The office may conditionally approve an application of an applicant, for a
468 maximum of one year after the day on which the office sends written notice to the applicant
469 under Subsection (12), without requiring that the applicant be directly supervised if the office:

470 (i) is awaiting the results of an out-of-state registry for providers other than foster and
471 adoptive parents; and

472 (ii) would otherwise approve an application of the applicant under Subsection (7).

473 (c) Upon receiving the results of the criminal history search of a national criminal
474 background database, the office shall approve or deny the application of the applicant in
475 accordance with Subsections (5) through (7).

476 (9) A licensee or department contractor may not permit an individual to have direct
477 access to a child or a vulnerable adult unless, subject to Subsection (10):

478 (a) the individual is associated with the licensee or department contractor and:

479 (i) the individual's application is approved by the office under this section;

480 (ii) the individual's application is conditionally approved by the office under
481 Subsection (8); or

482 (iii) (A) the individual has submitted the background check information described in
483 Subsection (2) to the office;

484 (B) the office has not determined whether to approve the applicant's application; and

485 (C) the individual is directly supervised by an individual who has a current background
486 screening approval issued by the office under this section and is associated with the licensee or
487 department contractor;

488 (b) (i) the individual is associated with the licensee or department contractor;

489 (ii) the individual has a current background screening approval issued by the office
490 under this section;

491 (iii) one of the following circumstances, that the office has not yet reviewed under
492 Subsection (6), applies to the individual:

- 493 (A) the individual was charged with an offense described in Subsection (5)(a);
- 494 (B) the individual is listed in the Licensing Information System, described in Section
- 495 62A-4a-1006;
- 496 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
- 497 database, described in Section 62A-3-311.1;
- 498 (D) the individual has a record in the juvenile court of a substantiated finding of severe
- 499 child abuse or neglect, described in Section 80-3-404; or
- 500 (E) the individual has a record of an adjudication in juvenile court for an act that, if
- 501 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
- 502 or (6); and
- 503 (iv) the individual is directly supervised by an individual who:
- 504 (A) has a current background screening approval issued by the office under this
- 505 section; and
- 506 (B) is associated with the licensee or department contractor;
- 507 (c) the individual:
- 508 (i) is not associated with the licensee or department contractor; and
- 509 (ii) is directly supervised by an individual who:
- 510 (A) has a current background screening approval issued by the office under this
- 511 section; and
- 512 (B) is associated with the licensee or department contractor;
- 513 (d) the individual is the parent or guardian of the child, or the guardian of the
- 514 vulnerable adult;
- 515 (e) the individual is approved by the parent or guardian of the child, or the guardian of
- 516 the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 517 (f) the individual is only permitted to have direct access to a vulnerable adult who
- 518 voluntarily invites the individual to visit; or
- 519 (g) the individual only provides incidental care for a foster child on behalf of a foster
- 520 parent who has used reasonable and prudent judgment to select the individual to provide the
- 521 incidental care for the foster child.
- 522 (10) An individual may not have direct access to a child or a vulnerable adult if the
- 523 individual is prohibited by court order from having that access.

524 (11) Notwithstanding any other provision of this section, an individual for whom the
525 office denies an application may not have direct access to a child or vulnerable adult unless the
526 office approves a subsequent application by the individual.

527 (12) (a) Within 30 days after the day on which the office receives the background
528 check information for an applicant, the office shall give notice of the clearance status to:

529 (i) the applicant, and the licensee or department contractor, of the office's decision
530 regarding the background check and findings; and

531 (ii) the applicant of any convictions and potentially disqualifying charges and
532 adjudications found in the search.

533 (b) With the notice described in Subsection (12)(a), the office shall also give the
534 applicant the details of any comprehensive review conducted under Subsection (6).

535 (c) If the notice under Subsection (12)(a) states that the applicant's application is
536 denied, the notice shall further advise the applicant that the applicant may, under Subsection
537 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
538 challenge the office's decision.

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

541 (i) defining procedures for the challenge of the office's background check decision
542 described in Subsection (12)(c); and

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

545 (13) An individual or a department contractor who provides services in an adults only
546 substance use disorder program, as defined by rule, is exempt from this section. This
547 exemption does not extend to a program director or a member, as defined by Section
548 62A-2-108, of the program.

549 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
550 of this section, if the background check of an applicant is being conducted for the purpose of
551 giving clearance status to an applicant seeking a position in a congregate care program, an
552 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or
553 an applicant seeking to provide a prospective adoptive home, the office shall:

554 (i) check the child abuse and neglect registry in each state where each applicant resided

555 in the five years immediately preceding the day on which the applicant applied to be a foster
556 parent or adoptive parent, to determine whether the prospective foster parent or prospective
557 adoptive parent is listed in the registry as having a substantiated or supported finding of child
558 abuse or neglect; and

559 (ii) check the child abuse and neglect registry in each state where each adult living in
560 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
561 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
562 parent, to determine whether the adult is listed in the registry as having a substantiated or
563 supported finding of child abuse or neglect.

564 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

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

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

568 (A) a noncustodial parent under Section 62A-4a-209, 80-3-302, or 80-3-303; or

569 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 80-3-302,
570 or 80-3-303, pending completion of the background check described in Subsection (5).

571 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
572 applicant seeking a position in a congregate care program, an applicant for a one-time adoption,
573 an applicant to become a prospective foster parent, or an applicant to become a prospective
574 adoptive parent if the applicant has been convicted of:

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

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

577 (B) commission of domestic violence in the presence of a child, as described in Section
578 76-5-109.1;

579 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

580 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

581 (E) aggravated murder, as described in Section 76-5-202;

582 (F) murder, as described in Section 76-5-203;

583 (G) manslaughter, as described in Section 76-5-205;

584 (H) child abuse homicide, as described in Section 76-5-208;

585 (I) homicide by assault, as described in Section 76-5-209;

- 586 (J) kidnapping, as described in Section 76-5-301;
- 587 (K) child kidnapping, as described in Section 76-5-301.1;
- 588 (L) aggravated kidnapping, as described in Section 76-5-302;
- 589 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 590 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 591 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 592 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 593 [~~(P)~~] (Q) aggravated arson, as described in Section 76-6-103;
- 594 [~~(Q)~~] (R) aggravated burglary, as described in Section 76-6-203;
- 595 [~~(R)~~] (S) aggravated robbery, as described in Section 76-6-302; or
- 596 [~~(S)~~] (T) domestic violence, as described in Section 77-36-1; or
- 597 (ii) an offense committed outside the state that, if committed in the state, would
- 598 constitute a violation of an offense described in Subsection (14)(c)(i).
- 599 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 600 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 601 five years immediately preceding the day on which the individual's application or license would
- 602 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 603 constitutes a violation of any of the following:
- 604 (i) aggravated assault, as described in Section 76-5-103;
- 605 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 606 (iii) mayhem, as described in Section 76-5-105;
- 607 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 608 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 609 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 610 Act;
- 611 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 612 Precursor Act; or
- 613 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 614 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
- 615 conduct the comprehensive review of an applicant's background check pursuant to this section
- 616 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a

617 child abuse and neglect registry of another state as having a substantiated or supported finding
618 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

619 Section 4. Section **63M-7-502** is amended to read:

620 **63M-7-502. Definitions.**

621 As used in this part:

622 (1) "Accomplice" means an individual who has engaged in criminal conduct as
623 described in Section [76-2-202](#).

624 (2) "Board" means the Crime Victim Reparations and Assistance Board created under
625 Section [63M-7-504](#).

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

628 (4) "Claimant" means any of the following claiming reparations under this part:

629 (a) a victim;

630 (b) a dependent of a deceased victim; or

631 (c) an individual or representative who files a reparations claim on behalf of a victim.

632 (5) "Child" means an unemancipated individual who is under 18 years old.

633 (6) "Collateral source" means any source of benefits or advantages for economic loss
634 otherwise reparable under this part that the victim or claimant has received, or that is readily
635 available to the victim from:

636 (a) the offender;

637 (b) the insurance of the offender or the victim;

638 (c) the United States government or any of its agencies, a state or any of its political
639 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory
640 state-funded programs;

641 (d) social security, Medicare, and Medicaid;

642 (e) state-required temporary nonoccupational income replacement insurance or
643 disability income insurance;

644 (f) workers' compensation;

645 (g) wage continuation programs of any employer;

646 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
647 sustained because of the criminally injurious conduct;

648 (i) a contract providing prepaid hospital and other health care services or benefits for
649 disability; or

650 (j) veteran's benefits, including veteran's hospitalization benefits.

651 (7) (a) "Criminally injurious conduct" other than acts of war declared or not declared
652 means conduct that:

653 (i) is or would be subject to prosecution in this state under Section 76-1-201;

654 (ii) occurs or is attempted;

655 (iii) causes, or poses a substantial threat of causing, bodily injury or death;

656 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the
657 conduct possessed the capacity to commit the conduct; and

658 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
659 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
660 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
661 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

662 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
663 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
664 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

665 (c) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and
666 other conduct leading to the psychological injury of an individual resulting from living in a
667 setting that involves a bigamous relationship.

668 (8) (a) "Dependent" means a natural person to whom the victim is wholly or partially
669 legally responsible for care or support.

670 (b) "Dependent" includes a child of the victim born after the victim's death.

671 (9) "Dependent's economic loss" means loss after the victim's death of contributions of
672 things of economic value to the victim's dependent, not including services the dependent would
673 have received from the victim if the victim had not suffered the fatal injury, less expenses of
674 the dependent avoided by reason of victim's death.

675 (10) "Dependent's replacement services loss" means loss reasonably and necessarily
676 incurred by the dependent after the victim's death in obtaining services in lieu of those the
677 decedent would have performed for the victim's benefit if the victim had not suffered the fatal
678 injury, less expenses of the dependent avoided by reason of the victim's death and not

679 subtracted in calculating the dependent's economic loss.

680 (11) "Director" means the director of the office.

681 (12) "Disposition" means the sentencing or determination of penalty or punishment to
682 be imposed upon an individual:

683 (a) convicted of a crime;

684 (b) found delinquent; or

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

687 (13) (a) "Economic loss" means economic detriment consisting only of allowable
688 expense, work loss, replacement services loss, and if injury causes death, dependent's economic
689 loss and dependent's replacement service loss.

690 (b) "Economic loss" includes economic detriment even if caused by pain and suffering
691 or physical impairment.

692 (c) "Economic loss" does not include noneconomic detriment.

693 (14) "Elderly victim" means an individual 60 years old or older who is a victim.

694 (15) "Fraudulent claim" means a filed reparations based on material misrepresentation
695 of fact and intended to deceive the reparations staff for the purpose of obtaining reparation
696 funds for which the claimant is not eligible.

697 (16) "Fund" means the Crime Victim Reparations Fund created in Section [63M-7-526](#).

698 (17) "Law enforcement officer" means the same as that term is defined in Section
699 [53-13-103](#).

700 (18) (a) "Medical examination" means a physical examination necessary to document
701 criminally injurious conduct.

702 (b) "Medical examination" does not include mental health evaluations for the
703 prosecution and investigation of a crime.

704 (19) "Mental health counseling" means outpatient and inpatient counseling necessitated
705 as a result of criminally injurious conduct, is subject to rules made by the board in accordance
706 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

707 (20) "Misconduct" means conduct by the victim that was attributable to the injury or
708 death of the victim as provided by rules made by the board in accordance with Title 63G,
709 Chapter 3, Utah Administrative Rulemaking Act.

- 710 (21) "Noneconomic detriment" means pain, suffering, inconvenience, physical
711 impairment, and other nonpecuniary damage, except as provided in this part.
- 712 (22) "Pecuniary loss" does not include loss attributable to pain and suffering except as
713 otherwise provided in this part.
- 714 (23) "Offender" means an individual who has violated Title 76, Utah Criminal Code,
715 through criminally injurious conduct regardless of whether the individual is arrested,
716 prosecuted, or convicted.
- 717 (24) "Offense" means a violation of Title 76, Utah Criminal Code.
- 718 (25) "Office" means the director, the reparations and assistance officers, and any other
719 staff employed for the purpose of carrying out the provisions of this part.
- 720 (26) "Perpetrator" means the individual who actually participated in the criminally
721 injurious conduct.
- 722 (27) "Reparations award" means money or other benefits provided to a claimant or to
723 another on behalf of a claimant after the day on which a reparations claim is approved by the
724 office.
- 725 (28) "Reparations claim" means a claimant's request or application made to the office
726 for a reparations award.
- 727 (29) (a) "Reparations officer" means an individual employed by the office to
728 investigate claims of victims and award reparations under this part.
- 729 (b) "Reparations officer" includes the director when the director is acting as a
730 reparations officer.
- 731 (30) "Replacement service loss" means expenses reasonably and necessarily incurred in
732 obtaining ordinary and necessary services in lieu of those the injured individual would have
733 performed, not for income but the benefit of the injured individual or the injured individual's
734 dependents if the injured individual had not been injured.
- 735 (31) (a) "Representative" means the victim, immediate family member, legal guardian,
736 attorney, conservator, executor, or an heir of an individual.
- 737 (b) "Representative" does not include a service provider or collateral source.
- 738 (32) "Restitution" means the same as that term is defined in Section [77-38b-102](#).
- 739 (33) "Secondary victim" means an individual who is traumatically affected by the
740 criminally injurious conduct subject to rules made by the board in accordance with Title 63G,

741 Chapter 3, Utah Administrative Rulemaking Act.

742 (34) "Service provider" means an individual or agency who provides a service to a
743 victim for a monetary fee, except attorneys as provided in Section [63M-7-524](#).

744 (35) "Serious bodily injury" means the same as that term is defined in Section
745 [76-1-601](#).

746 (36) "Substantial bodily injury" means the same as that term is defined in Section
747 [76-1-601](#).

748 (37) (a) "Victim" means an individual who suffers bodily or psychological injury or
749 death as a direct result of:

750 (i) criminally injurious conduct; or

751 (ii) the production of pornography in violation of Section [76-5b-201](#) or [76-5b-201.1](#) if
752 the individual is a minor.

753 (b) "Victim" does not include an individual who participated in or observed the judicial
754 proceedings against an offender unless otherwise provided by statute or rule made in
755 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

758 (38) "Work loss" means loss of income from work the injured victim would have
759 performed if the injured victim had not been injured and expenses reasonably incurred by the
760 injured victim in obtaining services in lieu of those the injured victim would have performed
761 for income, reduced by any income from substitute work the injured victim was capable of
762 performing but unreasonably failed to undertake.

763 Section 5. Section **76-1-302** is amended to read:

764 **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**
765 **evidence would identify the defendant -- Commencement of prosecution.**

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

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

769 (i) forcible sexual abuse shall be commenced within eight years after the offense is
770 committed, if within four years after its commission the offense is reported to a law
771 enforcement agency; and

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

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

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

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

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

783 (3) If the statute of limitations would have run but for the provisions of Subsection (2)
784 and identification of a perpetrator is made through DNA, a prosecution shall be commenced
785 within four years of confirmation of the identity of the perpetrator.

786 (4) A prosecution is commenced upon:

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

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

789 (c) the issuance of a citation.

790 Section 6. Section [76-3-203.1](#) is amended to read:

791 **76-3-203.1. Offenses committed in concert with three or more persons or in**
792 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

793 (1) As used in this section:

794 (a) "Criminal street gang" means the same as that term is defined in Section [76-9-802](#).

795 (b) "In concert with three or more persons" means:

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

798 (ii) each of the other persons:

799 (A) was physically present; and

800 (B) participated as a party to any offense listed in Subsection (4), (5), or (6).

801 (c) "In concert with three or more persons" means, regarding intent:

802 (i) other persons participating as parties need not have the intent to engage in the same

803 offense or degree of offense as the defendant; and

804 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
805 minor were an adult.

806 (2) A person who commits any offense in accordance with this section is subject to an
807 enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a
808 reasonable doubt that the person acted:

809 (a) in concert with three or more persons;

810 (b) for the benefit of, at the direction of, or in association with any criminal street gang
811 as defined in Section 76-9-802; or

812 (c) to gain recognition, acceptance, membership, or increased status with a criminal
813 street gang as defined in Section 76-9-802.

814 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to
815 be subscribed upon the information or indictment notice that the defendant is subject to the
816 enhanced penalties provided under this section.

817 (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

818 (i) for a class B misdemeanor, as a class A misdemeanor; and

819 (ii) for a class A misdemeanor, as a third degree felony.

820 (b) The following offenses are subject to Subsection (4)(a):

821 (i) criminal mischief as defined in Section 76-6-106; and

822 (ii) graffiti as defined in Section 76-6-107.

823 (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:

824 (i) for a class B misdemeanor, as a class A misdemeanor;

825 (ii) for a class A misdemeanor, as a third degree felony; and

826 (iii) for a third degree felony, as a second degree felony.

827 (b) The following offenses are subject to Subsection (5)(a):

828 (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);

829 (ii) any offense of obstructing government operations under [~~Title 76;~~] Chapter 8, Part

830 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,

831 76-8-308, and 76-8-312;

832 (iii) tampering with a witness or other violation of Section 76-8-508;

833 (iv) retaliation against a witness, victim, informant, or other violation of Section

834 76-8-508.3;

835 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section

836 76-8-509;

837 (vi) any weapons offense under~~[Title 76,]~~ Chapter 10, Part 5, Weapons; and

838 (vii) any violation of ~~[Title 76,]~~ Chapter 10, Part 16, Pattern of Unlawful Activity Act.

839 (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:

840 (i) for a class B misdemeanor, as a class A misdemeanor;

841 (ii) for a class A misdemeanor, as a third degree felony;

842 (iii) for a third degree felony, as a second degree felony; and

843 (iv) for a second degree felony, as a first degree felony.

844 (b) The following offenses are subject to Subsection (6)(a):

845 (i) assault and related offenses under ~~[Title 76,]~~ Chapter 5, Part 1, Assault and Related

846 Offenses;

847 (ii) any criminal homicide offense under ~~[Title 76,]~~ Chapter 5, Part 2, Criminal

848 Homicide;

849 (iii) kidnapping and related offenses under ~~[Title 76,]~~ Chapter 5, Part 3, Kidnapping,

850 Trafficking, and Smuggling;

851 (iv) any felony sexual offense under ~~[Title 76,]~~ Chapter 5, Part 4, Sexual Offenses;

852 (v) sexual exploitation of a minor as defined in Section 76-5b-201;

853 (vi) aggravated sexual exploitation of a minor as defined in Section 76-5b-201.1;

854 ~~[(vi)]~~ (vii) robbery and aggravated robbery under ~~[Title 76,]~~ Chapter 6, Part 3,

855 Robbery; and

856 ~~[(vii)]~~ (viii) aggravated exploitation of prostitution under Section 76-10-1306.

857 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the
858 individual placed on probation for the higher level of offense.

859 (8) It is not a bar to imposing the enhanced penalties under this section that the persons
860 with whom the actor is alleged to have acted in concert are not identified, apprehended,
861 charged, or convicted, or that any of those persons are charged with or convicted of a different
862 or lesser offense.

863 Section 7. Section 76-3-203.5 is amended to read:

864 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

865 (1) As used in this section:

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

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

873 (c) "Violent felony" means:

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

876 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
877 [~~Title 76,~~] Chapter 6, Part 1, Property Destruction;

878 (B) assault by prisoner, Section 76-5-102.5;

879 (C) disarming a police officer, Section 76-5-102.8;

880 (D) aggravated assault, Section 76-5-103;

881 (E) aggravated assault by prisoner, Section 76-5-103.5;

882 (F) mayhem, Section 76-5-105;

883 (G) stalking, Subsection 76-5-106.5(2) or (3);

884 (H) threat of terrorism, Section 76-5-107.3;

885 (I) child abuse, Subsection 76-5-109(2)(a) or (b);

886 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

887 (K) abuse or neglect of a child with a disability, Section 76-5-110;

888 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

889 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

890 (N) criminal homicide offenses under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;

891 (O) kidnapping, child kidnapping, and aggravated kidnapping under [~~Title 76,~~] Chapter
892 5, Part 3, Kidnapping, Trafficking, and Smuggling;

893 (P) rape, Section 76-5-402;

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

895 (R) object rape, Section 76-5-402.2;

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

897 (T) forcible sodomy, Section [76-5-403](#);

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

899 (V) forcible sexual abuse, Section [76-5-404](#);

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

901 (X) aggravated sexual assault, Section [76-5-405](#);

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

903 (Z) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

904 [~~(Z)~~] (AA) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);

905 [~~(AA)~~] (BB) aggravated burglary and burglary of a dwelling under [~~Title 76,~~] Chapter

906 6, Part 2, Burglary and Criminal Trespass;

907 [~~(BB)~~] (CC) aggravated robbery and robbery under Title 76, Chapter 6, Part 3,

908 Robbery;

909 [~~(CC)~~] (DD) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b);

910 [~~(DD)~~] (EE) tampering with a witness under Subsection [76-8-508\(1\)](#);

911 [~~(EE)~~] (FF) retaliation against a witness, victim, or informant under Section

912 [76-8-508.3](#);

913 [~~(FF)~~] (GG) tampering with a juror under Subsection [76-8-508.5\(2\)\(c\)](#);

914 [~~(GG)~~] (HH) extortion to dismiss a criminal proceeding under Section [76-8-509](#) if by

915 any threat or by use of force theft by extortion has been committed pursuant to Subsections

916 [76-6-406\(2\)\(a\)](#), (b), and (i);

917 [~~(HH)~~] (II) possession, use, or removal of explosive, chemical, or incendiary devices

918 under Subsections [76-10-306\(3\)](#) through (6);

919 [~~(II)~~] (JJ) unlawful delivery of explosive, chemical, or incendiary devices under

920 Section [76-10-307](#);

921 [~~(JJ)~~] (KK) purchase or possession of a dangerous weapon or handgun by a restricted

922 person under Section [76-10-503](#);

923 [~~(KK)~~] (LL) unlawful discharge of a firearm under Section [76-10-508](#);

924 [~~(LL)~~] (MM) aggravated exploitation of prostitution under Subsection

925 [76-10-1306\(1\)\(a\)](#);

926 [~~(MM)~~] (NN) bus hijacking under Section [76-10-1504](#); and

927 [~~NN~~] OO discharging firearms and hurling missiles under Section 76-10-1505; or
928 (ii) any felony violation of a criminal statute of any other state, the United States, or
929 any district, possession, or territory of the United States which would constitute a violent
930 felony as defined in this Subsection (1) if committed in this state.

931 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
932 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
933 under this section, the penalty for a:

934 (a) third degree felony is as if the conviction were for a first degree felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

957 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of

958 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
959 the jury, in which case the allegation shall be tried immediately to the court.

960 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
961 applies.

962 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
963 and the defendant shall be afforded an opportunity to present any necessary additional
964 evidence.

965 (iii) Before sentencing under this section, the trier of fact shall determine whether this
966 section is applicable beyond a reasonable doubt.

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

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

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

980 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
981 Subsection (1)(c) shall include any felony sexual offense violation of [~~Title 76,~~] Chapter 5, Part
982 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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

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

985 (i) a grievous sexual offense;

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

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

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

989 (b) applying the sentencing enhancement provided for in this section would result in a
990 lower maximum penalty than the penalty provided for under the section that describes the
991 offense for which the person is being sentenced.

992 Section 8. Section **76-3-407** is amended to read:

993 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
994 **felony convictions.**

995 (1) As used in this section:

996 (a) "Prior sexual offense" means:

997 (i) a felony offense described in [~~Title 76;~~] Chapter 5, Part 4, Sexual Offenses;

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

999 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1000 [~~(iii)~~] (iv) a felony offense of enticing a minor over the Internet, Section [76-4-401](#);

1001 [~~(iv)~~] (v) a felony attempt to commit an offense described in Subsections (1)(a)(i)

1002 through [~~(iii)~~] (iv); or

1003 [~~(v)~~] (vi) an offense in another state, territory, or district of the United States that, if

1004 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through

1005 [~~(iv)~~] (v).

1006 (b) "Sexual offense" means:

1007 (i) an offense that is a felony of the second or third degree, or an attempted offense,

1008 which attempt is a felony of the second or third degree, described in [~~Title 76;~~] Chapter 5, Part

1009 4, Sexual Offenses;

1010 (ii) sexual exploitation of a minor, Section [76-5b-201](#);

1011 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1012 [~~(iii)~~] (iv) a felony offense of enticing a minor over the Internet, Section [76-4-401](#);

1013 [~~(iv)~~] (v) a felony attempt to commit an offense described in [~~Subsection (1)(b)(ii) or~~

1014 (iii)] Subsections (1)(b)(ii) through (iv); or

1015 [~~(v)~~] (vi) an offense in another state, territory, or district of the United States that, if

1016 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through

1017 [~~(iv)~~] (v).

1018 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual

1019 offense is increased by five years for each conviction of the defendant for a prior sexual offense

1020 that arose from a separate criminal episode, if the trier of fact finds that:

1021 (a) the defendant was convicted of a prior sexual offense; and

1022 (b) the defendant was convicted of the prior sexual offense described in Subsection

1023 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is

1024 being sentenced.

1025 (3) The increased maximum term described in Subsection (2) shall be in addition to,

1026 and consecutive to, any other prison term served by the defendant.

1027 Section 9. Section **76-5b-201** is amended to read:

1028 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

1029 [~~(1) A person is guilty of sexual exploitation of a minor:~~]

1030 [~~(a) when the person:~~]

1031 [~~(i) knowingly produces, possesses, or possesses with intent to distribute child~~

1032 pornography; or]

1033 [~~(ii) intentionally distributes or views child pornography; or]~~

1034 [~~(b) if the person is a minor's parent or legal guardian and knowingly consents to or~~

1035 permits the minor to be sexually exploited as described in Subsection (1)(a).]

1036 [(2) (a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a

1037 second degree felony.]

1038 [(b) A violation of Subsection (1) for knowingly producing child pornography is a first

1039 degree felony if the person produces original child pornography depicting a first degree felony

1040 that involves:]

1041 [(i) the person or another person engaging in conduct with the minor that is a violation

1042 of:]

1043 [(A) Section ~~76-5-402.1~~, rape of a child;]

1044 [(B) Section ~~76-5-402.3~~, object rape of a child;]

1045 [(C) Section ~~76-5-403.1~~, sodomy on a child; or]

1046 [(D) Section ~~76-5-404.1~~, aggravated sexual abuse of a child; or]

1047 [(ii) the minor being physically abused, as defined in Section ~~80-1-102~~.]

1048 (1) An actor commits sexual exploitation of a minor when the actor knowingly

1049 possesses or intentionally views child pornography.

1050 (2) A violation of Subsection (1) is a second degree felony.

- 1051 (3) It is a separate offense under this section:
- 1052 (a) for each minor depicted in the child pornography; and
- 1053 (b) for each time the same minor is depicted in different child pornography.
- 1054 (4) (a) It is an affirmative defense to a charge of violating this section that no minor
- 1055 was actually depicted in the visual depiction or used in producing or advertising the visual
- 1056 depiction.
- 1057 (b) For a charge of violating this section [~~for knowingly possessing or intentionally~~
- 1058 ~~viewing child pornography~~], it is an affirmative defense that:
- 1059 (i) the defendant:
- 1060 (A) did not solicit the child pornography from the minor depicted in the child
- 1061 pornography;
- 1062 (B) is not more than two years older than the minor depicted in the child pornography;
- 1063 and
- 1064 (C) upon request of a law enforcement agent or the minor depicted in the child
- 1065 pornography, removes from an electronic device or destroys the child pornography and all
- 1066 copies of the child pornography in the defendant's possession; and
- 1067 (ii) the child pornography does not depict an offense under [~~Title 76;~~] Chapter 5, Part
- 1068 4, Sexual Offenses.
- 1069 (5) In proving a violation of this section in relation to an identifiable minor, proof of
- 1070 the actual identity of the identifiable minor is not required.
- 1071 (6) This section may not be construed to impose criminal or civil liability on:
- 1072 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 1073 the scope of employment, for the good faith performance of:
- 1074 (i) reporting or data preservation duties required under federal or state law; or
- 1075 (ii) implementing a policy of attempting to prevent the presence of child pornography
- 1076 on tangible or intangible property, or of detecting and reporting the presence of child
- 1077 pornography on the property;
- 1078 (b) a law enforcement officer acting within the scope of a criminal investigation;
- 1079 (c) an employee of a court who may be required to view child pornography during the
- 1080 course of and within the scope of the employee's employment;
- 1081 (d) a juror who may be required to view child pornography during the course of the

1082 individual's service as a juror;

1083 (e) an attorney or employee of an attorney who is required to view child pornography
1084 during the course of a judicial process and while acting within the scope of employment;

1085 (f) an employee of the Department of Human Services who is required to view child
1086 pornography within the scope of the employee's employment; or

1087 (g) an attorney who is required to view child pornography within the scope of the
1088 attorney's responsibility to represent the Department of Human Services, including the
1089 divisions and offices within the Department of Human Services.

1090 Section 10. Section **76-5b-201.1** is enacted to read:

1091 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

1092 (1) As used in this section, "physical abuse" or "physically abused" means the same as
1093 the term "physical abuse" is defined in Section [80-1-102](#).

1094 (2) An actor commits aggravated sexual exploitation of a minor if the actor:

1095 (a) knowingly distributes or possesses with the intent to distribute child pornography;

1096 (b) knowingly produces child pornography;

1097 (c) is the minor's parent or legal guardian and knowingly consents to or permits the
1098 minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section [76-5b-201](#);

1099 (d) intentionally possesses or views child pornography that depicts a minor who is:

1100 (i) prepubescent; or

1101 (ii) under 14 years old;

1102 (e) knowingly possesses or intentionally views:

1103 (i) 500 or more images, photographs, or pictures of child pornography; or

1104 (ii) 25 or more recorded or streamed videos or live performances of child pornography;

1105 or

1106 (f) having been previously convicted of a grievous sexual offense, commits a violation
1107 of Section [76-5b-201](#), sexual exploitation of a minor.

1108 (3) (a) A violation of Subsection (2) is a first degree felony.

1109 (b) When sentencing an actor for a violation of Subsection (2)(b), the sentencing court
1110 shall impose a sentence of imprisonment of at least five years and which may be for life if the
1111 child pornography produced by the actor in violation of Subsection (2)(b):

1112 (i) is child pornography created by the actor; and

- 1113 (ii) depicts:
- 1114 (A) a first degree felony that involves the minor being physically abused; or
- 1115 (B) the actor or another individual engaging in conduct with the minor that is a
- 1116 violation of Section 76-5-404.1, sexual abuse of a child.
- 1117 (c) Notwithstanding Subsection (3)(b), when sentencing an actor for a violation of
- 1118 Subsection (2)(b), the sentencing court shall impose a sentence of imprisonment of at least 15
- 1119 years and which may be for life if the child pornography produced by the actor in violation of
- 1120 Subsection (2)(b):
- 1121 (i) is child pornography created by the actor; and
- 1122 (ii) depicts the actor or another individual engaging in conduct with the minor that is a
- 1123 violation of Section 76-5-404.1, aggravated sexual abuse of a child.
- 1124 (d) Notwithstanding Subsections (3)(b) and (c), when sentencing an actor for a
- 1125 violation of Subsection (2)(b), the sentencing court shall impose a sentence of imprisonment of
- 1126 at least 25 years and which may be for life if the child pornography produced by the actor in
- 1127 violation of Subsection (2)(b):
- 1128 (i) is child pornography created by the actor; and
- 1129 (ii) depicts a first degree felony that involves the actor or another individual engaging
- 1130 in conduct with the minor that is a violation of:
- 1131 (A) Section 76-5-402.1, rape of a child;
- 1132 (B) Section 76-5-402.3, object rape of a child; or
- 1133 (C) Section 76-5-403.1, sodomy on a child.
- 1134 (e) When sentencing an actor for a violation of Subsection (2)(c) or (f), the sentencing
- 1135 court shall impose a sentence of imprisonment of at least three years and which may be for life.
- 1136 (4) It is a separate offense under this section:
- 1137 (a) for each minor depicted in the child pornography; and
- 1138 (b) for each time the same minor is depicted in different child pornography.
- 1139 (5) (a) It is an affirmative defense to a charge of violating this section that no minor
- 1140 was actually depicted in the visual depiction or used in producing or advertising the visual
- 1141 depiction.
- 1142 (b) In proving a violation of this section in relation to an identifiable minor, proof of
- 1143 the actual identity of the identifiable minor is not required.

- 1144 (6) This section may not be construed to impose criminal or civil liability on:
1145 (a) an entity or an employee, director, officer, or agent of an entity when acting within
1146 the scope of employment, for the good faith performance of:
1147 (i) reporting or data preservation duties required under federal or state law; or
1148 (ii) implementing a policy of attempting to prevent the presence of child pornography
1149 on tangible or intangible property, or of detecting and reporting the presence of child
1150 pornography on the property;
1151 (b) a law enforcement officer acting within the scope of a criminal investigation;
1152 (c) an employee of a court who may be required to view child pornography during the
1153 course of and within the scope of the employee's employment;
1154 (d) a juror who may be required to view child pornography during the course of the
1155 individual's service as a juror;
1156 (e) an attorney or employee of an attorney who is required to view child pornography
1157 during the course of a judicial process and while acting within the scope of employment;
1158 (f) an employee of the Department of Human Services who is required to view child
1159 pornography within the scope of the employee's employment; or
1160 (g) an attorney who is required to view child pornography within the scope of the
1161 attorney's responsibility to represent the Department of Human Services, including the
1162 divisions and offices within the Department of Human Services.

1163 Section 11. Section **76-5b-205** is amended to read:

1164 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

1165 (1) As used in this section:

1166 (a) "Child" means an individual under the age of 18.

1167 (b) "Counterfeit intimate image" means any visual depiction, photograph, film, video,
1168 recording, picture, or computer or computer-generated image or picture, whether made or
1169 produced by electronic, mechanical, or other means, that has been edited, manipulated, or
1170 altered to depict the likeness of an identifiable individual and purports to, or is made to appear
1171 to, depict that individual's:

1172 (i) exposed human male or female genitals or pubic area, with less than an opaque
1173 covering;

1174 (ii) a female breast with less than an opaque covering, or any portion of the female

1175 breast below the top of the areola; or

1176 (iii) the individual engaged in any sexually explicit conduct or simulated sexually
1177 explicit conduct.

1178 (c) "Distribute" means the same as that term is defined in Section 76-5b-203.

1179 (d) "Sexually explicit conduct" means the same as that term is defined in Section
1180 76-5b-203.

1181 (e) "Simulated sexually explicit conduct" means the same as that term is defined in
1182 Section 76-5b-203.

1183 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate
1184 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
1185 actor knows or should reasonably know would cause a reasonable person to suffer emotional or
1186 physical distress or harm, if:

1187 (a) the actor has not received consent from the depicted individual to distribute the
1188 counterfeit intimate image; and

1189 (b) the counterfeit intimate image was created or provided by the actor without the
1190 knowledge and consent of the depicted individual.

1191 (3) An individual commits aggravated unlawful distribution of a counterfeit intimate
1192 image if, in committing the offense described in Subsection (2), the individual depicted in the
1193 counterfeit intimate image is a child.

1194 (4) This section does not apply to:

1195 (a) (i) lawful practices of law enforcement agencies;

1196 (ii) prosecutorial agency functions;

1197 (iii) the reporting of a criminal offense;

1198 (iv) court proceedings or any other judicial proceeding; or

1199 (v) lawful and generally accepted medical practices and procedures;

1200 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily
1201 allows public exposure of the image;

1202 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

1203 (d) a counterfeit intimate image that is related to a matter of public concern or interest
1204 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
1205 and 15 of the Utah Constitution.

1206 (5) (a) This section does not apply to an Internet service provider or interactive
1207 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
1208 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
1209 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
1210 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
1211 in 47 U.S.C. Sec. 522, if:

1212 (i) the distribution of a counterfeit intimate image by the Internet service provider
1213 occurs only incidentally through the provider's function of:

1214 (A) transmitting or routing data from one person to another person; or

1215 (B) providing a connection between one person and another person;

1216 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
1217 intimate image; and

1218 (iii) the provider does not knowingly receive from or through a person who distributes
1219 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
1220 specific condition for permitting the person to distribute the counterfeit intimate image.

1221 (b) This section does not apply to a hosting company, as defined in Section
1222 [76-10-1230](#), if:

1223 (i) the distribution of a counterfeit intimate image by the hosting company occurs only
1224 incidentally through the hosting company's function of providing data storage space or data
1225 caching to a person;

1226 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
1227 of the counterfeit intimate image;

1228 (iii) the hosting company does not knowingly receive from or through a person who
1229 distributes the counterfeit intimate image a fee greater than the fee generally charged by the
1230 provider, as a specific condition for permitting the person to distribute, store, or cache the
1231 counterfeit intimate image; and

1232 (iv) the hosting company immediately removes the counterfeit intimate image upon
1233 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly
1234 depicted in the counterfeit intimate image.

1235 (c) A service provider, as defined in Section [76-10-1230](#), is not negligent under this
1236 section if it complies with Section [76-10-1231](#).

1237 (6) This section does not apply to an actor who engages in conduct that constitutes a
1238 violation of this section to the extent that the actor is chargeable, for the same conduct, under
1239 Section [76-5b-201](#), sexual exploitation of a minor, or Section [76-5b-201.1](#), aggravated sexual
1240 exploitation of a minor.

1241 (7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful
1242 distribution of a counterfeit intimate image is a class A misdemeanor.

1243 (b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a
1244 third degree felony on a second or subsequent conviction for an offense under this section that
1245 arises from a separate criminal episode as defined in Section [76-1-401](#).

1246 (c) Except as provided in Subsection (7)(d), knowing or intentional aggravated
1247 unlawful distribution of a counterfeit intimate image is a third degree felony.

1248 (d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate
1249 image is a second degree felony on a second or subsequent conviction for an offense under this
1250 section that arises from a separate criminal episode as defined in Section [76-1-401](#).

1251 Section 12. Section [76-9-702.5](#) is amended to read:

1252 **[76-9-702.5. Lewdness involving a child.](#)**

1253 (1) As used in this section, "in the presence of" includes within visual contact through
1254 an electronic device.

1255 (2) A person is guilty of lewdness involving a child if the person under circumstances
1256 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a
1257 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,
1258 intentionally or knowingly:

1259 (a) does any of the following in the presence of a child who is under 14 years of age:

1260 (i) performs an act of sexual intercourse or sodomy;

1261 (ii) exposes his or her genitals, the female breast below the top of the areola, the
1262 buttocks, the anus, or the pubic area:

1263 (A) in a public place; or

1264 (B) in a private place under circumstances the person should know will likely cause
1265 affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the child;

1266 (iii) masturbates; or

1267 (iv) performs any other act of lewdness; or

1268 (b) under circumstances not amounting to sexual exploitation of a child under Section
1269 [76-5b-201](#) or aggravated sexual exploitation of a child under Section [76-5b-201.1](#), causes a
1270 child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the
1271 actor, with the intent to arouse or gratify the sexual desire of the actor or the child.

1272 (3) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection
1273 (3)(b).

1274 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

1275 (i) the person is a sex offender as defined in Section [77-27-21.7](#); or

1276 (ii) the person has previously been convicted of a violation of this section.

1277 Section 13. Section **76-10-1302** is amended to read:

1278 **76-10-1302. Prostitution.**

1279 (1) An individual except for a child under Section [76-10-1315](#) is guilty of prostitution
1280 when the individual:

1281 (a) engages, offers, or agrees to engage in any sexual activity with another individual
1282 for a fee, or the functional equivalent of a fee;

1283 (b) takes steps in arranging a meeting through any form of advertising, agreeing to
1284 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
1285 or the functional equivalent of a fee; or

1286 (c) loiters in or within view of any public place for the purpose of being hired to
1287 engage in sexual activity.

1288 (2) (a) Except as provided in Subsection (2)(b) and Section [76-10-1309](#), prostitution is
1289 a class B misdemeanor.

1290 (b) Except as provided in Section [76-10-1309](#), an individual who is convicted a second
1291 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
1292 section or under a local ordinance adopted in compliance with Section [76-10-1307](#), is guilty of
1293 a class A misdemeanor.

1294 (3) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
1295 the individual engages in a violation of Subsection (1) at or near the time the individual
1296 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
1297 following offenses, and the individual reports the offense or attempt to law enforcement in
1298 good faith:

- 1299 (a) assault, Section [76-5-102](#);
- 1300 (b) aggravated assault, Section [76-5-103](#);
- 1301 (c) mayhem, Section [76-5-105](#);
- 1302 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
1303 homicide, or homicide by assault under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
- 1304 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
1305 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
1306 trafficking of a child under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping, Trafficking, and
1307 Smuggling;
- 1308 (f) rape, Section [76-5-402](#);
- 1309 (g) rape of a child, Section [76-5-402.1](#);
- 1310 (h) object rape, Section [76-5-402.2](#);
- 1311 (i) object rape of a child, Section [76-5-402.3](#);
- 1312 (j) forcible sodomy, Section [76-5-403](#);
- 1313 (k) sodomy on a child, Section [76-5-403.1](#);
- 1314 (l) forcible sexual abuse, Section [76-5-404](#);
- 1315 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);
- 1316 (n) aggravated sexual assault, Section [76-5-405](#);
- 1317 (o) sexual exploitation of a minor, Section [76-5b-201](#);
- 1318 (p) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
- 1319 [~~(p)~~] (q) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 1320 [~~(q)~~] (r) aggravated burglary or burglary of a dwelling under [~~Title 76,~~] Chapter 6, Part
1321 2, Burglary and Criminal Trespass;
- 1322 [~~(r)~~] (s) aggravated robbery or robbery under [~~Title 76,~~] Chapter 6, Part 3, Robbery; or
1323 [~~(s)~~] (t) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b).
- 1324 Section 14. Section **76-10-1602** is amended to read:
- 1325 **76-10-1602. Definitions.**
- 1326 As used in this part:
- 1327 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
1328 business trust, association, or other legal entity, and any union or group of individuals
1329 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1330 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
1331 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
1332 have the same or similar purposes, results, participants, victims, or methods of commission, or
1333 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
1334 demonstrate continuing unlawful conduct and be related either to each other or to the
1335 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
1336 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
1337 activity as defined by this part shall have occurred within five years of the commission of the
1338 next preceding act alleged as part of the pattern.

1339 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
1340 interest in property, including state, county, and local governmental entities.

1341 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
1342 command, encourage, or intentionally aid another person to engage in conduct which would
1343 constitute any offense described by the following crimes or categories of crimes, or to attempt
1344 or conspire to engage in an act which would constitute any of those offenses, regardless of
1345 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
1346 or a felony:

1347 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
1348 Recording Practices Act;

1349 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
1350 Code, Sections 19-1-101 through 19-7-109;

1351 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
1352 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
1353 Code of Utah, or Section 23-20-4;

1354 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
1355 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

1356 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
1357 Offenses and Procedure Act;

1358 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
1359 Land Sales Practices Act;

1360 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah

- 1361 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
1362 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
1363 Clandestine Drug Lab Act;
- 1364 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
1365 Securities Act;
- 1366 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
1367 Procurement Code;
- 1368 (j) assault or aggravated assault, Sections [76-5-102](#) and [76-5-103](#);
- 1369 (k) a threat of terrorism, Section [76-5-107.3](#);
- 1370 (l) criminal homicide, Sections [76-5-201](#), [76-5-202](#), and [76-5-203](#);
- 1371 (m) kidnapping or aggravated kidnapping, Sections [76-5-301](#) and [76-5-302](#);
- 1372 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
1373 human trafficking, Sections [76-5-308](#), [76-5-308.5](#), [76-5-309](#), and [76-5-310](#);
- 1374 (o) sexual exploitation of a minor or aggravated sexual exploitation of a minor,
1375 ~~[Section]~~ Sections [76-5b-201](#) and [76-5b-201.1](#);
- 1376 (p) arson or aggravated arson, Sections [76-6-102](#) and [76-6-103](#);
- 1377 (q) causing a catastrophe, Section [76-6-105](#);
- 1378 (r) burglary or aggravated burglary, Sections [76-6-202](#) and [76-6-203](#);
- 1379 (s) burglary of a vehicle, Section [76-6-204](#);
- 1380 (t) manufacture or possession of an instrument for burglary or theft, Section [76-6-205](#);
- 1381 (u) robbery or aggravated robbery, Sections [76-6-301](#) and [76-6-302](#);
- 1382 (v) theft, Section [76-6-404](#);
- 1383 (w) theft by deception, Section [76-6-405](#);
- 1384 (x) theft by extortion, Section [76-6-406](#);
- 1385 (y) receiving stolen property, Section [76-6-408](#);
- 1386 (z) theft of services, Section [76-6-409](#);
- 1387 (aa) forgery, Section [76-6-501](#);
- 1388 (bb) fraudulent use of a credit card, Sections [76-6-506.2](#), [76-6-506.3](#), [76-6-506.5](#), and
1389 [76-6-506.6](#);
- 1390 (cc) deceptive business practices, Section [76-6-507](#);
- 1391 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or

- 1392 criticism of goods, Section 76-6-508;
- 1393 (ee) bribery of a labor official, Section 76-6-509;
- 1394 (ff) defrauding creditors, Section 76-6-511;
- 1395 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1396 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1397 (ii) bribery or threat to influence contest, Section 76-6-514;
- 1398 (jj) making a false credit report, Section 76-6-517;
- 1399 (kk) criminal simulation, Section 76-6-518;
- 1400 (ll) criminal usury, Section 76-6-520;
- 1401 (mm) fraudulent insurance act, Section 76-6-521;
- 1402 (nn) retail theft, Section 76-6-602;
- 1403 (oo) computer crimes, Section 76-6-703;
- 1404 (pp) identity fraud, Section 76-6-1102;
- 1405 (qq) mortgage fraud, Section 76-6-1203;
- 1406 (rr) sale of a child, Section 76-7-203;
- 1407 (ss) bribery to influence official or political actions, Section 76-8-103;
- 1408 (tt) threats to influence official or political action, Section 76-8-104;
- 1409 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 1410 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 1411 76-8-106;
- 1412 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 1413 (xx) obstruction of justice, Section 76-8-306;
- 1414 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1415 (zz) false or inconsistent material statements, Section 76-8-502;
- 1416 (aaa) false or inconsistent statements, Section 76-8-503;
- 1417 (bbb) written false statements, Section 76-8-504;
- 1418 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1419 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1420 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1421 (fff) tampering with evidence, Section 76-8-510.5;
- 1422 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is

1423 a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and
1424 Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist
1425 Disclosure and Regulation Act;

1426 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
1427 76-8-1205;

1428 (iii) unemployment insurance fraud, Section 76-8-1301;

1429 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
1430 76-9-301(2)(d) or (e), or Section 76-9-301.1;

1431 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
1432 parts, Section 76-10-306;

1433 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
1434 device, Section 76-10-307;

1435 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

1436 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;

1437 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;

1438 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
1439 76-10-1002;

1440 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
1441 Section 76-10-1003;

1442 (rrr) sales in containers bearing registered trademark of substituted articles, Section
1443 76-10-1004;

1444 (sss) selling or dealing with article bearing registered trademark or service mark with
1445 intent to defraud, Section 76-10-1006;

1446 (ttt) gambling, Section 76-10-1102;

1447 (uuu) gambling fraud, Section 76-10-1103;

1448 (vvv) gambling promotion, Section 76-10-1104;

1449 (www) possessing a gambling device or record, Section 76-10-1105;

1450 (xxx) confidence game, Section 76-10-1109;

1451 (yyy) distributing pornographic material, Section 76-10-1204;

1452 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;

1453 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;

- 1454 (bbbb) distribution of pornographic films, Section 76-10-1222;
- 1455 (cccc) indecent public displays, Section 76-10-1228;
- 1456 (dddd) prostitution, Section 76-10-1302;
- 1457 (eeee) aiding prostitution, Section 76-10-1304;
- 1458 (ffff) exploiting prostitution, Section 76-10-1305;
- 1459 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
- 1460 (hhhh) communications fraud, Section 76-10-1801;
- 1461 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
- 1462 Currency Transaction Reporting Act;
- 1463 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
- 1464 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
- 1465 this state; and
- 1466 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
- 1467 Sec. 1961(1)(B), (C), and (D).

1468 Section 15. Section 77-22-2.5 is amended to read:

1469 **77-22-2.5. Court orders for criminal investigations for records concerning an**
1470 **electronic communications system or service or remote computing service -- Content --**
1471 **Fee for providing information.**

1472 (1) As used in this section:

1473 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
1474 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
1475 radio, electromagnetic, photoelectronic, or photooptical system.

1476 (ii) "Electronic communication" does not include:

1477 (A) a wire or oral communication;

1478 (B) a communication made through a tone-only paging device;

1479 (C) a communication from a tracking device; or

1480 (D) electronic funds transfer information stored by a financial institution in a
1481 communications system used for the electronic storage and transfer of funds.

1482 (b) "Electronic communications service" means a service which provides for users the
1483 ability to send or receive wire or electronic communications.

1484 (c) "Electronic communications system" means a wire, radio, electromagnetic,

1485 photooptical, or photoelectronic facilities for the transmission of wire or electronic
1486 communications, and a computer facilities or related electronic equipment for the electronic
1487 storage of the communication.

1488 (d) "Internet service provider" means the same as that term is defined in Section
1489 [76-10-1230](#).

1490 (e) "Prosecutor" means the same as that term is defined in Section [77-22-4.5](#).

1491 (f) "Remote computing service" means the provision to the public of computer storage
1492 or processing services by means of an electronic communications system.

1493 (g) "Sexual offense against a minor" means:

1494 (i) sexual exploitation of a minor or attempted sexual exploitation of a minor in
1495 violation of Section [76-5b-201](#);

1496 (ii) aggravated sexual exploitation of a minor or attempted aggravated sexual
1497 exploitation of a minor in violation of Section [76-5b-201.1](#);

1498 [~~(iii)~~] (iii) a sexual offense or attempted sexual offense committed against a minor in
1499 violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

1500 [~~(iii)~~] (iv) dealing in or attempting to deal in material harmful to a minor in violation of
1501 Section [76-10-1206](#);

1502 [~~(iv)~~] (v) enticement of a minor or attempted enticement of a minor in violation of
1503 Section [76-4-401](#);

1504 [~~(v)~~] (vi) human trafficking of a child in violation of Section [76-5-308.5](#); or

1505 [~~(vi)~~] (vii) aggravated sexual extortion of a child in violation of Section [76-5b-204](#).

1506 (2) When a law enforcement agency is investigating a sexual offense against a minor,
1507 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under
1508 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or
1509 service or remote computing service has been used in the commission of a criminal offense, a
1510 law enforcement agent shall:

1511 (a) articulate specific facts showing reasonable grounds to believe that the records or
1512 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and
1513 material to an ongoing investigation;

1514 (b) present the request to a prosecutor for review and authorization to proceed; and

1515 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.

1516 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote
1517 computing service provider that owns or controls the Internet protocol address, websites, email
1518 address, or service to a specific telephone number, requiring the production of the following
1519 information, if available, upon providing in the court order the Internet protocol address, email
1520 address, telephone number, or other identifier, and the dates and times the address, telephone
1521 number, or other identifier is suspected of being used in the commission of the offense:

- 1522 (i) names of subscribers, service customers, and users;
- 1523 (ii) addresses of subscribers, service customers, and users;
- 1524 (iii) records of session times and durations;
- 1525 (iv) length of service, including the start date and types of service utilized; and
- 1526 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
1527 including a temporarily assigned network address.

1528 (3) A court order issued under this section shall state that the electronic
1529 communications system or service or remote computing service provider shall produce a record
1530 under Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the
1531 suspected criminal activity or offense as described in the court order.

1532 (4) (a) An electronic communications system or service or remote computing service
1533 provider that provides information in response to a court order issued under this section may
1534 charge a fee, not to exceed the actual cost, for providing the information.

1535 (b) The law enforcement agency conducting the investigation shall pay the fee.

1536 (5) The electronic communications system or service or remote computing service
1537 provider served with or responding to the court order may not disclose the court order to the
1538 account holder identified pursuant to the court order for a period of 90 days.

1539 (6) If the electronic communications system or service or remote computing service
1540 provider served with the court order does not own or control the Internet protocol address,
1541 websites, or email address, or provide service for the telephone number that is the subject of
1542 the court order, the provider shall notify the investigating law enforcement agency that the
1543 provider does not have the information.

1544 (7) There is no cause of action against a provider or wire or electronic communication
1545 service, or the provider or service's officers, employees, agents, or other specified persons, for
1546 providing information, facilities, or assistance in accordance with the terms of the court order

1547 issued under this section or statutory authorization.

1548 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
1549 Chapter 23b, Access to Electronic Communications.

1550 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
1551 Access to Electronic Communications, apply to providers and subscribers subject to a court
1552 order issued under this section.

1553 (9) A prosecutorial agency shall annually on or before February 15 report to the
1554 Commission on Criminal and Juvenile Justice:

1555 (a) the number of requests for court orders authorized by the prosecutorial agency;

1556 (b) the number of orders issued by the court and the criminal offense, pursuant to
1557 Subsection (2), each order was used to investigate; and

1558 (c) if the court order led to criminal charges being filed, the type and number of
1559 offenses charged.

1560 Section 16. Section **77-36-1** is amended to read:

1561 **77-36-1. Definitions.**

1562 As used in this chapter:

1563 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

1564 (2) "Department" means the Department of Public Safety.

1565 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
1566 3, Divorce.

1567 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
1568 involving violence or physical harm or threat of violence or physical harm, or any attempt,
1569 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
1570 when committed by one cohabitant against another. "Domestic violence" or "domestic
1571 violence offense" includes commission or attempt to commit, any of the following offenses by
1572 one cohabitant against another:

1573 (a) aggravated assault, as described in Section [76-5-103](#);

1574 (b) aggravated cruelty to an animal, as described in Subsection [76-9-301\(4\)](#), with the
1575 intent to harass or threaten the other cohabitant;

1576 (c) assault, as described in Section [76-5-102](#);

1577 (d) criminal homicide, as described in Section [76-5-201](#);

- 1578 (e) harassment, as described in Section [76-5-106](#);
- 1579 (f) electronic communication harassment, as described in Section [76-9-201](#);
- 1580 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
1581 [76-5-301](#), [76-5-301.1](#), and [76-5-302](#);
- 1582 (h) mayhem, as described in Section [76-5-105](#);
- 1583 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
1584 [~~Section [76-5b-201](#), Sexual exploitation of a minor -- Offenses;~~] sexual exploitation of a minor
1585 and aggravated sexual exploitation of a minor, as described in Sections [76-5b-201](#) and
1586 [76-5b-201.1](#);
- 1587 (j) stalking, as described in Section [76-5-106.5](#);
- 1588 (k) unlawful detention or unlawful detention of a minor, as described in Section
1589 [76-5-304](#);
- 1590 (l) violation of a protective order or ex parte protective order, as described in Section
1591 [76-5-108](#);
- 1592 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property
1593 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
1594 Part 3, Robbery;
- 1595 (n) possession of a deadly weapon with criminal intent, as described in Section
1596 [76-10-507](#);
- 1597 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any
1598 person, building, or vehicle, as described in Section [76-10-508](#);
- 1599 (p) disorderly conduct, as defined in Section [76-9-102](#), if a conviction or adjudication
1600 of disorderly conduct is the result of a plea agreement in which the perpetrator was originally
1601 charged with a domestic violence offense otherwise described in this Subsection (4), except
1602 that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the
1603 manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of
1604 domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18
1605 U.S.C. Sec. 921 et seq.;
- 1606 (q) child abuse, as described in Section [76-5-109.1](#);
- 1607 (r) threatening use of a dangerous weapon, as described in Section [76-10-506](#);
- 1608 (s) threatening violence, as described in Section [76-5-107](#);

- 1609 (t) tampering with a witness, as described in Section 76-8-508;
- 1610 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;
- 1611 (v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or
- 1612 unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;
- 1613 (w) sexual battery, as described in Section 76-9-702.1;
- 1614 (x) voyeurism, as described in Section 76-9-702.7;
- 1615 (y) damage to or interruption of a communication device, as described in Section
- 1616 76-6-108; or
- 1617 (z) an offense described in Subsection 78B-7-806(1).
- 1618 (5) "Jail release agreement" means the same as that term is defined in Section
- 1619 78B-7-801.
- 1620 (6) "Jail release court order" means the same as that term is defined in Section
- 1621 78B-7-801.
- 1622 (7) "Marital status" means married and living together, divorced, separated, or not
- 1623 married.
- 1624 (8) "Married and living together" means a couple whose marriage was solemnized
- 1625 under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- 1626 (9) "Not married" means any living arrangement other than married and living together,
- 1627 divorced, or separated.
- 1628 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).
- 1629 (11) "Pretrial protective order" means a written order:
- 1630 (a) specifying and limiting the contact a person who has been charged with a domestic
- 1631 violence offense may have with an alleged victim or other specified individuals; and
- 1632 (b) specifying other conditions of release under ~~[Sections]~~ Section 78B-7-802 or
- 1633 78B-7-803, pending trial in the criminal case.
- 1634 (12) "Sentencing protective order" means a written order of the court as part of
- 1635 sentencing in a domestic violence case that limits the contact an individual who is convicted or
- 1636 adjudicated of a domestic violence offense may have with a victim or other specified
- 1637 individuals under Section 78B-7-804.
- 1638 (13) "Separated" means a couple who have had their marriage solemnized under
- 1639 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

1640 (14) "Victim" means a cohabitant who has been subjected to domestic violence.

1641 Section 17. Section **77-41-102** is amended to read:

1642 **77-41-102. Definitions.**

1643 As used in this chapter:

1644 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
1645 Safety established in section [53-10-201](#).

1646 (2) "Business day" means a day on which state offices are open for regular business.

1647 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
1648 Identification showing that the offender has met the requirements of Section [77-41-112](#).

1649 (4) "Department" means the Department of Corrections.

1650 (5) "Division" means the Division of Juvenile Justice Services.

1651 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
1652 time, whether financially compensated, volunteered, or for the purpose of government or
1653 educational benefit.

1654 (7) "Indian Country" means:

1655 (a) all land within the limits of any Indian reservation under the jurisdiction of the
1656 United States government, regardless of the issuance of any patent, and includes rights-of-way
1657 running through the reservation;

1658 (b) all dependent Indian communities within the borders of the United States whether
1659 within the original or subsequently acquired territory, and whether or not within the limits of a
1660 state; and

1661 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
1662 not been extinguished, including rights-of-way running through the allotments.

1663 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
1664 property under the jurisdiction of the United States military, Canada, the United Kingdom,
1665 Australia, or New Zealand.

1666 (9) "Kidnap offender" means any individual, other than a natural parent of the victim:

1667 (a) who has been convicted in this state of a violation of:

1668 (i) Subsection [76-5-301](#)(1)(c) or (d), kidnapping;

1669 (ii) Section [76-5-301.1](#), child kidnapping;

1670 (iii) Section [76-5-302](#), aggravated kidnapping;

- 1671 (iv) Section 76-5-308, human trafficking for labor and human smuggling;
- 1672 (v) Section 76-5-308, human smuggling, when the individual smuggled is under 18
1673 years old;
- 1674 (vi) Section 76-5-308.5, human trafficking of a child for labor;
- 1675 (vii) Section 76-5-310, aggravated human trafficking and aggravated human
1676 smuggling, on or after May 10, 2011;
- 1677 (viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or
- 1678 (ix) attempting, soliciting, or conspiring to commit any felony offense listed in
1679 Subsections (9)(a)(i) through (iii);
- 1680 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
1681 to commit a crime in another jurisdiction, including any state, federal, or military court that is
1682 substantially equivalent to the offenses listed in Subsection (9)(a); and
- 1683 (ii) who is:
- 1684 (A) a Utah resident; or
- 1685 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
1686 10 or more days, regardless of whether or not the offender intends to permanently reside in this
1687 state;
- 1688 (c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of
1689 original conviction;
- 1690 (B) who is required to register as a kidnap offender by any state, federal, or military
1691 court; or
- 1692 (C) who would be required to register as a kidnap offender if residing in the
1693 jurisdiction of the conviction regardless of the date of the conviction or any previous
1694 registration requirements; and
- 1695 (ii) in any 12-month period, who is in this state for a total of 10 or more days,
1696 regardless of whether or not the offender intends to permanently reside in this state;
- 1697 (d) (i) (A) who is a nonresident regularly employed or working in this state; or
- 1698 (B) who is a student in this state; and
- 1699 (ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any
1700 substantially equivalent offense in another jurisdiction; or
- 1701 (B) as a result of the conviction, who is required to register in the individual's state of

1702 residence;

1703 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction

1704 of one or more offenses listed in Subsection (9); or

1705 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in

1706 Subsection (9)(a); and

1707 (ii) who has been committed to the division for secure care, as defined in Section

1708 80-1-102, for that offense and:

1709 (A) the individual remains in the division's custody until 30 days before the individual's

1710 21st birthday; or

1711 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual

1712 under Section 80-6-605, the individual remains in the division's custody until 30 days before

1713 the individual's 25th birthday.

1714 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the

1715 minor's noncustodial parent.

1716 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender

1717 as defined in Subsection (17).

1718 (12) "Online identifier" or "Internet identifier":

1719 (a) means any electronic mail, chat, instant messenger, social networking, or similar

1720 name used for Internet communication; and

1721 (b) does not include date of birth, social security number, PIN number, or Internet

1722 passwords.

1723 (13) "Primary residence" means the location where the offender regularly resides, even

1724 if the offender intends to move to another location or return to another location at any future

1725 date.

1726 (14) "Register" means to comply with the requirements of this chapter and

1727 administrative rules of the department made under this chapter.

1728 (15) "Registration website" means the Sex and Kidnap Offender Notification and

1729 Registration website described in Section 77-41-110 and the information on the website.

1730 (16) "Secondary residence" means any real property that the offender owns or has a

1731 financial interest in, or any location where, in any 12-month period, the offender stays

1732 overnight a total of 10 or more nights when not staying at the offender's primary residence.

- 1733 (17) "Sex offender" means any individual:
- 1734 (a) convicted in this state of:
- 1735 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
- 1736 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
- 1737 2011;
- 1738 (iii) Section 76-5-308, human trafficking for sexual exploitation;
- 1739 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 1740 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 1741 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 1742 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in
- 1743 Subsection 76-5-401(3)(b) or (c);
- 1744 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection
- 1745 76-5-401.1(3);
- 1746 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 1747 (x) Section 76-5-402, rape;
- 1748 (xi) Section 76-5-402.1, rape of a child;
- 1749 (xii) Section 76-5-402.2, object rape;
- 1750 (xiii) Section 76-5-402.3, object rape of a child;
- 1751 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- 1752 (xv) Section 76-5-403.1, sodomy on a child;
- 1753 (xvi) Section 76-5-404, forcible sexual abuse;
- 1754 (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a
- 1755 child;
- 1756 (xviii) Section 76-5-405, aggravated sexual assault;
- 1757 (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is
- 1758 younger than 18 years old, if the offense is committed on or after May 10, 2011;
- 1759 (xx) Section 76-5b-201, sexual exploitation of a minor;
- 1760 (xxi) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- 1761 [~~xxi~~] (xxii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 1762 [~~xxii~~] (xxiii) Section 76-7-102, incest;
- 1763 [~~xxiii~~] (xxiv) Section 76-9-702, lewdness, if the individual has been convicted of the

1764 offense four or more times;

1765 [~~(xxiv)~~] (xxv) Section 76-9-702.1, sexual battery, if the individual has been convicted

1766 of the offense four or more times;

1767 [~~(xxv)~~] (xxvi) any combination of convictions of Section 76-9-702, lewdness, and of

1768 Section 76-9-702.1, sexual battery, that total four or more convictions;

1769 [~~(xxvi)~~] (xxvii) Section 76-9-702.5, lewdness involving a child;

1770 [~~(xxvii)~~] (xxviii) a felony or class A misdemeanor violation of Section 76-9-702.7,

1771 voyeurism;

1772 [~~(xxviii)~~] (xxix) Section 76-10-1306, aggravated exploitation of prostitution; or

1773 [~~(xxix)~~] (xxx) attempting, soliciting, or conspiring to commit any felony offense listed

1774 in this Subsection (17)(a);

1775 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy

1776 to commit a crime in another jurisdiction, including any state, federal, or military court that is

1777 substantially equivalent to the offenses listed in Subsection (17)(a); and

1778 (ii) who is:

1779 (A) a Utah resident; or

1780 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of

1781 10 or more days, regardless of whether the offender intends to permanently reside in this state;

1782 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of

1783 original conviction;

1784 (B) who is required to register as a sex offender by any state, federal, or military court;

1785 or

1786 (C) who would be required to register as a sex offender if residing in the jurisdiction of

1787 the original conviction regardless of the date of the conviction or any previous registration

1788 requirements; and

1789 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,

1790 regardless of whether or not the offender intends to permanently reside in this state;

1791 (d) (i) (A) who is a nonresident regularly employed or working in this state; or

1792 (B) who is a student in this state; and

1793 (ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any

1794 substantially equivalent offense in any jurisdiction; or

- 1795 (B) who is, as a result of the conviction, required to register in the individual's
1796 jurisdiction of residence;
- 1797 (e) who is found not guilty by reason of insanity in this state, or in any other
1798 jurisdiction of one or more offenses listed in Subsection (17)(a); or
- 1799 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1800 Subsection (17)(a); and
- 1801 (ii) who has been committed to the division for secure care, as defined in Section
1802 80-1-102, for that offense and:
- 1803 (A) the individual remains in the division's custody until 30 days before the individual's
1804 21st birthday; or
- 1805 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual
1806 under Section 80-6-605, the individual remains in the division's custody until 30 days before
1807 the individual's 25th birthday.
- 1808 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
1809 Driving Under the Influence and Reckless Driving.
- 1810 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
1811 any jurisdiction.
- 1812 Section 18. Section 77-41-106 is amended to read:
- 1813 **77-41-106. Registerable offenses.**
- 1814 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:
- 1815 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the
1816 conviction, the offender has previously been convicted of an offense listed in Subsection
1817 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense
1818 committed as a juvenile;
- 1819 (2) a conviction for any of the following offenses, including attempting, soliciting, or
1820 conspiring to commit any felony of:
- 1821 (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
1822 the victim;
- 1823 (b) Section 76-5-402, rape;
- 1824 (c) Section 76-5-402.1, rape of a child;
- 1825 (d) Section 76-5-402.2, object rape;

- 1826 (e) Section [76-5-402.3](#), object rape of a child;
- 1827 (f) Section [76-5-403.1](#), sodomy on a child;
- 1828 (g) Subsection [76-5-404.1](#)(4), aggravated sexual abuse of a child; or
- 1829 (h) Section [76-5-405](#), aggravated sexual assault;
- 1830 (3) Section [76-5-308](#), human trafficking for sexual exploitation;
- 1831 (4) Section [76-5-308.5](#), human trafficking of a child for sexual exploitation;
- 1832 (5) Section [76-5-310](#), aggravated human trafficking for sexual exploitation;
- 1833 (6) Section [76-5-311](#), human trafficking of a vulnerable adult for sexual exploitation;
- 1834 (7) Section [76-4-401](#), a felony violation of enticing a minor over the Internet;
- 1835 (8) Section [76-5-302](#), aggravated kidnapping, except if the offender is a natural parent
- 1836 of the victim;
- 1837 (9) Section [76-5-403](#), forcible sodomy;
- 1838 (10) Section [76-5-404.1](#), sexual abuse of a child;
- 1839 (11) Section [76-5b-201](#), sexual exploitation of a minor;
- 1840 (12) Section [76-5b-201.1](#), aggravated sexual exploitation of a minor;
- 1841 [~~(12)~~] (13) Subsection [76-5b-204](#)(4), aggravated sexual extortion; or
- 1842 [~~(13)~~] (14) Section [76-10-1306](#), aggravated exploitation of prostitution, on or after May
- 1843 10, 2011.

1844 Section 19. Section **78B-6-117** is amended to read:

1845 **78B-6-117. Who may adopt -- Adoption of minor.**

- 1846 (1) A minor child may be adopted by an adult individual, in accordance with this
- 1847 section and this part.
- 1848 (2) A child may be adopted by:
- 1849 (a) adults who are legally married to each other in accordance with the laws of this
- 1850 state, including adoption by a stepparent; or
- 1851 (b) subject to Subsections (3) and (4), a single adult.
- 1852 (3) A child may not be adopted by an individual who is cohabiting in a relationship that
- 1853 is not a legally valid and binding marriage under the laws of this state unless the individual is a
- 1854 relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C.
- 1855 Sec. 1901 et seq.
- 1856 (4) To provide a child who is in the custody of the division with the most beneficial

1857 family structure, when a child in the custody of the division is placed for adoption, the division
1858 or child-placing agency shall place the child with a married couple, unless:

1859 (a) there are no qualified married couples who:

1860 (i) have applied to adopt a child;

1861 (ii) are willing to adopt the child; and

1862 (iii) are an appropriate placement for the child;

1863 (b) the child is placed with a relative of the child;

1864 (c) the child is placed with an individual who has already developed a substantial
1865 relationship with the child;

1866 (d) the child is placed with an individual who:

1867 (i) is selected by a parent or former parent of the child, if the parent or former parent
1868 consented to the adoption of the child; and

1869 (ii) the parent or former parent described in Subsection (4)(d)(i):

1870 (A) knew the individual with whom the child is placed before the parent consented to
1871 the adoption; or

1872 (B) became aware of the individual with whom the child is placed through a source
1873 other than the division or the child-placing agency that assists with the adoption of the child; or

1874 (e) it is in the best interests of the child to place the child with a single adult.

1875 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
1876 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
1877 to a felony or attempted felony involving conduct that constitutes any of the following:

1878 (a) child abuse, as described in Section 76-5-109;

1879 (b) child abuse homicide, as described in Section 76-5-208;

1880 (c) child kidnapping, as described in Section 76-5-301.1;

1881 (d) human trafficking of a child, as described in Section 76-5-308.5;

1882 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

1883 (f) rape of a child, as described in Section 76-5-402.1;

1884 (g) object rape of a child, as described in Section 76-5-402.3;

1885 (h) sodomy on a child, as described in Section 76-5-403.1;

1886 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
1887 Section 76-5-404.1;

1888 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); [~~or~~]
1889 (k) aggravated sexual exploitation of a minor, as described in Section [76-5b-201.1](#); or
1890 [~~(k)~~] (l) an offense in another state that, if committed in this state, would constitute an
1891 offense described in this Subsection (5).

1892 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
1893 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
1894 child except as provided in this Subsection (6).

1895 (b) An individual described in Subsection (5) may only be considered for adoption of a
1896 child if the following criteria are met by clear and convincing evidence:

1897 (i) at least 10 years have elapsed from the day on which the individual is successfully
1898 released from prison, jail, parole, or probation related to a disqualifying offense;

1899 (ii) during the 10 years before the day on which the individual files a petition with the
1900 court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no
1901 contest to an offense greater than an infraction or traffic violation that would likely impact the
1902 health, safety, or well-being of the child;

1903 (iii) the individual can provide evidence of successful treatment or rehabilitation
1904 directly related to the disqualifying offense;

1905 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
1906 cause harm, as defined in Section [80-1-102](#), or potential harm to the child currently or at any
1907 time in the future when considering all of the following:

1908 (A) the child's age;

1909 (B) the child's gender;

1910 (C) the child's development;

1911 (D) the nature and seriousness of the disqualifying offense;

1912 (E) the preferences of a child 12 years old or older;

1913 (F) any available assessments, including custody evaluations, home studies,
1914 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
1915 assessments, and bonding assessments; and

1916 (G) any other relevant information;

1917 (v) the individual can provide evidence of all of the following:

1918 (A) the relationship with the child is of long duration;

- 1919 (B) that an emotional bond exists with the child; and
- 1920 (C) that adoption by the individual who has committed the disqualifying offense
- 1921 ensures the best interests of the child are met; and
- 1922 (vi) the adoption is by:
- 1923 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- 1924 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102
- 1925 and there is not another relative without a disqualifying offense filing an adoption petition.
- 1926 (c) The individual with the disqualifying offense bears the burden of proof regarding
- 1927 why adoption with that individual is in the best interest of the child over another responsible
- 1928 relative or equally situated individual who does not have a disqualifying offense.
- 1929 (d) If there is an alternative responsible relative who does not have a disqualifying
- 1930 offense filing an adoption petition, the following applies:
- 1931 (i) preference for adoption shall be given to a relative who does not have a
- 1932 disqualifying offense; and
- 1933 (ii) before the court may grant adoption to the individual who has the disqualifying
- 1934 offense over another responsible, willing, and able relative:
- 1935 (A) an impartial custody evaluation shall be completed; and
- 1936 (B) a guardian ad litem shall be assigned.
- 1937 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a
- 1938 final decision on adoption has not been made and to a case filed on or after March 25, 2017.
- 1939 Section 20. Section 80-1-102 is amended to read:
- 1940 **80-1-102. Juvenile code definitions.**
- 1941 As used in this title:
- 1942 (1) (a) "Abuse" means:
- 1943 (i) (A) nonaccidental harm of a child;
- 1944 (B) threatened harm of a child;
- 1945 (C) sexual exploitation;
- 1946 (D) sexual abuse; or
- 1947 (E) human trafficking of a child in violation of Section 76-5-308.5; or
- 1948 (ii) that a child's natural parent:
- 1949 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

1950 child;

1951 (B) is identified by a law enforcement agency as the primary suspect in an investigation

1952 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

1953 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

1954 recklessly causing the death of another parent of the child.

1955 (b) "Abuse" does not include:

1956 (i) reasonable discipline or management of a child, including withholding privileges;

1957 (ii) conduct described in Section 76-2-401; or

1958 (iii) the use of reasonable and necessary physical restraint or force on a child:

1959 (A) in self-defense;

1960 (B) in defense of others;

1961 (C) to protect the child; or

1962 (D) to remove a weapon in the possession of a child for any of the reasons described in

1963 Subsections (1)(b)(iii)(A) through (C).

1964 (2) "Abused child" means a child who has been subjected to abuse.

1965 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the

1966 facts alleged in the petition have been proved.

1967 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance

1968 with Section 80-6-402.

1969 (4) (a) "Adult" means an individual who is 18 years old or older.

1970 (b) "Adult" does not include an individual:

1971 (i) who is 18 years old or older; and

1972 (ii) who is a minor.

1973 (5) "Attorney guardian ad litem" means the same as that term is defined in Section

1974 78A-2-801.

1975 (6) "Board" means the Board of Juvenile Court Judges.

1976 (7) "Child" means an individual who is under 18 years old.

1977 (8) "Child and family plan" means a written agreement between a child's parents or

1978 guardian and the Division of Child and Family Services as described in Section 62A-4a-205.

1979 (9) "Child placement agency" means:

1980 (a) a private agency licensed to receive a child for placement or adoption under this

1981 code; or

1982 (b) a private agency that receives a child for placement or adoption in another state,
1983 which is licensed or approved where such license or approval is required by law.

1984 (10) "Clandestine laboratory operation" means the same as that term is defined in
1985 Section [58-37d-3](#).

1986 (11) "Commit" or "committed" means, unless specified otherwise:

1987 (a) with respect to a child, to transfer legal custody; and

1988 (b) with respect to a minor who is at least 18 years old, to transfer custody.

1989 (12) "Community-based program" means a nonsecure residential or nonresidential
1990 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
1991 restrictive setting, consistent with public safety, and operated by or under contract with the
1992 Division of Juvenile Justice Services.

1993 (13) "Community placement" means placement of a minor in a community-based
1994 program described in Section [80-5-402](#).

1995 (14) "Correctional facility" means:

1996 (a) a county jail; or

1997 (b) a secure correctional facility as defined in Section [64-13-1](#).

1998 (15) "Criminogenic risk factors" means evidence-based factors that are associated with
1999 a minor's likelihood of reoffending.

2000 (16) "Department" means the Department of Human Services created in Section
2001 [62A-1-102](#).

2002 (17) "Dependent child" or "dependency" means a child who is without proper care
2003 through no fault of the child's parent, guardian, or custodian.

2004 (18) "Deprivation of custody" means transfer of legal custody by the juvenile court
2005 from a parent or a previous custodian to another person, agency, or institution.

2006 (19) "Detention" means home detention or secure detention.

2007 (20) "Detention risk assessment tool" means an evidence-based tool established under
2008 Section [80-5-203](#) that:

2009 (a) assesses a minor's risk of failing to appear in court or reoffending before
2010 adjudication; and

2011 (b) is designed to assist in making a determination of whether a minor shall be held in

2012 detention.

2013 (21) "Developmental immaturity" means incomplete development in one or more
2014 domains that manifests as a functional limitation in the minor's present ability to:

2015 (a) consult with counsel with a reasonable degree of rational understanding; and

2016 (b) have a rational as well as factual understanding of the proceedings.

2017 (22) "Disposition" means an order by a juvenile court, after the adjudication of a
2018 minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

2019 (23) "Educational neglect" means that, after receiving a notice of compulsory education
2020 violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to
2021 ensure that the child receives an appropriate education.

2022 (24) "Educational series" means an evidence-based instructional series:

2023 (a) obtained at a substance abuse program that is approved by the Division of
2024 Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

2025 (b) designed to prevent substance use or the onset of a mental health disorder.

2026 (25) "Emancipated" means the same as that term is defined in Section 80-7-102.

2027 (26) "Evidence-based" means a program or practice that has had multiple randomized
2028 control studies or a meta-analysis demonstrating that the program or practice is effective for a
2029 specific population or has been rated as effective by a standardized program evaluation tool.

2030 (27) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

2031 (28) "Formal probation" means a minor is:

2032 (a) supervised in the community by, and reports to, a juvenile probation officer or an
2033 agency designated by the juvenile court; and

2034 (b) subject to return to the juvenile court in accordance with Section 80-6-607.

2035 (29) "Group rehabilitation therapy" means psychological and social counseling of one
2036 or more individuals in the group, depending upon the recommendation of the therapist.

2037 (30) "Guardian" means a person appointed by a court to make decisions regarding a
2038 minor, including the authority to consent to:

2039 (a) marriage;

2040 (b) enlistment in the armed forces;

2041 (c) major medical, surgical, or psychiatric treatment; or

2042 (d) legal custody, if legal custody is not vested in another individual, agency, or

2043 institution.

2044 (31) "Guardian ad litem" means the same as that term is defined in Section [78A-2-801](#).

2045 (32) "Harm" means:

2046 (a) physical or developmental injury or damage;

2047 (b) emotional damage that results in a serious impairment in the child's growth,
2048 development, behavior, or psychological functioning;

2049 (c) sexual abuse; or

2050 (d) sexual exploitation.

2051 (33) "Home detention" means placement of a minor:

2052 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the
2053 consent of the minor's parent, guardian, or custodian, under terms and conditions established by
2054 the Division of Juvenile Justice Services or the juvenile court; or

2055 (b) if after a disposition, and in accordance with Section [78A-6-353](#) or [80-6-704](#), in the
2056 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or
2057 custodian, under terms and conditions established by the Division of Juvenile Justice Services
2058 or the juvenile court.

2059 (34) (a) "Incest" means engaging in sexual intercourse with an individual whom the
2060 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
2061 nephew, niece, or first cousin.

2062 (b) "Incest" includes:

2063 (i) blood relationships of the whole or half blood, without regard to legitimacy;

2064 (ii) relationships of parent and child by adoption; and

2065 (iii) relationships of stepparent and stepchild while the marriage creating the
2066 relationship of a stepparent and stepchild exists.

2067 (35) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2068 (36) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2069 (37) "Indigent defense service provider" means the same as that term is defined in
2070 Section [78B-22-102](#).

2071 (38) "Indigent defense services" means the same as that term is defined in Section
2072 [78B-22-102](#).

2073 (39) "Indigent individual" means the same as that term is defined in Section

2074 78B-22-102.

2075 (40) (a) "Intake probation" means a minor is:

2076 (i) monitored by a juvenile probation officer; and

2077 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.

2078 (b) "Intake probation" does not include formal probation.

2079 (41) "Intellectual disability" means a significant subaverage general intellectual

2080 functioning existing concurrently with deficits in adaptive behavior that constitutes a

2081 substantial limitation to the individual's ability to function in society.

2082 (42) "Juvenile offender" means:

2083 (a) a serious youth offender; or

2084 (b) a youth offender.

2085 (43) "Juvenile probation officer" means a probation officer appointed under Section

2086 78A-6-205.

2087 (44) "Juvenile receiving center" means a nonsecure, nonresidential program established

2088 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile

2089 Justice Services, that is responsible for minors taken into temporary custody under Section

2090 80-6-201.

2091 (45) "Legal custody" means a relationship embodying:

2092 (a) the right to physical custody of the minor;

2093 (b) the right and duty to protect, train, and discipline the minor;

2094 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
2095 medical care;

2096 (d) the right to determine where and with whom the minor shall live; and

2097 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

2098 (46) "Mental illness" means:

2099 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
2100 behavioral, or related functioning; or

2101 (b) the same as that term is defined in:

2102 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
2103 published by the American Psychiatric Association; or

2104 (ii) the current edition of the International Statistical Classification of Diseases and

2105 Related Health Problems.

2106 (47) "Minor" means, except as provided in Sections [80-6-501](#), [80-6-901](#), and [80-7-102](#):

2107 (a) a child; or

2108 (b) an individual:

2109 (i) (A) who is at least 18 years old and younger than 21 years old; and

2110 (B) for whom the Division of Child and Family Services has been specifically ordered
2111 by the juvenile court to provide services because the individual was an abused, neglected, or
2112 dependent child or because the individual was adjudicated for an offense; or

2113 (ii) (A) who is at least 18 years old and younger than 25 years old; and

2114 (B) whose case is under the continuing jurisdiction of the juvenile court under Chapter
2115 6, Juvenile Justice.

2116 (48) "Mobile crisis outreach team" means the same as that term is defined in Section
2117 [62A-15-102](#).

2118 (49) "Molestation" means that an individual, with the intent to arouse or gratify the
2119 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
2120 or the breast of a female child, or takes indecent liberties with a child as defined in Section
2121 [76-5-416](#).

2122 (50) (a) "Natural parent" means a minor's biological or adoptive parent.

2123 (b) "Natural parent" includes the minor's noncustodial parent.

2124 (51) (a) "Neglect" means action or inaction causing:

2125 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
2126 Relinquishment of a Newborn Child;

2127 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
2128 guardian, or custodian;

2129 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
2130 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or
2131 well-being;

2132 (iv) a child to be at risk of being neglected or abused because another child in the same
2133 home is neglected or abused;

2134 (v) abandonment of a child through an unregulated custody transfer; or

2135 (vi) educational neglect.

- 2136 (b) "Neglect" does not include:
- 2137 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
- 2138 reason, does not provide specified medical treatment for a child;
- 2139 (ii) a health care decision made for a child by the child's parent or guardian, unless the
- 2140 state or other party to a proceeding shows, by clear and convincing evidence, that the health
- 2141 care decision is not reasonable and informed;
- 2142 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 2143 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
- 2144 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,
- 2145 including:
- 2146 (A) traveling to and from school, including by walking, running, or bicycling;
- 2147 (B) traveling to and from nearby commercial or recreational facilities;
- 2148 (C) engaging in outdoor play;
- 2149 (D) remaining in a vehicle unattended, except under the conditions described in
- 2150 Subsection 76-10-2202(2);
- 2151 (E) remaining at home unattended; or
- 2152 (F) engaging in a similar independent activity.
- 2153 (52) "Neglected child" means a child who has been subjected to neglect.
- 2154 (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile
- 2155 probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the
- 2156 consent in writing of:
- 2157 (a) the assigned juvenile probation officer; and
- 2158 (b) (i) the minor; or
- 2159 (ii) the minor and the minor's parent, legal guardian, or custodian.
- 2160 (54) "Not competent to proceed" means that a minor, due to a mental illness,
- 2161 intellectual disability or related condition, or developmental immaturity, lacks the ability to:
- 2162 (a) understand the nature of the proceedings against the minor or of the potential
- 2163 disposition for the offense charged; or
- 2164 (b) consult with counsel and participate in the proceedings against the minor with a
- 2165 reasonable degree of rational understanding.
- 2166 (55) "Parole" means a conditional release of a juvenile offender from residency in

2167 secure care to live outside of secure care under the supervision of the Division of Juvenile
2168 Justice Services, or another person designated by the Division of Juvenile Justice Services.

2169 (56) "Physical abuse" means abuse that results in physical injury or damage to a child.

2170 (57) (a) "Probation" means a legal status created by court order, following an
2171 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's
2172 home under prescribed conditions.

2173 (b) "Probation" includes intake probation or formal probation.

2174 (58) "Prosecuting attorney" means:

2175 (a) the attorney general and any assistant attorney general;

2176 (b) any district attorney or deputy district attorney;

2177 (c) any county attorney or assistant county attorney; and

2178 (d) any other attorney authorized to commence an action on behalf of the state.

2179 (59) "Protective custody" means the shelter of a child by the Division of Child and
2180 Family Services from the time the child is removed from the home until the earlier of:

2181 (a) the day on which the shelter hearing is held under Section 80-3-301; or

2182 (b) the day on which the child is returned home.

2183 (60) "Protective supervision" means a legal status created by court order, following an
2184 adjudication on the ground of abuse, neglect, or dependency, whereby:

2185 (a) the minor is permitted to remain in the minor's home; and

2186 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
2187 by an agency designated by the juvenile court.

2188 (61) (a) "Related condition" means a condition that:

2189 (i) is found to be closely related to intellectual disability;

2190 (ii) results in impairment of general intellectual functioning or adaptive behavior
2191 similar to that of an intellectually disabled individual;

2192 (iii) is likely to continue indefinitely; and

2193 (iv) constitutes a substantial limitation to the individual's ability to function in society.

2194 (b) "Related condition" does not include mental illness, psychiatric impairment, or
2195 serious emotional or behavioral disturbance.

2196 (62) (a) "Residual parental rights and duties" means the rights and duties remaining
2197 with a parent after legal custody or guardianship, or both, have been vested in another person or

2198 agency, including:

2199 (i) the responsibility for support;

2200 (ii) the right to consent to adoption;

2201 (iii) the right to determine the child's religious affiliation; and

2202 (iv) the right to reasonable parent-time unless restricted by the court.

2203 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
2204 right to consent to:

2205 (i) marriage;

2206 (ii) enlistment; and

2207 (iii) major medical, surgical, or psychiatric treatment.

2208 (63) "Runaway" means a child, other than an emancipated child, who willfully leaves
2209 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,
2210 without permission.

2211 (64) "Secure care" means placement of a minor, who is committed to the Division of
2212 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the
2213 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the
2214 minor.

2215 (65) "Secure care facility" means a facility, established in accordance with Section
2216 80-5-503, for juvenile offenders in secure care.

2217 (66) "Secure detention" means temporary care of a minor who requires secure custody
2218 in a physically restricting facility operated by, or under contract with, the Division of Juvenile
2219 Justice Services:

2220 (a) before disposition of an offense that is alleged to have been committed by the
2221 minor; or

2222 (b) under Section 80-6-704.

2223 (67) "Serious youth offender" means an individual who:

2224 (a) is at least 14 years old, but under 25 years old;

2225 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
2226 of the juvenile court was extended over the individual's case until the individual was 25 years
2227 old in accordance with Section 80-6-605; and

2228 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for

2229 secure care under Sections [80-6-703](#) and [80-6-705](#).

2230 (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
2231 child.

2232 (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
2233 child.

2234 (70) "Sexual abuse" means:

2235 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
2236 adult directed towards a child;

2237 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
2238 committed by a child towards another child if:

2239 (i) there is an indication of force or coercion;

2240 (ii) the children are related, as described in Subsection (34), including siblings by
2241 marriage while the marriage exists or by adoption;

2242 (iii) there have been repeated incidents of sexual contact between the two children,
2243 unless the children are 14 years old or older; or

2244 (iv) there is a disparity in chronological age of four or more years between the two
2245 children;

2246 (c) engaging in any conduct with a child that would constitute an offense under any of
2247 the following, regardless of whether the individual who engages in the conduct is actually
2248 charged with, or convicted of, the offense:

2249 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section [76-5-401](#), if the
2250 alleged perpetrator of an offense described in Section [76-5-401](#) is a minor;

2251 (ii) child bigamy, Section [76-7-101.5](#);

2252 (iii) incest, Section [76-7-102](#);

2253 (iv) lewdness, Section [76-9-702](#);

2254 (v) sexual battery, Section [76-9-702.1](#);

2255 (vi) lewdness involving a child, Section [76-9-702.5](#); or

2256 (vii) voyeurism, Section [76-9-702.7](#); or

2257 (d) subjecting a child to participate in or threatening to subject a child to participate in
2258 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
2259 marriage.

- 2260 (71) "Sexual exploitation" means knowingly:
- 2261 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2262 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2263 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 2264 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 2265 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 2266 material depicting a child:
- 2267 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2268 (ii) engaging in sexual or simulated sexual conduct; or
- 2269 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
- 2270 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a
- 2271 minor, regardless of whether the individual who engages in the conduct is actually charged
- 2272 with, or convicted of, the offense.
- 2273 (72) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 2274 pending a disposition or transfer to another jurisdiction.
- 2275 (73) "Shelter facility" means the same as that term is defined in Section 62A-4a-101.
- 2276 (74) "Single criminal episode" means the same as that term is defined in Section
- 2277 76-1-401.
- 2278 (75) "Status offense" means an offense that would not be an offense but for the age of
- 2279 the offender.
- 2280 (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
- 2281 substances.
- 2282 (77) "Substantiated" means the same as that term is defined in Section 62A-4a-101.
- 2283 (78) "Supported" means the same as that term is defined in Section 62A-4a-101.
- 2284 (79) "Termination of parental rights" means the permanent elimination of all parental
- 2285 rights and duties, including residual parental rights and duties, by court order.
- 2286 (80) "Therapist" means:
- 2287 (a) an individual employed by a state division or agency for the purpose of conducting
- 2288 psychological treatment and counseling of a minor in the division's or agency's custody; or
- 2289 (b) any other individual licensed or approved by the state for the purpose of conducting
- 2290 psychological treatment and counseling.

2291 (81) "Threatened harm" means actions, inactions, or credible verbal threats, indicating
2292 that the child is at an unreasonable risk of harm or neglect.

2293 (82) "Ungovernable" means a child in conflict with a parent or guardian, and the
2294 conflict:

2295 (a) results in behavior that is beyond the control or ability of the child, or the parent or
2296 guardian, to manage effectively;

2297 (b) poses a threat to the safety or well-being of the child, the child's family, or others;

2298 or

2299 (c) results in the situations described in Subsections (82)(a) and (b).

2300 (83) "Unregulated custody transfer" means the placement of a child:

2301 (a) with an individual who is not the child's parent, step-parent, grandparent, adult
2302 sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with
2303 whom the child is familiar, or a member of the child's federally recognized tribe;

2304 (b) with the intent of severing the child's existing parent-child or guardian-child
2305 relationship; and

2306 (c) without taking:

2307 (i) reasonable steps to ensure the safety of the child and permanency of the placement;

2308 and

2309 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
2310 guardianship to the individual taking custody of the child.

2311 (84) "Unsupported" means the same as that term is defined in Section [62A-4a-101](#).

2312 (85) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

2313 (86) "Validated risk and needs assessment" means an evidence-based tool that assesses
2314 a minor's risk of reoffending and a minor's criminogenic needs.

2315 (87) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

2316 (88) "Youth offender" means an individual who is:

2317 (a) at least 12 years old, but under 21 years old; and

2318 (b) committed by the juvenile court to the Division of Juvenile Justice Services for
2319 secure care under Sections [80-6-703](#) and [80-6-705](#).

2320 Section 21. **Coordinating S.B. 167 with S.B. 123 -- Technical amendment.**

2321 If this S.B. 167 and S.B. 123, Criminal Code Recodification, both pass and become

2322 law, it is the intent of the Legislature that the Office of Legislative Research and General
2323 Counsel prepare the Utah Code database for publication by amending Subsection
2324 76-5b-201.1(1) to read:

2325 "(1) As used in this section:

2326 (a) "Physical abuse" or "physically abused" means the same as the term "physical
2327 abuse" is defined in Section 80-1-102.

2328 (b) The terms defined in Section 76-1-101.5 apply to this section."