

**Senator Chris H. Wilson** proposes the following substitute bill:

**SEXUAL EXPLOITATION AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Chris H. Wilson**

House Sponsor: \_\_\_\_\_

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**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;
- ▶ requires the Sentencing Commission to study and update sentencing and release guidelines concerning the offense of sexual exploitation of a minor;
- ▶ 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;



- 26 • the Sex and Kidnap Offender Registry; and
- 27 • 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-7-404**, as last amended by Laws of Utah 2021, Chapter 173
- 39 **63M-7-502**, as last amended by Laws of Utah 2021, Chapter 260
- 40 **76-1-302**, as last amended by Laws of Utah 2019, Chapter 216
- 41 **76-3-203.1**, as last amended by Laws of Utah 2021, First Special Session, Chapter 11
- 42 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278
- 43 **76-3-407**, as last amended by Laws of Utah 2011, Chapter 320
- 44 **76-5b-201**, as last amended by Laws of Utah 2021, Chapter 262
- 45 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134
- 46 **76-9-702.5**, as last amended by Laws of Utah 2019, Chapter 394
- 47 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
- 48 amended by Coordination Clause, Laws of Utah 2020, Chapter 214
- 49 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363
- 50 **77-22-2.5**, as last amended by Laws of Utah 2019, Chapters 382 and 420
- 51 **77-36-1**, as last amended by Laws of Utah 2021, Chapters 134 and 159
- 52 **77-41-102**, as last amended by Laws of Utah 2021, Chapter 2 and further amended by
- 53 Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2
- 54 **77-41-106**, as last amended by Laws of Utah 2020, Chapter 108
- 55 **78B-6-117**, as last amended by Laws of Utah 2021, Chapter 262
- 56 **80-1-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

57 ENACTS:

58 [76-5b-201.1](#), Utah Code Annotated 1953

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

60 [76-5b-201.1](#), Utah Code Annotated 1953



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

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

64 **30-5a-103. Custody and visitation for individuals other than a parent.**

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

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

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

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

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

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

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

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

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

84 (g) the parent:

85 (i) is absent; or

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

87 (3) A proceeding under this chapter may be commenced by filing a verified petition, or

88 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district  
89 court in the county where the child:

90 (a) currently resides; or

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

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

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

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

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

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

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

105 (c) the child's guardian;

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

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

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

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

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

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

- 119 (a) child abuse, as described in Section [76-5-109](#);
- 120 (b) child abuse homicide, as described in Section [76-5-208](#);
- 121 (c) child kidnapping, as described in Section [76-5-301.1](#);
- 122 (d) human trafficking of a child, as described in Section [76-5-308.5](#);
- 123 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);
- 124 (f) rape of a child, as described in Section [76-5-402.1](#);
- 125 (g) object rape of a child, as described in Section [76-5-402.3](#);
- 126 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 127 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 128 Section [76-5-404.1](#);
- 129 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); ~~[or]~~
- 130 (k) aggravated sexual exploitation of a minor, as described in Section [76-5b-201.1](#); or
- 131 ~~[(k)]~~ (l) an offense in another state that, if committed in this state, would constitute an
- 132 offense described in this Subsection (10).
- 133 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
- 134 listed in Subsection (10) that prevents a court from granting custody except as provided in this
- 135 Subsection (11).
- 136 (b) An individual described in Subsection (10) may only be considered for custody of a
- 137 child if the following criteria are met by clear and convincing evidence:
- 138 (i) the individual is a relative, as defined in Section [80-3-102](#), of the child;
- 139 (ii) at least 10 years have elapsed from the day on which the individual is successfully
- 140 released from prison, jail, parole, or probation related to a disqualifying offense;
- 141 (iii) during the 10 years before the day on which the individual files a petition with the
- 142 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
- 143 an offense greater than an infraction or traffic violation that would likely impact the health,
- 144 safety, or well-being of the child;
- 145 (iv) the individual can provide evidence of successful treatment or rehabilitation
- 146 directly related to the disqualifying offense;
- 147 (v) the court determines that the risk related to the disqualifying offense is unlikely to
- 148 cause harm, as defined in Section [80-1-102](#), or potential harm to the child currently or at any
- 149 time in the future when considering all of the following:

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

181 (B) a guardian ad litem shall be assigned.

182 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a  
183 final decision on custody has not been made and to a case filed on or after March 25, 2017.

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

185 **31A-21-501. Definitions.**

186 For purposes of this part:

187 (1) "Applicant" means:

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

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

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

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

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

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

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

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

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

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

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

203 (c) Section [76-9-702](#), Lewdness;

204 (d) Section [76-9-702.1](#), Sexual battery; or

205 (e) Section [76-9-702.5](#), Lewdness involving a child.

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

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

- 212 (b) assault, as described in Section 76-5-102;
- 213 (c) criminal homicide, as described in Section 76-5-201;
- 214 (d) harassment, as described in Section 76-5-106;
- 215 (e) electronic communication harassment, as described in Section 76-9-201;
- 216 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 217 76-5-301, 76-5-301.1, and 76-5-302;
- 218 (g) mayhem, as described in Section 76-5-105;
- 219 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 220 ~~[Section 76-5b-201]~~ Sections 76-5b-201 and 76-5b-201.1;
- 221 (i) stalking, as described in Section 76-5-106.5;
- 222 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 223 76-5-304;
- 224 (k) violation of a protective order or ex parte protective order, as described in Section
- 225 76-5-108;
- 226 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 227 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 228 (m) possession of a deadly weapon with intent to assault, as described in Section
- 229 76-10-507; or
- 230 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 231 person, building, or vehicle, as described in Section 76-10-508.

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

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

235 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

236 (1) As used in this section:

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

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

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

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



243 (D) a department contractor;

244 (E) a guardian submitting an application on behalf of an individual, other than the child  
245 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and  
246 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult  
247 who is receiving services; or

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

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

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

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

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

258 (e) "Personal identifying information" means:

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

260 (ii) date of birth;

261 (iii) physical address and email address;

262 (iv) telephone number;

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

264 (vi) social security number;

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

267 (viii) other information specified by the office by rule made in accordance with Title  
268 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

271 (i) personal identifying information;

272 (ii) a fee established by the office under Section [63J-1-504](#); and

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

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

276 (B) ongoing monitoring of fingerprints and registries until no longer associated with a  
277 licensee for 90 days;

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

279 (D) retention of personal identifying information, including fingerprints, for  
280 monitoring and notification as described in Subsections (3)(d) and (4).

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

287 (3) The office:

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

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

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

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

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

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

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

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

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

304 (b) shall conduct a background check of an applicant for an initial background check

305 upon submission of the information described under Subsection (2)(a);

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

309 (i) for an annual renewal; or

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

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

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

317 (i) more than one license;

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

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

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

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

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

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

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

335 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

336 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background  
337 checks.

338 (4) (a) With the personal identifying information the office submits to the bureau under  
339 Subsection (3), the bureau shall check against state and regional criminal background databases  
340 for the applicant's criminal history.

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

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

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

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

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

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

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

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

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

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

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

367 (5) (a) After conducting the background check described in Subsections (3) and (4), the  
368 office shall deny an application to an applicant who, within three years before the day on which  
369 the applicant submits information to the office under Subsection (2) for a background check,  
370 has been convicted of any of the following, regardless of whether the offense is a felony, a  
371 misdemeanor, or an infraction:

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

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

376 (iii) prostitution;

377 (iv) an offense included in:

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

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

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

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

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

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

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

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

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

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

392 (c) If the applicant will be working in a program serving only adults whose only  
393 impairment is a mental health diagnosis, including that of a serious mental health disorder,  
394 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)  
395 do not apply, and the office shall conduct a comprehensive review as described in Subsection  
396 (6).

397 (6) (a) The office shall conduct a comprehensive review of an applicant's background

398 check if the applicant:

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

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

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

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

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

414 (vi) has a listing in the Department of Human Services, Division of Aging and Adult  
415 Services' vulnerable adult abuse, neglect, or exploitation database described in Section  
416 [62A-3-311.1](#);

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

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

421 (A) under 28 years old; or

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

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

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

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

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

460 (7) Subject to Subsection (10), the office shall approve an application to an applicant  
461 who is not denied under Subsection (5), (6), or (14).

462 (8) (a) The office may conditionally approve an application of an applicant, for a  
463 maximum of 60 days after the day on which the office sends written notice to the applicant  
464 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

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

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

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

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

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

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

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

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

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

481 (ii) the individual's application is conditionally approved by the office under

482 Subsection (8); or

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

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

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

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

490 (ii) the individual has a current background screening approval issued by the office



491 under this section;

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

494 (A) the individual was charged with an offense described in Subsection (5)(a);

495 (B) the individual is listed in the Licensing Information System, described in Section  
496 62A-4a-1006;

497 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation  
498 database, described in Section 62A-3-311.1;

499 (D) the individual has a record in the juvenile court of a substantiated finding of severe  
500 child abuse or neglect, described in Section 80-3-404; or

501 (E) the individual has a record of an adjudication in juvenile court for an act that, if  
502 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)  
503 or (6); and

504 (iv) the individual is directly supervised by an individual who:

505 (A) has a current background screening approval issued by the office under this  
506 section; and

507 (B) is associated with the licensee or department contractor;

508 (c) the individual:

509 (i) is not associated with the licensee or department contractor; and

510 (ii) is directly supervised by an individual who:

511 (A) has a current background screening approval issued by the office under this  
512 section; and

513 (B) is associated with the licensee or department contractor;

514 (d) the individual is the parent or guardian of the child, or the guardian of the  
515 vulnerable adult;

516 (e) the individual is approved by the parent or guardian of the child, or the guardian of  
517 the vulnerable adult, to have direct access to the child or the vulnerable adult;

518 (f) the individual is only permitted to have direct access to a vulnerable adult who  
519 voluntarily invites the individual to visit; or

520 (g) the individual only provides incidental care for a foster child on behalf of a foster  
521 parent who has used reasonable and prudent judgment to select the individual to provide the

522 incidental care for the foster child.

523 (10) An individual may not have direct access to a child or a vulnerable adult if the  
524 individual is prohibited by court order from having that access.

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

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

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

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

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

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

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

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

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

546 (13) An individual or a department contractor who provides services in an adults only  
547 substance use disorder program, as defined by rule, is exempt from this section. This  
548 exemption does not extend to a program director or a member, as defined by Section  
549 [62A-2-108](#), of the program.

550 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements  
551 of this section, if the background check of an applicant is being conducted for the purpose of  
552 giving clearance status to an applicant seeking a position in a congregate care program, an

553 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or  
554 an applicant seeking to provide a prospective adoptive home, the office shall:

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

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

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

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

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

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

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

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

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

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

578 (B) commission of domestic violence in the presence of a child, as described in Section  
579 76-5-109.1;

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

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

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

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

- 584 (G) manslaughter, as described in Section [76-5-205](#);
- 585 (H) child abuse homicide, as described in Section [76-5-208](#);
- 586 (I) homicide by assault, as described in Section [76-5-209](#);
- 587 (J) kidnapping, as described in Section [76-5-301](#);
- 588 (K) child kidnapping, as described in Section [76-5-301.1](#);
- 589 (L) aggravated kidnapping, as described in Section [76-5-302](#);
- 590 (M) human trafficking of a child, as described in Section [76-5-308.5](#);
- 591 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 592 (O) sexual exploitation of a minor, as described in Section [76-5b-201](#);
- 593 (P) aggravated exploitation of a minor, as described in Section [76-5b-201.1](#);
- 594 [~~(P)~~] (Q) aggravated arson, as described in Section [76-6-103](#);
- 595 [~~(Q)~~] (R) aggravated burglary, as described in Section [76-6-203](#);
- 596 [~~(R)~~] (S) aggravated robbery, as described in Section [76-6-302](#); or
- 597 [~~(S)~~] (T) domestic violence, as described in Section [77-36-1](#); or
- 598 (ii) an offense committed outside the state that, if committed in the state, would
- 599 constitute a violation of an offense described in Subsection (14)(c)(i).
- 600 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 601 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 602 five years immediately preceding the day on which the individual's application or license would
- 603 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 604 constitutes a violation of any of the following:
  - 605 (i) aggravated assault, as described in Section [76-5-103](#);
  - 606 (ii) aggravated assault by a prisoner, as described in Section [76-5-103.5](#);
  - 607 (iii) mayhem, as described in Section [76-5-105](#);
  - 608 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
  - 609 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
  - 610 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
  - 611 Act;
  - 612 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
  - 613 Precursor Act; or
  - 614 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

615 (e) In addition to the circumstances described in Subsection (6)(a), the office shall  
616 conduct the comprehensive review of an applicant's background check pursuant to this section  
617 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a  
618 child abuse and neglect registry of another state as having a substantiated or supported finding  
619 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

620 Section 4. Section **63M-7-404** is amended to read:

621 **63M-7-404. Purpose -- Duties.**

622 (1) The purpose of the commission is to develop guidelines and propose  
623 recommendations to the Legislature, the governor, and the Judicial Council regarding:

624 (a) the sentencing and release of juvenile and adult offenders in order to:

625 (i) respond to public comment;

626 (ii) relate sentencing practices and correctional resources;

627 (iii) increase equity in criminal sentencing;

628 (iv) better define responsibility in criminal sentencing; and

629 (v) enhance the discretion of sentencing judges while preserving the role of the Board  
630 of Pardons and Parole and the Youth Parole Authority;

631 (b) the length of supervision of adult offenders on probation or parole in order to:

632 (i) increase equity in criminal supervision lengths;

633 (ii) respond to public comment;

634 (iii) relate the length of supervision to an offender's progress;

635 (iv) take into account an offender's risk of offending again;

636 (v) relate the length of supervision to the amount of time an offender has remained  
637 under supervision in the community; and

638 (vi) enhance the discretion of the sentencing judges while preserving the role of the  
639 Board of Pardons and Parole;

640 (c) appropriate, evidence-based probation and parole supervision policies and services  
641 that assist individuals in successfully completing supervision and reduce incarceration rates  
642 from community supervision programs while ensuring public safety, including:

643 (i) treatment and intervention completion determinations based on individualized case  
644 action plans;

645 (ii) measured and consistent processes for addressing violations of conditions of

646 supervision;

647 (iii) processes that include using positive reinforcement to recognize an individual's  
648 progress in supervision;

649 (iv) engaging with social services agencies and other stakeholders who provide  
650 services that meet offender needs; and

651 (v) identifying community violations that may not warrant revocation of probation or  
652 parole.

653 (2) (a) The commission shall modify the sentencing guidelines and supervision length  
654 guidelines for adult offenders to implement the recommendations of the Commission on  
655 Criminal and Juvenile Justice for reducing recidivism.

656 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting  
657 the public and ensuring efficient use of state funds.

658 (3) (a) The commission shall modify the criminal history score in the sentencing  
659 guidelines for adult offenders to implement the recommendations of the Commission on  
660 Criminal and Juvenile Justice for reducing recidivism.

661 (b) The modifications to the criminal history score under Subsection (3)(a) shall  
662 include factors in an offender's criminal history that are relevant to the accurate determination  
663 of an individual's risk of offending again.

664 (4) (a) The commission shall establish sentencing guidelines for periods of  
665 incarceration for individuals who are on probation and:

666 (i) who have violated one or more conditions of probation; and  
667 (ii) whose probation has been revoked by the court.

668 (b) The guidelines shall consider the seriousness of the violation of the conditions of  
669 probation, the probationer's conduct while on probation, and the probationer's criminal history.

670 (5) (a) The commission shall establish sentencing guidelines for periods of  
671 incarceration for individuals who are on parole and:

672 (i) who have violated a condition of parole; and  
673 (ii) whose parole has been revoked by the Board of Pardons and Parole.

674 (b) The guidelines shall consider the seriousness of the violation of the conditions of  
675 parole, the individual's conduct while on parole, and the individual's criminal history.

676 (6) The commission shall establish graduated and evidence-based processes to

677 facilitate the prompt and effective response to an individual's progress in or violation of the  
678 terms of probation or parole by the adult probation and parole section of the Department of  
679 Corrections, or other supervision services provider, in order to implement the  
680 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism  
681 and incarceration, including:

682 (a) responses to be used when an individual violates a condition of probation or parole;

683 (b) responses to recognize positive behavior and progress related to an individual's case  
684 action plan;

685 (c) when a violation of a condition of probation or parole should be reported to the  
686 court or the Board of Pardons and Parole; and

687 (d) a range of sanctions that may not exceed a period of incarceration of more than:

688 (i) three consecutive days; and

689 (ii) a total of five days in a period of 30 days.

690 (7) The commission shall establish graduated incentives to facilitate a prompt and  
691 effective response by the adult probation and parole section of the Department of Corrections  
692 to an offender's:

693 (a) compliance with the terms of probation or parole; and

694 (b) positive conduct that exceeds those terms.

695 (8) (a) The commission shall establish guidelines, including sanctions and incentives,  
696 to appropriately respond to negative and positive behavior of juveniles who are:

697 (i) nonjudicially adjusted;

698 (ii) placed on diversion;

699 (iii) placed on probation;

700 (iv) placed on community supervision;

701 (v) placed in an out-of-home placement; or

702 (vi) placed in a secure care facility.

703 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

704 (i) the seriousness of the negative and positive behavior;

705 (ii) the juvenile's conduct post-adjudication; and

706 (iii) the delinquency history of the juvenile.

707 (c) The guidelines shall include:

- 708 (i) responses that are swift and certain;
  - 709 (ii) a continuum of community-based options for juveniles living at home;
  - 710 (iii) responses that target the individual's criminogenic risk and needs; and
  - 711 (iv) incentives for compliance, including earned discharge credits.
- 712 (9) The commission shall establish supervision length guidelines in accordance with  
713 this section before October 1, 2018.

714 (10) Before January 1, 2023, the commission shall study the offenses of sexual  
715 exploitation of a minor and aggravated sexual exploitation of a minor under Sections  
716 76-5b-201 and 76-5b-201.1 and update sentencing and release guidelines to reflect appropriate  
717 sanctions for different types of violations of the offenses.

718 Section 5. Section **63M-7-502** is amended to read:

719 **63M-7-502. Definitions.**

720 As used in this part:

- 721 (1) "Accomplice" means an individual who has engaged in criminal conduct as  
722 described in Section [76-2-202](#).
- 723 (2) "Board" means the Crime Victim Reparations and Assistance Board created under  
724 Section [63M-7-504](#).
- 725 (3) "Bodily injury" means physical pain, illness, or any impairment of physical  
726 condition.
- 727 (4) "Claimant" means any of the following claiming reparations under this part:
  - 728 (a) a victim;
  - 729 (b) a dependent of a deceased victim; or
  - 730 (c) an individual or representative who files a reparations claim on behalf of a victim.
- 731 (5) "Child" means an unemancipated individual who is under 18 years old.
- 732 (6) "Collateral source" means any source of benefits or advantages for economic loss  
733 otherwise reparable under this part that the victim or claimant has received, or that is readily  
734 available to the victim from:
  - 735 (a) the offender;
  - 736 (b) the insurance of the offender or the victim;
  - 737 (c) the United States government or any of its agencies, a state or any of its political  
738 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory



- 739 state-funded programs;
- 740 (d) social security, Medicare, and Medicaid;
- 741 (e) state-required temporary nonoccupational income replacement insurance or
- 742 disability income insurance;
- 743 (f) workers' compensation;
- 744 (g) wage continuation programs of any employer;
- 745 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
- 746 sustained because of the criminally injurious conduct;
- 747 (i) a contract providing prepaid hospital and other health care services or benefits for
- 748 disability; or
- 749 (j) veteran's benefits, including veteran's hospitalization benefits.
- 750 (7) (a) "Criminally injurious conduct" other than acts of war declared or not declared
- 751 means conduct that:
- 752 (i) is or would be subject to prosecution in this state under Section [76-1-201](#);
- 753 (ii) occurs or is attempted;
- 754 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 755 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the
- 756 conduct possessed the capacity to commit the conduct; and
- 757 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
- 758 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
- 759 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
- 760 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.
- 761 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
- 762 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
- 763 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.
- 764 (c) "Criminally injurious conduct" includes a felony violation of Section [76-7-101](#) and
- 765 other conduct leading to the psychological injury of an individual resulting from living in a
- 766 setting that involves a bigamous relationship.
- 767 (8) (a) "Dependent" means a natural person to whom the victim is wholly or partially
- 768 legally responsible for care or support.
- 769 (b) "Dependent" includes a child of the victim born after the victim's death.

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

774 (10) "Dependent's replacement services loss" means loss reasonably and necessarily  
775 incurred by the dependent after the victim's death in obtaining services in lieu of those the  
776 decedent would have performed for the victim's benefit if the victim had not suffered the fatal  
777 injury, less expenses of the dependent avoided by reason of the victim's death and not  
778 subtracted in calculating the dependent's economic loss.

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

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

782 (a) convicted of a crime;

783 (b) found delinquent; or

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

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

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

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

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

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

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

797 (17) "Law enforcement officer" means the same as that term is defined in Section  
798 [53-13-103](#).

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

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

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

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

809 (21) "Noneconomic detriment" means pain, suffering, inconvenience, physical  
810 impairment, and other nonpecuniary damage, except as provided in this part.

811 (22) "Pecuniary loss" does not include loss attributable to pain and suffering except as  
812 otherwise provided in this part.

813 (23) "Offender" means an individual who has violated Title 76, Utah Criminal Code,  
814 through criminally injurious conduct regardless of whether the individual is arrested,  
815 prosecuted, or convicted.

816 (24) "Offense" means a violation of Title 76, Utah Criminal Code.

817 (25) "Office" means the director, the reparations and assistance officers, and any other  
818 staff employed for the purpose of carrying out the provisions of this part.

819 (26) "Perpetrator" means the individual who actually participated in the criminally  
820 injurious conduct.

821 (27) "Reparations award" means money or other benefits provided to a claimant or to  
822 another on behalf of a claimant after the day on which a reparations claim is approved by the  
823 office.

824 (28) "Reparations claim" means a claimant's request or application made to the office  
825 for a reparations award.

826 (29) (a) "Reparations officer" means an individual employed by the office to  
827 investigate claims of victims and award reparations under this part.

828 (b) "Reparations officer" includes the director when the director is acting as a  
829 reparations officer.

830 (30) "Replacement service loss" means expenses reasonably and necessarily incurred in  
831 obtaining ordinary and necessary services in lieu of those the injured individual would have

832 performed, not for income but the benefit of the injured individual or the injured individual's  
833 dependents if the injured individual had not been injured.

834 (31) (a) "Representative" means the victim, immediate family member, legal guardian,  
835 attorney, conservator, executor, or an heir of an individual.

836 (b) "Representative" does not include a service provider or collateral source.

837 (32) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

838 (33) "Secondary victim" means an individual who is traumatically affected by the  
839 criminally injurious conduct subject to rules made by the board in accordance with Title 63G,  
840 Chapter 3, Utah Administrative Rulemaking Act.

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

843 (35) "Serious bodily injury" means the same as that term is defined in Section  
844 [76-1-601](#).

845 (36) "Substantial bodily injury" means the same as that term is defined in Section  
846 [76-1-601](#).

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

849 (i) criminally injurious conduct; or

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

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

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

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

862 Section 6. Section [76-1-302](#) is amended to read:

863           **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**  
864 **evidence would identify the defendant -- Commencement of prosecution.**

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

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

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

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

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

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

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

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

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

885           (4) A prosecution is commenced upon:

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

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

888           (c) the issuance of a citation.

889           Section 7. Section [76-3-203.1](#) is amended to read:

890           **[76-3-203.1. Offenses committed in concert with three or more persons or in](#)**  
891 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

892           (1) As used in this section:

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

- 894 (b) "In concert with three or more persons" means:
- 895 (i) the defendant was aided or encouraged by at least three other persons in committing
- 896 the offense and was aware of this aid or encouragement; and
- 897 (ii) each of the other persons:
- 898 (A) was physically present; and
- 899 (B) participated as a party to any offense listed in Subsection (4), (5), or (6).
- 900 (c) "In concert with three or more persons" means, regarding intent:
- 901 (i) other persons participating as parties need not have the intent to engage in the same
- 902 offense or degree of offense as the defendant; and
- 903 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
- 904 minor were an adult.
- 905 (2) A person who commits any offense in accordance with this section is subject to an
- 906 enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a
- 907 reasonable doubt that the person acted:
- 908 (a) in concert with three or more persons;
- 909 (b) for the benefit of, at the direction of, or in association with any criminal street gang
- 910 as defined in Section [76-9-802](#); or
- 911 (c) to gain recognition, acceptance, membership, or increased status with a criminal
- 912 street gang as defined in Section [76-9-802](#).
- 913 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to
- 914 be subscribed upon the information or indictment notice that the defendant is subject to the
- 915 enhanced penalties provided under this section.
- 916 (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:
- 917 (i) for a class B misdemeanor, as a class A misdemeanor; and
- 918 (ii) for a class A misdemeanor, as a third degree felony.
- 919 (b) The following offenses are subject to Subsection (4)(a):
- 920 (i) criminal mischief as defined in Section [76-6-106](#); and
- 921 (ii) graffiti as defined in Section [76-6-107](#).
- 922 (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:
- 923 (i) for a class B misdemeanor, as a class A misdemeanor;
- 924 (ii) for a class A misdemeanor, as a third degree felony; and

- 925 (iii) for a third degree felony, as a second degree felony.
- 926 (b) The following offenses are subject to Subsection (5)(a):
- 927 (i) burglary, if committed in a dwelling as defined in Subsection [76-6-202\(2\)](#);
- 928 (ii) any offense of obstructing government operations under [~~Title 76,~~] Chapter 8, Part
- 929 3, Obstructing Governmental Operations, except Sections [76-8-302](#), [76-8-303](#), [76-8-307](#),
- 930 [76-8-308](#), and [76-8-312](#);
- 931 (iii) tampering with a witness or other violation of Section [76-8-508](#);
- 932 (iv) retaliation against a witness, victim, informant, or other violation of Section
- 933 [76-8-508.3](#);
- 934 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section
- 935 [76-8-509](#);
- 936 (vi) any weapons offense under [~~Title 76,~~] Chapter 10, Part 5, Weapons; and
- 937 (vii) any violation of [~~Title 76,~~] Chapter 10, Part 16, Pattern of Unlawful Activity Act.
- 938 (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:
- 939 (i) for a class B misdemeanor, as a class A misdemeanor;
- 940 (ii) for a class A misdemeanor, as a third degree felony;
- 941 (iii) for a third degree felony, as a second degree felony; and
- 942 (iv) for a second degree felony, as a first degree felony.
- 943 (b) The following offenses are subject to Subsection (6)(a):
- 944 (i) assault and related offenses under [~~Title 76,~~] Chapter 5, Part 1, Assault and Related
- 945 Offenses;
- 946 (ii) any criminal homicide offense under [~~Title 76,~~] Chapter 5, Part 2, Criminal
- 947 Homicide;
- 948 (iii) kidnapping and related offenses under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping,
- 949 Trafficking, and Smuggling;
- 950 (iv) any felony sexual offense under [~~Title 76,~~] Chapter 5, Part 4, Sexual Offenses;
- 951 (v) sexual exploitation of a minor as defined in Section [76-5b-201](#);
- 952 (vi) aggravated sexual exploitation of a minor as defined in Section [76-5b-201.1](#);
- 953 [~~(vi)~~] (vii) robbery and aggravated robbery under [~~Title 76,~~] Chapter 6, Part 3,
- 954 Robbery; and
- 955 [~~(vii)~~] (viii) aggravated exploitation of prostitution under Section [76-10-1306](#).

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

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

962 Section 8. Section **76-3-203.5** is amended to read:

963 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

964 (1) As used in this section:

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

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

972 (c) "Violent felony" means:

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

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

977 (B) assault by prisoner, Section [76-5-102.5](#);

978 (C) disarming a police officer, Section [76-5-102.8](#);

979 (D) aggravated assault, Section [76-5-103](#);

980 (E) aggravated assault by prisoner, Section [76-5-103.5](#);

981 (F) mayhem, Section [76-5-105](#);

982 (G) stalking, Subsection [76-5-106.5\(2\)](#) or (3);

983 (H) threat of terrorism, Section [76-5-107.3](#);

984 (I) child abuse, Subsection [76-5-109\(2\)\(a\)](#) or (b);

985 (J) commission of domestic violence in the presence of a child, Section [76-5-109.1](#);

986 (K) abuse or neglect of a child with a disability, Section [76-5-110](#);



- 987 (L) abuse, neglect, or exploitation of a vulnerable adult, Section [76-5-111](#);
- 988 (M) endangerment of a child or vulnerable adult, Section [76-5-112.5](#);
- 989 (N) criminal homicide offenses under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
- 990 (O) kidnapping, child kidnapping, and aggravated kidnapping under [~~Title 76,~~] Chapter
- 991 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 992 (P) rape, Section [76-5-402](#);
- 993 (Q) rape of a child, Section [76-5-402.1](#);
- 994 (R) object rape, Section [76-5-402.2](#);
- 995 (S) object rape of a child, Section [76-5-402.3](#);
- 996 (T) forcible sodomy, Section [76-5-403](#);
- 997 (U) sodomy on a child, Section [76-5-403.1](#);
- 998 (V) forcible sexual abuse, Section [76-5-404](#);
- 999 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);
- 1000 (X) aggravated sexual assault, Section [76-5-405](#);
- 1001 (Y) sexual exploitation of a minor, Section [76-5b-201](#);
- 1002 (Z) (AA) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
- 1003 [~~(Z)~~] (AA) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 1004 [~~(AA)~~] (BB) aggravated burglary and burglary of a dwelling under [~~Title 76,~~] Chapter
- 1005 6, Part 2, Burglary and Criminal Trespass;
- 1006 [~~(BB)~~] (CC) aggravated robbery and robbery under Title 76, Chapter 6, Part 3,
- 1007 Robbery;
- 1008 [~~(CC)~~] (DD) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b);
- 1009 [~~(DD)~~] (EE) tampering with a witness under Subsection [76-8-508\(1\)](#);
- 1010 [~~(EE)~~] (FF) retaliation against a witness, victim, or informant under Section
- 1011 [76-8-508.3](#);
- 1012 [~~(FF)~~] (GG) tampering with a juror under Subsection [76-8-508.5\(2\)\(c\)](#);
- 1013 [~~(GG)~~] (HH) extortion to dismiss a criminal proceeding under Section [76-8-509](#) if by
- 1014 any threat or by use of force theft by extortion has been committed pursuant to Subsections
- 1015 [76-6-406\(2\)\(a\)](#), (b), and (i);
- 1016 [~~(HH)~~] (II) possession, use, or removal of explosive, chemical, or incendiary devices
- 1017 under Subsections [76-10-306\(3\)](#) through (6);

1018           ~~[(H)]~~ (JJ) unlawful delivery of explosive, chemical, or incendiary devices under  
1019 Section 76-10-307;

1020           ~~[(H)]~~ (KK) purchase or possession of a dangerous weapon or handgun by a restricted  
1021 person under Section 76-10-503;

1022           ~~[(K)]~~ (LL) unlawful discharge of a firearm under Section 76-10-508;

1023           ~~[(L)]~~ (MM) aggravated exploitation of prostitution under Subsection  
1024 76-10-1306(1)(a);

1025           ~~[(M)]~~ (NN) bus hijacking under Section 76-10-1504; and

1026           ~~[(N)]~~ (OO) discharging firearms and hurling missiles under Section 76-10-1505; or  
1027           (ii) any felony violation of a criminal statute of any other state, the United States, or  
1028 any district, possession, or territory of the United States which would constitute a violent  
1029 felony as defined in this Subsection (1) if committed in this state.

1030           (2) If a person is convicted in this state of a violent felony by plea or by verdict and the  
1031 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender  
1032 under this section, the penalty for a:

1033           (a) third degree felony is as if the conviction were for a first degree felony;

1034           (b) second degree felony is as if the conviction were for a first degree felony; or

1035           (c) first degree felony remains the penalty for a first degree penalty except:

1036           (i) the convicted person is not eligible for probation; and

1037           (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
1038 habitual violent offender as an aggravating factor in determining the length of incarceration.

1039           (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
1040 provide notice in the information or indictment that the defendant is subject to punishment as a  
1041 habitual violent offender under this section. Notice shall include the case number, court, and  
1042 date of conviction or commitment of any case relied upon by the prosecution.

1043           (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
1044 intends to deny that:

1045           (A) the defendant is the person who was convicted or committed;

1046           (B) the defendant was represented by counsel or had waived counsel; or

1047           (C) the defendant's plea was understandingly or voluntarily entered.

1048           (ii) The notice of denial shall be served not later than five days prior to trial and shall

1049 state in detail the defendant's contention regarding the previous conviction and commitment.

1050 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
1051 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,  
1052 of the:

1053 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
1054 in the Utah Rules of Evidence; or

1055 (ii) allegation against the defendant of being a habitual violent offender.

1056 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
1057 being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
1058 the jury, in which case the allegation shall be tried immediately to the court.

1059 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section  
1060 applies.

1061 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
1062 and the defendant shall be afforded an opportunity to present any necessary additional  
1063 evidence.

1064 (iii) Before sentencing under this section, the trier of fact shall determine whether this  
1065 section is applicable beyond a reasonable doubt.

1066 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
1067 contest, there is a rebuttable presumption that the conviction and commitment were regular and  
1068 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the  
1069 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution  
1070 to establish by a preponderance of the evidence that the defendant was then represented by  
1071 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea  
1072 was understandingly and voluntarily entered.

1073 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
1074 finding on the record and shall indicate in the order of judgment and commitment that the  
1075 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
1076 under this section.

1077 (5) (a) The sentencing enhancement provisions of Section [76-3-407](#) supersede the  
1078 provisions of this section.

1079 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in

1080 Subsection (1)(c) shall include any felony sexual offense violation of [~~Title 76,~~] Chapter 5, Part  
1081 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

1082 (6) The sentencing enhancement described in this section does not apply if:

1083 (a) the offense for which the person is being sentenced is:

1084 (i) a grievous sexual offense;

1085 (ii) child kidnapping, Section [76-5-301.1](#);

1086 (iii) aggravated kidnapping, Section [76-5-302](#); or

1087 (iv) forcible sexual abuse, Section [76-5-404](#); and

1088 (b) applying the sentencing enhancement provided for in this section would result in a  
1089 lower maximum penalty than the penalty provided for under the section that describes the  
1090 offense for which the person is being sentenced.

1091 Section 9. Section ~~76-3-407~~ is amended to read:

1092 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**  
1093 **felony convictions.**

1094 (1) As used in this section:

1095 (a) "Prior sexual offense" means:

1096 (i) a felony offense described in [~~Title 76,~~] Chapter 5, Part 4, Sexual Offenses;

1097 (ii) sexual exploitation of a minor, Section [76-5b-201](#);

1098 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1099 [~~(iii)~~] (iv) a felony offense of enticing a minor over the Internet, Section [76-4-401](#);

1100 [~~(iv)~~] (v) a felony attempt to commit an offense described in Subsections (1)(a)(i)

1101 through [~~(iii)~~] (iv); or

1102 [~~(v)~~] (vi) an offense in another state, territory, or district of the United States that, if

1103 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through

1104 [~~(iv)~~] (v).

1105 (b) "Sexual offense" means:

1106 (i) an offense that is a felony of the second or third degree, or an attempted offense,

1107 which attempt is a felony of the second or third degree, described in [~~Title 76,~~] Chapter 5, Part

1108 4, Sexual Offenses;

1109 (ii) sexual exploitation of a minor, Section [76-5b-201](#);

1110 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1111           ~~[(iii)]~~ (iv) a felony offense of enticing a minor over the Internet, Section 76-4-401;

1112           ~~[(iv)]~~ (v) a felony attempt to commit an offense described in ~~[Subsection (1)(b)(ii) or~~

1113 ~~(iii)]~~ Subsections (1)(b)(ii) through (iv); or

1114           ~~[(v)]~~ (vi) an offense in another state, territory, or district of the United States that, if

1115 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through

1116 ~~[(iv)]~~ (v).

1117           (2) Notwithstanding any other provision of law, the maximum penalty for a sexual

1118 offense is increased by five years for each conviction of the defendant for a prior sexual offense

1119 that arose from a separate criminal episode, if the trier of fact finds that:

1120           (a) the defendant was convicted of a prior sexual offense; and

1121           (b) the defendant was convicted of the prior sexual offense described in Subsection

1122 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is

1123 being sentenced.

1124           (3) The increased maximum term described in Subsection (2) shall be in addition to,

1125 and consecutive to, any other prison term served by the defendant.

1126           Section 10. Section **76-5b-201** is amended to read:

1127           **76-5b-201. Sexual exploitation of a minor -- Offenses.**

1128           ~~[(1) A person is guilty of sexual exploitation of a minor:]~~

1129           ~~[(a) when the person:]~~

1130           ~~[(i) knowingly produces, possesses, or possesses with intent to distribute child~~

1131 ~~pornography; or]~~

1132           ~~[(ii) intentionally distributes or views child pornography; or]~~

1133           ~~[(b) if the person is a minor's parent or legal guardian and knowingly consents to or~~

1134 ~~permits the minor to be sexually exploited as described in Subsection (1)(a):]~~

1135           ~~[(2) (a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a~~

1136 ~~second degree felony:]~~

1137           ~~[(b) A violation of Subsection (1) for knowingly producing child pornography is a first~~

1138 ~~degree felony if the person produces original child pornography depicting a first degree felony~~

1139 ~~that involves:]~~

1140           ~~[(i) the person or another person engaging in conduct with the minor that is a violation~~

1141 ~~of:]~~

1142 [~~(A) Section 76-5-402.1, rape of a child;~~]  
1143 [~~(B) Section 76-5-402.3, object rape of a child;~~]  
1144 [~~(C) Section 76-5-403.1, sodomy on a child; or~~]  
1145 [~~(D) Section 76-5-404.1, aggravated sexual abuse of a child; or~~]  
1146 [~~(ii) the minor being physically abused, as defined in Section 80-1-102.~~]  
1147 (1) An actor commits sexual exploitation of a minor when the actor knowingly  
1148 possesses or intentionally views child pornography.  
1149 (2) A violation of Subsection (1) is a second degree felony.  
1150 (3) It is a separate offense under this section:  
1151 (a) for each minor depicted in the child pornography; and  
1152 (b) for each time the same minor is depicted in different child pornography.  
1153 (4) (a) It is an affirmative defense to a charge of violating this section that no minor  
1154 was actually depicted in the visual depiction or used in producing or advertising the visual  
1155 depiction.  
1156 (b) For a charge of violating this section [~~for knowingly possessing or intentionally~~  
1157 ~~viewing child pornography~~], it is an affirmative defense that:  
1158 (i) the defendant:  
1159 (A) did not solicit the child pornography from the minor depicted in the child  
1160 pornography;  
1161 (B) is not more than two years older than the minor depicted in the child pornography;  
1162 and  
1163 (C) upon request of a law enforcement agent or the minor depicted in the child  
1164 pornography, removes from an electronic device or destroys the child pornography and all  
1165 copies of the child pornography in the defendant's possession; and  
1166 (ii) the child pornography does not depict an offense under [~~Title 76;~~] Chapter 5, Part  
1167 4, Sexual Offenses.  
1168 (5) In proving a violation of this section in relation to an identifiable minor, proof of  
1169 the actual identity of the identifiable minor is not required.  
1170 (6) This section may not be construed to impose criminal or civil liability on:  
1171 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
1172 the scope of employment, for the good faith performance of:

- 1173 (i) reporting or data preservation duties required under federal or state law; or
- 1174 (ii) implementing a policy of attempting to prevent the presence of child pornography
- 1175 on tangible or intangible property, or of detecting and reporting the presence of child
- 1176 pornography on the property;
- 1177 (b) a law enforcement officer acting within the scope of a criminal investigation;
- 1178 (c) an employee of a court who may be required to view child pornography during the
- 1179 course of and within the scope of the employee's employment;
- 1180 (d) a juror who may be required to view child pornography during the course of the
- 1181 individual's service as a juror;
- 1182 (e) an attorney or employee of an attorney who is required to view child pornography
- 1183 during the course of a judicial process and while acting within the scope of employment;
- 1184 (f) an employee of the Department of Human Services who is required to view child
- 1185 pornography within the scope of the employee's employment; or
- 1186 (g) an attorney who is required to view child pornography within the scope of the
- 1187 attorney's responsibility to represent the Department of Human Services, including the
- 1188 divisions and offices within the Department of Human Services.

1189 Section 11. Section **76-5b-201.1** is enacted to read:

1190 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

1191 (1) As used in this section, "physical abuse" or "physically abused" means the same as

1192 the term "physical abuse" is defined in Section [80-1-102](#).

1193 (2) An actor commits aggravated sexual exploitation of a minor if the actor:

1194 (a) knowingly distributes or possesses with the intent to distribute child pornography;

1195 (b) knowingly produces child pornography; or

1196 (c) is the minor's parent or legal guardian and knowingly consents to or permits the

1197 minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section [76-5b-201](#).

1198 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a first

1199 degree felony.

1200 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection

1201 (2) is a second degree felony.

1202 (4) It is a separate offense under this section:

1203 (a) for each minor depicted in the child pornography; and

- 1204 (b) for each time the same minor is depicted in different child pornography.
- 1205 (5) (a) It is an affirmative defense to a charge of violating this section that no minor
- 1206 was actually depicted in the visual depiction or used in producing or advertising the visual
- 1207 depiction.
- 1208 (b) In proving a violation of this section in relation to an identifiable minor, proof of
- 1209 the actual identity of the identifiable minor is not required.
- 1210 (6) This section may not be construed to impose criminal or civil liability on:
- 1211 (a) an entity or an employee, director, officer, or agent of an entity when acting within
- 1212 the scope of employment, for the good faith performance of:
- 1213 (i) reporting or data preservation duties required under federal or state law; or
- 1214 (ii) implementing a policy of attempting to prevent the presence of child pornography
- 1215 on tangible or intangible property, or of detecting and reporting the presence of child
- 1216 pornography on the property;
- 1217 (b) a law enforcement officer acting within the scope of a criminal investigation;
- 1218 (c) an employee of a court who may be required to view child pornography during the
- 1219 course of and within the scope of the employee's employment;
- 1220 (d) a juror who may be required to view child pornography during the course of the
- 1221 individual's service as a juror;
- 1222 (e) an attorney or employee of an attorney who is required to view child pornography
- 1223 during the course of a judicial process and while acting within the scope of employment;
- 1224 (f) an employee of the Department of Human Services who is required to view child
- 1225 pornography within the scope of the employee's employment; or
- 1226 (g) an attorney who is required to view child pornography within the scope of the
- 1227 attorney's responsibility to represent the Department of Human Services, including the
- 1228 divisions and offices within the Department of Human Services.

1229 Section 12. Section **76-5b-205** is amended to read:

1230 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

1231 (1) As used in this section:

1232 (a) "Child" means an individual under the age of 18.

1233 (b) "Counterfeit intimate image" means any visual depiction, photograph, film, video,  
1234 recording, picture, or computer or computer-generated image or picture, whether made or



1235 produced by electronic, mechanical, or other means, that has been edited, manipulated, or  
1236 altered to depict the likeness of an identifiable individual and purports to, or is made to appear  
1237 to, depict that individual's:

1238 (i) exposed human male or female genitals or pubic area, with less than an opaque  
1239 covering;

1240 (ii) a female breast with less than an opaque covering, or any portion of the female  
1241 breast below the top of the areola; or

1242 (iii) the individual engaged in any sexually explicit conduct or simulated sexually  
1243 explicit conduct.

1244 (c) "Distribute" means the same as that term is defined in Section [76-5b-203](#).

1245 (d) "Sexually explicit conduct" means the same as that term is defined in Section  
1246 [76-5b-203](#).

1247 (e) "Simulated sexually explicit conduct" means the same as that term is defined in  
1248 Section [76-5b-203](#).

1249 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate  
1250 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the  
1251 actor knows or should reasonably know would cause a reasonable person to suffer emotional or  
1252 physical distress or harm, if:

1253 (a) the actor has not received consent from the depicted individual to distribute the  
1254 counterfeit intimate image; and

1255 (b) the counterfeit intimate image was created or provided by the actor without the  
1256 knowledge and consent of the depicted individual.

1257 (3) An individual commits aggravated unlawful distribution of a counterfeit intimate  
1258 image if, in committing the offense described in Subsection (2), the individual depicted in the  
1259 counterfeit intimate image is a child.

1260 (4) This section does not apply to:

1261 (a) (i) lawful practices of law enforcement agencies;

1262 (ii) prosecutorial agency functions;

1263 (iii) the reporting of a criminal offense;

1264 (iv) court proceedings or any other judicial proceeding; or

1265 (v) lawful and generally accepted medical practices and procedures;

1266 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily  
1267 allows public exposure of the image;

1268 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

1269 (d) a counterfeit intimate image that is related to a matter of public concern or interest  
1270 or protected by the First Amendment to the United States Constitution or Article I, Sections 1  
1271 and 15 of the Utah Constitution.

1272 (5) (a) This section does not apply to an Internet service provider or interactive  
1273 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic  
1274 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,  
1275 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a  
1276 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined  
1277 in 47 U.S.C. Sec. 522, if:

1278 (i) the distribution of a counterfeit intimate image by the Internet service provider  
1279 occurs only incidentally through the provider's function of:

1280 (A) transmitting or routing data from one person to another person; or

1281 (B) providing a connection between one person and another person;

1282 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit  
1283 intimate image; and

1284 (iii) the provider does not knowingly receive from or through a person who distributes  
1285 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a  
1286 specific condition for permitting the person to distribute the counterfeit intimate image.

1287 (b) This section does not apply to a hosting company, as defined in Section  
1288 [76-10-1230](#), if:

1289 (i) the distribution of a counterfeit intimate image by the hosting company occurs only  
1290 incidentally through the hosting company's function of providing data storage space or data  
1291 caching to a person;

1292 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
1293 of the counterfeit intimate image;

1294 (iii) the hosting company does not knowingly receive from or through a person who  
1295 distributes the counterfeit intimate image a fee greater than the fee generally charged by the  
1296 provider, as a specific condition for permitting the person to distribute, store, or cache the

1297 counterfeit intimate image; and

1298 (iv) the hosting company immediately removes the counterfeit intimate image upon  
1299 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly  
1300 depicted in the counterfeit intimate image.

1301 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this  
1302 section if it complies with Section 76-10-1231.

1303 (6) This section does not apply to an actor who engages in conduct that constitutes a  
1304 violation of this section to the extent that the actor is chargeable, for the same conduct, under  
1305 Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual  
1306 exploitation of a minor.

1307 (7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful  
1308 distribution of a counterfeit intimate image is a class A misdemeanor.

1309 (b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a  
1310 third degree felony on a second or subsequent conviction for an offense under this section that  
1311 arises from a separate criminal episode as defined in Section 76-1-401.

1312 (c) Except as provided in Subsection (7)(d), knowing or intentional aggravated  
1313 unlawful distribution of a counterfeit intimate image is a third degree felony.

1314 (d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate  
1315 image is a second degree felony on a second or subsequent conviction for an offense under this  
1316 section that arises from a separate criminal episode as defined in Section 76-1-401.

1317 Section 13. Section 76-9-702.5 is amended to read:

1318 **76-9-702.5. Lewdness involving a child.**

1319 (1) As used in this section, "in the presence of" includes within visual contact through  
1320 an electronic device.

1321 (2) A person is guilty of lewdness involving a child if the person under circumstances  
1322 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a  
1323 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,  
1324 intentionally or knowingly:

1325 (a) does any of the following in the presence of a child who is under 14 years of age:

1326 (i) performs an act of sexual intercourse or sodomy;

1327 (ii) exposes his or her genitals, the female breast below the top of the areola, the

1328 buttocks, the anus, or the pubic area:

1329 (A) in a public place; or

1330 (B) in a private place under circumstances the person should know will likely cause

1331 affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the child;

1332 (iii) masturbates; or

1333 (iv) performs any other act of lewdness; or

1334 (b) under circumstances not amounting to sexual exploitation of a child under Section

1335 [76-5b-201](#) or aggravated sexual exploitation of a child under Section [76-5b-201.1](#), causes a

1336 child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the

1337 actor, with the intent to arouse or gratify the sexual desire of the actor or the child.

1338 (3) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection

1339 (3)(b).

1340 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

1341 (i) the person is a sex offender as defined in Section [77-27-21.7](#); or

1342 (ii) the person has previously been convicted of a violation of this section.

1343 Section 14. Section **76-10-1302** is amended to read:

1344 **76-10-1302. Prostitution.**

1345 (1) An individual except for a child under Section [76-10-1315](#) is guilty of prostitution  
1346 when the individual:

1347 (a) engages, offers, or agrees to engage in any sexual activity with another individual  
1348 for a fee, or the functional equivalent of a fee;

1349 (b) takes steps in arranging a meeting through any form of advertising, agreeing to  
1350 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee  
1351 or the functional equivalent of a fee; or

1352 (c) loiters in or within view of any public place for the purpose of being hired to  
1353 engage in sexual activity.

1354 (2) (a) Except as provided in Subsection (2)(b) and Section [76-10-1309](#), prostitution is  
1355 a class B misdemeanor.

1356 (b) Except as provided in Section [76-10-1309](#), an individual who is convicted a second  
1357 time, and on all subsequent convictions, of a subsequent offense of prostitution under this  
1358 section or under a local ordinance adopted in compliance with Section [76-10-1307](#), is guilty of

1359 a class A misdemeanor.

1360 (3) A prosecutor may not prosecute an individual for a violation of Subsection (1) if  
1361 the individual engages in a violation of Subsection (1) at or near the time the individual  
1362 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the  
1363 following offenses, and the individual reports the offense or attempt to law enforcement in  
1364 good faith:

1365 (a) assault, Section [76-5-102](#);

1366 (b) aggravated assault, Section [76-5-103](#);

1367 (c) mayhem, Section [76-5-105](#);

1368 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse  
1369 homicide, or homicide by assault under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;

1370 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or  
1371 aggravated human trafficking, human smuggling or aggravated human smuggling, or human  
1372 trafficking of a child under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping, Trafficking, and  
1373 Smuggling;

1374 (f) rape, Section [76-5-402](#);

1375 (g) rape of a child, Section [76-5-402.1](#);

1376 (h) object rape, Section [76-5-402.2](#);

1377 (i) object rape of a child, Section [76-5-402.3](#);

1378 (j) forcible sodomy, Section [76-5-403](#);

1379 (k) sodomy on a child, Section [76-5-403.1](#);

1380 (l) forcible sexual abuse, Section [76-5-404](#);

1381 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);

1382 (n) aggravated sexual assault, Section [76-5-405](#);

1383 (o) sexual exploitation of a minor, Section [76-5b-201](#);

1384 (p) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1385 [~~(p)~~] (q) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);

1386 [~~(q)~~] (r) aggravated burglary or burglary of a dwelling under [~~Title 76,~~] Chapter 6, Part  
1387 2, Burglary and Criminal Trespass;

1388 [~~(r)~~] (s) aggravated robbery or robbery under [~~Title 76,~~] Chapter 6, Part 3, Robbery; or

1389 [~~(s)~~] (t) theft by extortion under Subsection [76-6-406\(2\)\(a\) or \(b\)](#).

1390 Section 15. Section **76-10-1602** is amended to read:

1391 **76-10-1602. Definitions.**

1392 As used in this part:

1393 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
1394 business trust, association, or other legal entity, and any union or group of individuals  
1395 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1396 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
1397 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
1398 have the same or similar purposes, results, participants, victims, or methods of commission, or  
1399 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
1400 demonstrate continuing unlawful conduct and be related either to each other or to the  
1401 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
1402 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
1403 activity as defined by this part shall have occurred within five years of the commission of the  
1404 next preceding act alleged as part of the pattern.

1405 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
1406 interest in property, including state, county, and local governmental entities.

1407 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
1408 command, encourage, or intentionally aid another person to engage in conduct which would  
1409 constitute any offense described by the following crimes or categories of crimes, or to attempt  
1410 or conspire to engage in an act which would constitute any of those offenses, regardless of  
1411 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
1412 or a felony:

1413 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
1414 Recording Practices Act;

1415 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
1416 Code, Sections [19-1-101](#) through [19-7-109](#);

1417 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
1418 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
1419 Code of Utah, or Section [23-20-4](#);

1420 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title

- 1421 26, Chapter 20, Utah False Claims Act, Sections [26-20-1](#) through [26-20-12](#);
- 1422 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
- 1423 Offenses and Procedure Act;
- 1424 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
- 1425 Land Sales Practices Act;
- 1426 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 1427 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
- 1428 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 1429 Clandestine Drug Lab Act;
- 1430 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 1431 Securities Act;
- 1432 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
- 1433 Procurement Code;
- 1434 (j) assault or aggravated assault, Sections [76-5-102](#) and [76-5-103](#);
- 1435 (k) a threat of terrorism, Section [76-5-107.3](#);
- 1436 (l) criminal homicide, Sections [76-5-201](#), [76-5-202](#), and [76-5-203](#);
- 1437 (m) kidnapping or aggravated kidnapping, Sections [76-5-301](#) and [76-5-302](#);
- 1438 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
- 1439 human trafficking, Sections [76-5-308](#), [76-5-308.5](#), [76-5-309](#), and [76-5-310](#);
- 1440 (o) sexual exploitation of a minor or aggravated sexual exploitation of a minor,
- 1441 ~~[Section]~~ Sections [76-5b-201](#) and [76-5b-201.1](#);
- 1442 (p) arson or aggravated arson, Sections [76-6-102](#) and [76-6-103](#);
- 1443 (q) causing a catastrophe, Section [76-6-105](#);
- 1444 (r) burglary or aggravated burglary, Sections [76-6-202](#) and [76-6-203](#);
- 1445 (s) burglary of a vehicle, Section [76-6-204](#);
- 1446 (t) manufacture or possession of an instrument for burglary or theft, Section [76-6-205](#);
- 1447 (u) robbery or aggravated robbery, Sections [76-6-301](#) and [76-6-302](#);
- 1448 (v) theft, Section [76-6-404](#);
- 1449 (w) theft by deception, Section [76-6-405](#);
- 1450 (x) theft by extortion, Section [76-6-406](#);
- 1451 (y) receiving stolen property, Section [76-6-408](#);

- 1452 (z) theft of services, Section 76-6-409;
- 1453 (aa) forgery, Section 76-6-501;
- 1454 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 1455 76-6-506.6;
- 1456 (cc) deceptive business practices, Section 76-6-507;
- 1457 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 1458 criticism of goods, Section 76-6-508;
- 1459 (ee) bribery of a labor official, Section 76-6-509;
- 1460 (ff) defrauding creditors, Section 76-6-511;
- 1461 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1462 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1463 (ii) bribery or threat to influence contest, Section 76-6-514;
- 1464 (jj) making a false credit report, Section 76-6-517;
- 1465 (kk) criminal simulation, Section 76-6-518;
- 1466 (ll) criminal usury, Section 76-6-520;
- 1467 (mm) fraudulent insurance act, Section 76-6-521;
- 1468 (nn) retail theft, Section 76-6-602;
- 1469 (oo) computer crimes, Section 76-6-703;
- 1470 (pp) identity fraud, Section 76-6-1102;
- 1471 (qq) mortgage fraud, Section 76-6-1203;
- 1472 (rr) sale of a child, Section 76-7-203;
- 1473 (ss) bribery to influence official or political actions, Section 76-8-103;
- 1474 (tt) threats to influence official or political action, Section 76-8-104;
- 1475 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 1476 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 1477 76-8-106;
- 1478 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 1479 (xx) obstruction of justice, Section 76-8-306;
- 1480 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1481 (zz) false or inconsistent material statements, Section 76-8-502;
- 1482 (aaa) false or inconsistent statements, Section 76-8-503;



- 1483 (bbb) written false statements, Section 76-8-504;
- 1484 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1485 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1486 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1487 (fff) tampering with evidence, Section 76-8-510.5;
- 1488 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 1489 a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and
- 1490 Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist
- 1491 Disclosure and Regulation Act;
- 1492 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 1493 76-8-1205;
- 1494 (iii) unemployment insurance fraud, Section 76-8-1301;
- 1495 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
- 1496 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 1497 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
- 1498 parts, Section 76-10-306;
- 1499 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
- 1500 device, Section 76-10-307;
- 1501 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 1502 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
- 1503 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 1504 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
- 1505 76-10-1002;
- 1506 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
- 1507 Section 76-10-1003;
- 1508 (rrr) sales in containers bearing registered trademark of substituted articles, Section
- 1509 76-10-1004;
- 1510 (sss) selling or dealing with article bearing registered trademark or service mark with
- 1511 intent to defraud, Section 76-10-1006;
- 1512 (ttt) gambling, Section 76-10-1102;
- 1513 (uuu) gambling fraud, Section 76-10-1103;

- 1514 (vvv) gambling promotion, Section 76-10-1104;
- 1515 (www) possessing a gambling device or record, Section 76-10-1105;
- 1516 (xxx) confidence game, Section 76-10-1109;
- 1517 (yyy) distributing pornographic material, Section 76-10-1204;
- 1518 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
- 1519 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
- 1520 (bbbb) distribution of pornographic films, Section 76-10-1222;
- 1521 (cccc) indecent public displays, Section 76-10-1228;
- 1522 (dddd) prostitution, Section 76-10-1302;
- 1523 (eeee) aiding prostitution, Section 76-10-1304;
- 1524 (ffff) exploiting prostitution, Section 76-10-1305;
- 1525 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
- 1526 (hhhh) communications fraud, Section 76-10-1801;
- 1527 (iii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
- 1528 Currency Transaction Reporting Act;
- 1529 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
- 1530 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
- 1531 this state; and
- 1532 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
- 1533 Sec. 1961(1)(B), (C), and (D).
- 1534 Section 16. Section 77-22-2.5 is amended to read:
- 1535 **77-22-2.5. Court orders for criminal investigations for records concerning an**
- 1536 **electronic communications system or service or remote computing service -- Content --**
- 1537 **Fee for providing information.**
- 1538 (1) As used in this section:
- 1539 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
- 1540 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
- 1541 radio, electromagnetic, photoelectronic, or photooptical system.
- 1542 (ii) "Electronic communication" does not include:
- 1543 (A) a wire or oral communication;
- 1544 (B) a communication made through a tone-only paging device;

1545 (C) a communication from a tracking device; or

1546 (D) electronic funds transfer information stored by a financial institution in a  
1547 communications system used for the electronic storage and transfer of funds.

1548 (b) "Electronic communications service" means a service which provides for users the  
1549 ability to send or receive wire or electronic communications.

1550 (c) "Electronic communications system" means a wire, radio, electromagnetic,  
1551 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
1552 communications, and a computer facilities or related electronic equipment for the electronic  
1553 storage of the communication.

1554 (d) "Internet service provider" means the same as that term is defined in Section  
1555 [76-10-1230](#).

1556 (e) "Prosecutor" means the same as that term is defined in Section [77-22-4.5](#).

1557 (f) "Remote computing service" means the provision to the public of computer storage  
1558 or processing services by means of an electronic communications system.

1559 (g) "Sexual offense against a minor" means:

1560 (i) sexual exploitation of a minor or attempted sexual exploitation of a minor in  
1561 violation of Section [76-5b-201](#);

1562 (ii) aggravated sexual exploitation of a minor or attempted aggravated sexual  
1563 exploitation of a minor in violation of Section [76-5b-201.1](#);

1564 ~~[(ii)]~~ (iii) a sexual offense or attempted sexual offense committed against a minor in  
1565 violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

1566 ~~[(iii)]~~ (iv) dealing in or attempting to deal in material harmful to a minor in violation of  
1567 Section [76-10-1206](#);

1568 ~~[(iv)]~~ (v) enticement of a minor or attempted enticement of a minor in violation of  
1569 Section [76-4-401](#);

1570 ~~[(v)]~~ (vi) human trafficking of a child in violation of Section [76-5-308.5](#); or

1571 ~~[(vi)]~~ (vii) aggravated sexual extortion of a child in violation of Section [76-5b-204](#).

1572 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
1573 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under  
1574 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or  
1575 service or remote computing service has been used in the commission of a criminal offense, a

1576 law enforcement agent shall:

1577 (a) articulate specific facts showing reasonable grounds to believe that the records or  
1578 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and  
1579 material to an ongoing investigation;

1580 (b) present the request to a prosecutor for review and authorization to proceed; and

1581 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.  
1582 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote  
1583 computing service provider that owns or controls the Internet protocol address, websites, email  
1584 address, or service to a specific telephone number, requiring the production of the following  
1585 information, if available, upon providing in the court order the Internet protocol address, email  
1586 address, telephone number, or other identifier, and the dates and times the address, telephone  
1587 number, or other identifier is suspected of being used in the commission of the offense:

1588 (i) names of subscribers, service customers, and users;

1589 (ii) addresses of subscribers, service customers, and users;

1590 (iii) records of session times and durations;

1591 (iv) length of service, including the start date and types of service utilized; and

1592 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
1593 including a temporarily assigned network address.

1594 (3) A court order issued under this section shall state that the electronic  
1595 communications system or service or remote computing service provider shall produce a record  
1596 under Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the  
1597 suspected criminal activity or offense as described in the court order.

1598 (4) (a) An electronic communications system or service or remote computing service  
1599 provider that provides information in response to a court order issued under this section may  
1600 charge a fee, not to exceed the actual cost, for providing the information.

1601 (b) The law enforcement agency conducting the investigation shall pay the fee.

1602 (5) The electronic communications system or service or remote computing service  
1603 provider served with or responding to the court order may not disclose the court order to the  
1604 account holder identified pursuant to the court order for a period of 90 days.

1605 (6) If the electronic communications system or service or remote computing service  
1606 provider served with the court order does not own or control the Internet protocol address,

1607 websites, or email address, or provide service for the telephone number that is the subject of  
1608 the court order, the provider shall notify the investigating law enforcement agency that the  
1609 provider does not have the information.

1610 (7) There is no cause of action against a provider or wire or electronic communication  
1611 service, or the provider or service's officers, employees, agents, or other specified persons, for  
1612 providing information, facilities, or assistance in accordance with the terms of the court order  
1613 issued under this section or statutory authorization.

1614 (8) (a) A court order issued under this section is subject to the provisions of Title 77,  
1615 Chapter 23b, Access to Electronic Communications.

1616 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,  
1617 Access to Electronic Communications, apply to providers and subscribers subject to a court  
1618 order issued under this section.

1619 (9) A prosecutorial agency shall annually on or before February 15 report to the  
1620 Commission on Criminal and Juvenile Justice:

1621 (a) the number of requests for court orders authorized by the prosecutorial agency;

1622 (b) the number of orders issued by the court and the criminal offense, pursuant to  
1623 Subsection (2), each order was used to investigate; and

1624 (c) if the court order led to criminal charges being filed, the type and number of  
1625 offenses charged.

1626 Section 17. Section **77-36-1** is amended to read:

1627 **77-36-1. Definitions.**

1628 As used in this chapter:

1629 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

1630 (2) "Department" means the Department of Public Safety.

1631 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
1632 3, Divorce.

1633 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
1634 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
1635 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
1636 when committed by one cohabitant against another. "Domestic violence" or "domestic  
1637 violence offense" includes commission or attempt to commit, any of the following offenses by

- 1638 one cohabitant against another:
- 1639 (a) aggravated assault, as described in Section [76-5-103](#);
- 1640 (b) aggravated cruelty to an animal, as described in Subsection [76-9-301\(4\)](#), with the  
1641 intent to harass or threaten the other cohabitant;
- 1642 (c) assault, as described in Section [76-5-102](#);
- 1643 (d) criminal homicide, as described in Section [76-5-201](#);
- 1644 (e) harassment, as described in Section [76-5-106](#);
- 1645 (f) electronic communication harassment, as described in Section [76-9-201](#);
- 1646 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
1647 [76-5-301](#), [76-5-301.1](#), and [76-5-302](#);
- 1648 (h) mayhem, as described in Section [76-5-105](#);
- 1649 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
1650 [~~Section [76-5b-201](#), Sexual exploitation of a minor -- Offenses;~~] sexual exploitation of a minor  
1651 and aggravated sexual exploitation of a minor, as described in Sections [76-5b-201](#) and  
1652 [76-5b-201.1](#);
- 1653 (j) stalking, as described in Section [76-5-106.5](#);
- 1654 (k) unlawful detention or unlawful detention of a minor, as described in Section  
1655 [76-5-304](#);
- 1656 (l) violation of a protective order or ex parte protective order, as described in Section  
1657 [76-5-108](#);
- 1658 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property  
1659 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,  
1660 Part 3, Robbery;
- 1661 (n) possession of a deadly weapon with criminal intent, as described in Section  
1662 [76-10-507](#);
- 1663 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
1664 person, building, or vehicle, as described in Section [76-10-508](#);
- 1665 (p) disorderly conduct, as defined in Section [76-9-102](#), if a conviction or adjudication  
1666 of disorderly conduct is the result of a plea agreement in which the perpetrator was originally  
1667 charged with a domestic violence offense otherwise described in this Subsection (4), except  
1668 that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the

1669 manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of  
1670 domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18  
1671 U.S.C. Sec. 921 et seq.;

- 1672 (q) child abuse, as described in Section 76-5-109.1;
- 1673 (r) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 1674 (s) threatening violence, as described in Section 76-5-107;
- 1675 (t) tampering with a witness, as described in Section 76-8-508;
- 1676 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;
- 1677 (v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or  
1678 unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;
- 1679 (w) sexual battery, as described in Section 76-9-702.1;
- 1680 (x) voyeurism, as described in Section 76-9-702.7;
- 1681 (y) damage to or interruption of a communication device, as described in Section  
1682 76-6-108; or
- 1683 (z) an offense described in Subsection 78B-7-806(1).

1684 (5) "Jail release agreement" means the same as that term is defined in Section  
1685 78B-7-801.

1686 (6) "Jail release court order" means the same as that term is defined in Section  
1687 78B-7-801.

1688 (7) "Marital status" means married and living together, divorced, separated, or not  
1689 married.

1690 (8) "Married and living together" means a couple whose marriage was solemnized  
1691 under Section 30-1-4 or 30-1-6 and who are living in the same residence.

1692 (9) "Not married" means any living arrangement other than married and living together,  
1693 divorced, or separated.

1694 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).

1695 (11) "Pretrial protective order" means a written order:

1696 (a) specifying and limiting the contact a person who has been charged with a domestic  
1697 violence offense may have with an alleged victim or other specified individuals; and

1698 (b) specifying other conditions of release under ~~[Sections]~~ Section 78B-7-802 or  
1699 78B-7-803, pending trial in the criminal case.

1700 (12) "Sentencing protective order" means a written order of the court as part of  
1701 sentencing in a domestic violence case that limits the contact an individual who is convicted or  
1702 adjudicated of a domestic violence offense may have with a victim or other specified  
1703 individuals under Section 78B-7-804.

1704 (13) "Separated" means a couple who have had their marriage solemnized under  
1705 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

1706 (14) "Victim" means a cohabitant who has been subjected to domestic violence.  
1707 Section 18. Section 77-41-102 is amended to read:

1708 **77-41-102. Definitions.**

1709 As used in this chapter:

1710 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
1711 Safety established in section 53-10-201.

1712 (2) "Business day" means a day on which state offices are open for regular business.

1713 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
1714 Identification showing that the offender has met the requirements of Section 77-41-112.

1715 (4) "Department" means the Department of Corrections.

1716 (5) "Division" means the Division of Juvenile Justice Services.

1717 (6) "Employed" or "carries on a vocation" includes employment that is full time or part  
1718 time, whether financially compensated, volunteered, or for the purpose of government or  
1719 educational benefit.

1720 (7) "Indian Country" means:

1721 (a) all land within the limits of any Indian reservation under the jurisdiction of the  
1722 United States government, regardless of the issuance of any patent, and includes rights-of-way  
1723 running through the reservation;

1724 (b) all dependent Indian communities within the borders of the United States whether  
1725 within the original or subsequently acquired territory, and whether or not within the limits of a  
1726 state; and

1727 (c) all Indian allotments, including the Indian allotments to which the Indian titles have  
1728 not been extinguished, including rights-of-way running through the allotments.

1729 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any  
1730 property under the jurisdiction of the United States military, Canada, the United Kingdom,



- 1731 Australia, or New Zealand.
- 1732 (9) "Kidnap offender" means any individual, other than a natural parent of the victim:
- 1733 (a) who has been convicted in this state of a violation of:
- 1734 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;
- 1735 (ii) Section 76-5-301.1, child kidnapping;
- 1736 (iii) Section 76-5-302, aggravated kidnapping;
- 1737 (iv) Section 76-5-308, human trafficking for labor and human smuggling;
- 1738 (v) Section 76-5-308, human smuggling, when the individual smuggled is under 18
- 1739 years old;
- 1740 (vi) Section 76-5-308.5, human trafficking of a child for labor;
- 1741 (vii) Section 76-5-310, aggravated human trafficking and aggravated human
- 1742 smuggling, on or after May 10, 2011;
- 1743 (viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or
- 1744 (ix) attempting, soliciting, or conspiring to commit any felony offense listed in
- 1745 Subsections (9)(a)(i) through (iii);
- 1746 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
- 1747 to commit a crime in another jurisdiction, including any state, federal, or military court that is
- 1748 substantially equivalent to the offenses listed in Subsection (9)(a); and
- 1749 (ii) who is:
- 1750 (A) a Utah resident; or
- 1751 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 1752 10 or more days, regardless of whether or not the offender intends to permanently reside in this
- 1753 state;
- 1754 (c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of
- 1755 original conviction;
- 1756 (B) who is required to register as a kidnap offender by any state, federal, or military
- 1757 court; or
- 1758 (C) who would be required to register as a kidnap offender if residing in the
- 1759 jurisdiction of the conviction regardless of the date of the conviction or any previous
- 1760 registration requirements; and
- 1761 (ii) in any 12-month period, who is in this state for a total of 10 or more days,

1762 regardless of whether or not the offender intends to permanently reside in this state;  
1763 (d) (i) (A) who is a nonresident regularly employed or working in this state; or  
1764 (B) who is a student in this state; and  
1765 (ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any  
1766 substantially equivalent offense in another jurisdiction; or  
1767 (B) as a result of the conviction, who is required to register in the individual's state of  
1768 residence;  
1769 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction  
1770 of one or more offenses listed in Subsection (9); or  
1771 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in  
1772 Subsection (9)(a); and  
1773 (ii) who has been committed to the division for secure care, as defined in Section  
1774 80-1-102, for that offense and:  
1775 (A) the individual remains in the division's custody until 30 days before the individual's  
1776 21st birthday; or  
1777 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual  
1778 under Section 80-6-605, the individual remains in the division's custody until 30 days before  
1779 the individual's 25th birthday.  
1780 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the  
1781 minor's noncustodial parent.  
1782 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender  
1783 as defined in Subsection (17).  
1784 (12) "Online identifier" or "Internet identifier":  
1785 (a) means any electronic mail, chat, instant messenger, social networking, or similar  
1786 name used for Internet communication; and  
1787 (b) does not include date of birth, social security number, PIN number, or Internet  
1788 passwords.  
1789 (13) "Primary residence" means the location where the offender regularly resides, even  
1790 if the offender intends to move to another location or return to another location at any future  
1791 date.  
1792 (14) "Register" means to comply with the requirements of this chapter and

1793 administrative rules of the department made under this chapter.

1794 (15) "Registration website" means the Sex and Kidnap Offender Notification and  
1795 Registration website described in Section 77-41-110 and the information on the website.

1796 (16) "Secondary residence" means any real property that the offender owns or has a  
1797 financial interest in, or any location where, in any 12-month period, the offender stays  
1798 overnight a total of 10 or more nights when not staying at the offender's primary residence.

1799 (17) "Sex offender" means any individual:

1800 (a) convicted in this state of:

1801 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

1802 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,  
1803 2011;

1804 (iii) Section 76-5-308, human trafficking for sexual exploitation;

1805 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

1806 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

1807 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

1808 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in

1809 Subsection 76-5-401(3)(b) or (c);

1810 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection

1811 76-5-401.1(3);

1812 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

1813 (x) Section 76-5-402, rape;

1814 (xi) Section 76-5-402.1, rape of a child;

1815 (xii) Section 76-5-402.2, object rape;

1816 (xiii) Section 76-5-402.3, object rape of a child;

1817 (xiv) a felony violation of Section 76-5-403, forcible sodomy;

1818 (xv) Section 76-5-403.1, sodomy on a child;

1819 (xvi) Section 76-5-404, forcible sexual abuse;

1820 (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a

1821 child;

1822 (xviii) Section 76-5-405, aggravated sexual assault;

1823 (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is

1824 younger than 18 years old, if the offense is committed on or after May 10, 2011;

1825 (xx) Section [76-5b-201](#), sexual exploitation of a minor;

1826 (xxi) Section [76-5b-201.1](#), aggravated sexual exploitation of a minor;

1827 [~~(xxi)~~] (xxii) Section [76-5b-204](#), sexual extortion or aggravated sexual extortion;

1828 [~~(xxii)~~] (xxiii) Section [76-7-102](#), incest;

1829 [~~(xxiii)~~] (xxiv) Section [76-9-702](#), lewdness, if the individual has been convicted of the

1830 offense four or more times;

1831 [~~(xxiv)~~] (xxv) Section [76-9-702.1](#), sexual battery, if the individual has been convicted

1832 of the offense four or more times;

1833 [~~(xxv)~~] (xxvi) any combination of convictions of Section [76-9-702](#), lewdness, and of

1834 Section [76-9-702.1](#), sexual battery, that total four or more convictions;

1835 [~~(xxvi)~~] (xxvii) Section [76-9-702.5](#), lewdness involving a child;

1836 [~~(xxvii)~~] (xxviii) a felony or class A misdemeanor violation of Section [76-9-702.7](#),

1837 voyeurism;

1838 [~~(xxviii)~~] (xxix) Section [76-10-1306](#), aggravated exploitation of prostitution; or

1839 [~~(xxix)~~] (xxx) attempting, soliciting, or conspiring to commit any felony offense listed

1840 in this Subsection (17)(a);

1841 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy

1842 to commit a crime in another jurisdiction, including any state, federal, or military court that is

1843 substantially equivalent to the offenses listed in Subsection (17)(a); and

1844 (ii) who is:

1845 (A) a Utah resident; or

1846 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of

1847 10 or more days, regardless of whether the offender intends to permanently reside in this state;

1848 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of

1849 original conviction;

1850 (B) who is required to register as a sex offender by any state, federal, or military court;

1851 or

1852 (C) who would be required to register as a sex offender if residing in the jurisdiction of

1853 the original conviction regardless of the date of the conviction or any previous registration

1854 requirements; and

- 1855 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,  
1856 regardless of whether or not the offender intends to permanently reside in this state;
- 1857 (d) (i) (A) who is a nonresident regularly employed or working in this state; or  
1858 (B) who is a student in this state; and
- 1859 (ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any  
1860 substantially equivalent offense in any jurisdiction; or
- 1861 (B) who is, as a result of the conviction, required to register in the individual's  
1862 jurisdiction of residence;
- 1863 (e) who is found not guilty by reason of insanity in this state, or in any other  
1864 jurisdiction of one or more offenses listed in Subsection (17)(a); or
- 1865 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in  
1866 Subsection (17)(a); and
- 1867 (ii) who has been committed to the division for secure care, as defined in Section  
1868 80-1-102, for that offense and:
- 1869 (A) the individual remains in the division's custody until 30 days before the individual's  
1870 21st birthday; or
- 1871 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual  
1872 under Section 80-6-605, the individual remains in the division's custody until 30 days before  
1873 the individual's 25th birthday.
- 1874 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,  
1875 Driving Under the Influence and Reckless Driving.
- 1876 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in  
1877 any jurisdiction.
- 1878 Section 19. Section 77-41-106 is amended to read:
- 1879 **77-41-106. Registerable offenses.**
- 1880 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:
- 1881 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the  
1882 conviction, the offender has previously been convicted of an offense listed in Subsection  
1883 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense  
1884 committed as a juvenile;
- 1885 (2) a conviction for any of the following offenses, including attempting, soliciting, or

- 1886 conspiring to commit any felony of:
- 1887       (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
- 1888 the victim;
- 1889       (b) Section 76-5-402, rape;
- 1890       (c) Section 76-5-402.1, rape of a child;
- 1891       (d) Section 76-5-402.2, object rape;
- 1892       (e) Section 76-5-402.3, object rape of a child;
- 1893       (f) Section 76-5-403.1, sodomy on a child;
- 1894       (g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
- 1895       (h) Section 76-5-405, aggravated sexual assault;
- 1896       (3) Section 76-5-308, human trafficking for sexual exploitation;
- 1897       (4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 1898       (5) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 1899       (6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 1900       (7) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- 1901       (8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 1902 of the victim;
- 1903       (9) Section 76-5-403, forcible sodomy;
- 1904       (10) Section 76-5-404.1, sexual abuse of a child;
- 1905       (11) Section 76-5b-201, sexual exploitation of a minor;
- 1906       (12) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- 1907       ~~[(12)]~~ (13) Subsection 76-5b-204(4), aggravated sexual extortion; or
- 1908       ~~[(13)]~~ (14) Section 76-10-1306, aggravated exploitation of prostitution, on or after May
- 1909 10, 2011.

1910 Section 20. Section 78B-6-117 is amended to read:

1911 **78B-6-117. Who may adopt -- Adoption of minor.**

1912 (1) A minor child may be adopted by an adult individual, in accordance with this

1913 section and this part.

1914 (2) A child may be adopted by:

1915 (a) adults who are legally married to each other in accordance with the laws of this

1916 state, including adoption by a stepparent; or

- 1917 (b) subject to Subsections (3) and (4), a single adult.
- 1918 (3) A child may not be adopted by an individual who is cohabiting in a relationship that  
1919 is not a legally valid and binding marriage under the laws of this state unless the individual is a  
1920 relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C.  
1921 Sec. 1901 et seq.
- 1922 (4) To provide a child who is in the custody of the division with the most beneficial  
1923 family structure, when a child in the custody of the division is placed for adoption, the division  
1924 or child-placing agency shall place the child with a married couple, unless:
- 1925 (a) there are no qualified married couples who:
- 1926 (i) have applied to adopt a child;
- 1927 (ii) are willing to adopt the child; and
- 1928 (iii) are an appropriate placement for the child;
- 1929 (b) the child is placed with a relative of the child;
- 1930 (c) the child is placed with an individual who has already developed a substantial  
1931 relationship with the child;
- 1932 (d) the child is placed with an individual who:
- 1933 (i) is selected by a parent or former parent of the child, if the parent or former parent  
1934 consented to the adoption of the child; and
- 1935 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 1936 (A) knew the individual with whom the child is placed before the parent consented to  
1937 the adoption; or
- 1938 (B) became aware of the individual with whom the child is placed through a source  
1939 other than the division or the child-placing agency that assists with the adoption of the child; or
- 1940 (e) it is in the best interests of the child to place the child with a single adult.
- 1941 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before  
1942 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest  
1943 to a felony or attempted felony involving conduct that constitutes any of the following:
- 1944 (a) child abuse, as described in Section [76-5-109](#);
- 1945 (b) child abuse homicide, as described in Section [76-5-208](#);
- 1946 (c) child kidnapping, as described in Section [76-5-301.1](#);
- 1947 (d) human trafficking of a child, as described in Section [76-5-308.5](#);

- 1948 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);
- 1949 (f) rape of a child, as described in Section [76-5-402.1](#);
- 1950 (g) object rape of a child, as described in Section [76-5-402.3](#);
- 1951 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 1952 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 1953 Section [76-5-404.1](#);
- 1954 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); [~~or~~]
- 1955 (k) aggravated sexual exploitation of a minor, as described in Section [76-5b-201.1](#); or
- 1956 [~~(k)~~] (l) an offense in another state that, if committed in this state, would constitute an
- 1957 offense described in this Subsection (5).
- 1958 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
- 1959 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
- 1960 child except as provided in this Subsection (6).
- 1961 (b) An individual described in Subsection (5) may only be considered for adoption of a
- 1962 child if the following criteria are met by clear and convincing evidence:
- 1963 (i) at least 10 years have elapsed from the day on which the individual is successfully
- 1964 released from prison, jail, parole, or probation related to a disqualifying offense;
- 1965 (ii) during the 10 years before the day on which the individual files a petition with the
- 1966 court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no
- 1967 contest to an offense greater than an infraction or traffic violation that would likely impact the
- 1968 health, safety, or well-being of the child;
- 1969 (iii) the individual can provide evidence of successful treatment or rehabilitation
- 1970 directly related to the disqualifying offense;
- 1971 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
- 1972 cause harm, as defined in Section [80-1-102](#), or potential harm to the child currently or at any
- 1973 time in the future when considering all of the following:
- 1974 (A) the child's age;
- 1975 (B) the child's gender;
- 1976 (C) the child's development;
- 1977 (D) the nature and seriousness of the disqualifying offense;
- 1978 (E) the preferences of a child 12 years old or older;



- 1979 (F) any available assessments, including custody evaluations, home studies,  
1980 pre-placement adoptive evaluations, parenting assessments, psychological or mental health  
1981 assessments, and bonding assessments; and
- 1982 (G) any other relevant information;
- 1983 (v) the individual can provide evidence of all of the following:
- 1984 (A) the relationship with the child is of long duration;
- 1985 (B) that an emotional bond exists with the child; and
- 1986 (C) that adoption by the individual who has committed the disqualifying offense  
1987 ensures the best interests of the child are met; and
- 1988 (vi) the adoption is by:
- 1989 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- 1990 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102  
1991 and there is not another relative without a disqualifying offense filing an adoption petition.
- 1992 (c) The individual with the disqualifying offense bears the burden of proof regarding  
1993 why adoption with that individual is in the best interest of the child over another responsible  
1994 relative or equally situated individual who does not have a disqualifying offense.
- 1995 (d) If there is an alternative responsible relative who does not have a disqualifying  
1996 offense filing an adoption petition, the following applies:
- 1997 (i) preference for adoption shall be given to a relative who does not have a  
1998 disqualifying offense; and
- 1999 (ii) before the court may grant adoption to the individual who has the disqualifying  
2000 offense over another responsible, willing, and able relative:
- 2001 (A) an impartial custody evaluation shall be completed; and
- 2002 (B) a guardian ad litem shall be assigned.
- 2003 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a  
2004 final decision on adoption has not been made and to a case filed on or after March 25, 2017.
- 2005 Section 21. Section **80-1-102** is amended to read:
- 2006 **80-1-102. Juvenile code definitions.**
- 2007 As used in this title:
- 2008 (1) (a) "Abuse" means:
- 2009 (i) (A) nonaccidental harm of a child;

2010 (B) threatened harm of a child;  
2011 (C) sexual exploitation;  
2012 (D) sexual abuse; or  
2013 (E) human trafficking of a child in violation of Section 76-5-308.5; or  
2014 (ii) that a child's natural parent:  
2015 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
2016 child;  
2017 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
2018 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or  
2019 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
2020 recklessly causing the death of another parent of the child.  
2021 (b) "Abuse" does not include:  
2022 (i) reasonable discipline or management of a child, including withholding privileges;  
2023 (ii) conduct described in Section 76-2-401; or  
2024 (iii) the use of reasonable and necessary physical restraint or force on a child:  
2025 (A) in self-defense;  
2026 (B) in defense of others;  
2027 (C) to protect the child; or  
2028 (D) to remove a weapon in the possession of a child for any of the reasons described in  
2029 Subsections (1)(b)(iii)(A) through (C).  
2030 (2) "Abused child" means a child who has been subjected to abuse.  
2031 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the  
2032 facts alleged in the petition have been proved.  
2033 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance  
2034 with Section 80-6-402.  
2035 (4) (a) "Adult" means an individual who is 18 years old or older.  
2036 (b) "Adult" does not include an individual:  
2037 (i) who is 18 years old or older; and  
2038 (ii) who is a minor.  
2039 (5) "Attorney guardian ad litem" means the same as that term is defined in Section  
2040 78A-2-801.

- 2041 (6) "Board" means the Board of Juvenile Court Judges.
- 2042 (7) "Child" means an individual who is under 18 years old.
- 2043 (8) "Child and family plan" means a written agreement between a child's parents or  
2044 guardian and the Division of Child and Family Services as described in Section [62A-4a-205](#).
- 2045 (9) "Child placement agency" means:
- 2046 (a) a private agency licensed to receive a child for placement or adoption under this  
2047 code; or
- 2048 (b) a private agency that receives a child for placement or adoption in another state,  
2049 which is licensed or approved where such license or approval is required by law.
- 2050 (10) "Clandestine laboratory operation" means the same as that term is defined in  
2051 Section [58-37d-3](#).
- 2052 (11) "Commit" or "committed" means, unless specified otherwise:
- 2053 (a) with respect to a child, to transfer legal custody; and
- 2054 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 2055 (12) "Community-based program" means a nonsecure residential or nonresidential  
2056 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least  
2057 restrictive setting, consistent with public safety, and operated by or under contract with the  
2058 Division of Juvenile Justice Services.
- 2059 (13) "Community placement" means placement of a minor in a community-based  
2060 program described in Section [80-5-402](#).
- 2061 (14) "Correctional facility" means:
- 2062 (a) a county jail; or
- 2063 (b) a secure correctional facility as defined in Section [64-13-1](#).
- 2064 (15) "Criminogenic risk factors" means evidence-based factors that are associated with  
2065 a minor's likelihood of reoffending.
- 2066 (16) "Department" means the Department of Human Services created in Section  
2067 [62A-1-102](#).
- 2068 (17) "Dependent child" or "dependency" means a child who is without proper care  
2069 through no fault of the child's parent, guardian, or custodian.
- 2070 (18) "Deprivation of custody" means transfer of legal custody by the juvenile court  
2071 from a parent or a previous custodian to another person, agency, or institution.

- 2072 (19) "Detention" means home detention or secure detention.
- 2073 (20) "Detention risk assessment tool" means an evidence-based tool established under  
2074 Section [80-5-203](#) that:
- 2075 (a) assesses a minor's risk of failing to appear in court or reoffending before  
2076 adjudication; and
- 2077 (b) is designed to assist in making a determination of whether a minor shall be held in  
2078 detention.
- 2079 (21) "Developmental immaturity" means incomplete development in one or more  
2080 domains that manifests as a functional limitation in the minor's present ability to:
- 2081 (a) consult with counsel with a reasonable degree of rational understanding; and  
2082 (b) have a rational as well as factual understanding of the proceedings.
- 2083 (22) "Disposition" means an order by a juvenile court, after the adjudication of a  
2084 minor, under Section [80-3-405](#) or [80-4-305](#) or Chapter 6, Part 7, Adjudication and Disposition.
- 2085 (23) "Educational neglect" means that, after receiving a notice of compulsory education  
2086 violation under Section [53G-6-202](#), the parent or guardian fails to make a good faith effort to  
2087 ensure that the child receives an appropriate education.
- 2088 (24) "Educational series" means an evidence-based instructional series:
- 2089 (a) obtained at a substance abuse program that is approved by the Division of  
2090 Substance Abuse and Mental Health in accordance with Section [62A-15-105](#); and  
2091 (b) designed to prevent substance use or the onset of a mental health disorder.
- 2092 (25) "Emancipated" means the same as that term is defined in Section [80-7-102](#).
- 2093 (26) "Evidence-based" means a program or practice that has had multiple randomized  
2094 control studies or a meta-analysis demonstrating that the program or practice is effective for a  
2095 specific population or has been rated as effective by a standardized program evaluation tool.
- 2096 (27) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).
- 2097 (28) "Formal probation" means a minor is:
- 2098 (a) supervised in the community by, and reports to, a juvenile probation officer or an  
2099 agency designated by the juvenile court; and  
2100 (b) subject to return to the juvenile court in accordance with Section [80-6-607](#).
- 2101 (29) "Group rehabilitation therapy" means psychological and social counseling of one  
2102 or more individuals in the group, depending upon the recommendation of the therapist.

2103 (30) "Guardian" means a person appointed by a court to make decisions regarding a  
2104 minor, including the authority to consent to:

2105 (a) marriage;

2106 (b) enlistment in the armed forces;

2107 (c) major medical, surgical, or psychiatric treatment; or

2108 (d) legal custody, if legal custody is not vested in another individual, agency, or  
2109 institution.

2110 (31) "Guardian ad litem" means the same as that term is defined in Section [78A-2-801](#).

2111 (32) "Harm" means:

2112 (a) physical or developmental injury or damage;

2113 (b) emotional damage that results in a serious impairment in the child's growth,  
2114 development, behavior, or psychological functioning;

2115 (c) sexual abuse; or

2116 (d) sexual exploitation.

2117 (33) "Home detention" means placement of a minor:

2118 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the  
2119 consent of the minor's parent, guardian, or custodian, under terms and conditions established by  
2120 the Division of Juvenile Justice Services or the juvenile court; or

2121 (b) if after a disposition, and in accordance with Section [78A-6-353](#) or [80-6-704](#), in the  
2122 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or  
2123 custodian, under terms and conditions established by the Division of Juvenile Justice Services  
2124 or the juvenile court.

2125 (34) (a) "Incest" means engaging in sexual intercourse with an individual whom the  
2126 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,  
2127 nephew, niece, or first cousin.

2128 (b) "Incest" includes:

2129 (i) blood relationships of the whole or half blood, without regard to legitimacy;

2130 (ii) relationships of parent and child by adoption; and

2131 (iii) relationships of stepparent and stepchild while the marriage creating the  
2132 relationship of a stepparent and stepchild exists.

2133 (35) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2134 (36) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2135 (37) "Indigent defense service provider" means the same as that term is defined in  
2136 Section [78B-22-102](#).

2137 (38) "Indigent defense services" means the same as that term is defined in Section  
2138 [78B-22-102](#).

2139 (39) "Indigent individual" means the same as that term is defined in Section  
2140 [78B-22-102](#).

2141 (40) (a) "Intake probation" means a minor is:

2142 (i) monitored by a juvenile probation officer; and

2143 (ii) subject to return to the juvenile court in accordance with Section [80-6-607](#).

2144 (b) "Intake probation" does not include formal probation.

2145 (41) "Intellectual disability" means a significant subaverage general intellectual  
2146 functioning existing concurrently with deficits in adaptive behavior that constitutes a  
2147 substantial limitation to the individual's ability to function in society.

2148 (42) "Juvenile offender" means:

2149 (a) a serious youth offender; or

2150 (b) a youth offender.

2151 (43) "Juvenile probation officer" means a probation officer appointed under Section  
2152 [78A-6-205](#).

2153 (44) "Juvenile receiving center" means a nonsecure, nonresidential program established  
2154 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile  
2155 Justice Services, that is responsible for minors taken into temporary custody under Section  
2156 [80-6-201](#).

2157 (45) "Legal custody" means a relationship embodying:

2158 (a) the right to physical custody of the minor;

2159 (b) the right and duty to protect, train, and discipline the minor;

2160 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
2161 medical care;

2162 (d) the right to determine where and with whom the minor shall live; and

2163 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

2164 (46) "Mental illness" means:

2165 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,  
2166 behavioral, or related functioning; or

2167 (b) the same as that term is defined in:

2168 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders  
2169 published by the American Psychiatric Association; or

2170 (ii) the current edition of the International Statistical Classification of Diseases and  
2171 Related Health Problems.

2172 (47) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

2173 (a) a child; or

2174 (b) an individual:

2175 (i) (A) who is at least 18 years old and younger than 21 years old; and

2176 (B) for whom the Division of Child and Family Services has been specifically ordered  
2177 by the juvenile court to provide services because the individual was an abused, neglected, or  
2178 dependent child or because the individual was adjudicated for an offense; or

2179 (ii) (A) who is at least 18 years old and younger than 25 years old; and

2180 (B) whose case is under the continuing jurisdiction of the juvenile court under Chapter  
2181 6, Juvenile Justice.

2182 (48) "Mobile crisis outreach team" means the same as that term is defined in Section  
2183 62A-15-102.

2184 (49) "Molestation" means that an individual, with the intent to arouse or gratify the  
2185 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,  
2186 or the breast of a female child, or takes indecent liberties with a child as defined in Section  
2187 76-5-416.

2188 (50) (a) "Natural parent" means a minor's biological or adoptive parent.

2189 (b) "Natural parent" includes the minor's noncustodial parent.

2190 (51) (a) "Neglect" means action or inaction causing:

2191 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
2192 Relinquishment of a Newborn Child;

2193 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,  
2194 guardian, or custodian;

2195 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary

2196 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or  
2197 well-being;

2198 (iv) a child to be at risk of being neglected or abused because another child in the same  
2199 home is neglected or abused;

2200 (v) abandonment of a child through an unregulated custody transfer; or

2201 (vi) educational neglect.

2202 (b) "Neglect" does not include:

2203 (i) a parent or guardian legitimately practicing religious beliefs and who, for that  
2204 reason, does not provide specified medical treatment for a child;

2205 (ii) a health care decision made for a child by the child's parent or guardian, unless the  
2206 state or other party to a proceeding shows, by clear and convincing evidence, that the health  
2207 care decision is not reasonable and informed;

2208 (iii) a parent or guardian exercising the right described in Section 80-3-304; or

2209 (iv) permitting a child, whose basic needs are met and who is of sufficient age and  
2210 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,  
2211 including:

2212 (A) traveling to and from school, including by walking, running, or bicycling;

2213 (B) traveling to and from nearby commercial or recreational facilities;

2214 (C) engaging in outdoor play;

2215 (D) remaining in a vehicle unattended, except under the conditions described in

2216 Subsection 76-10-2202(2);

2217 (E) remaining at home unattended; or

2218 (F) engaging in a similar independent activity.

2219 (52) "Neglected child" means a child who has been subjected to neglect.

2220 (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile  
2221 probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the  
2222 consent in writing of:

2223 (a) the assigned juvenile probation officer; and

2224 (b) (i) the minor; or

2225 (ii) the minor and the minor's parent, legal guardian, or custodian.

2226 (54) "Not competent to proceed" means that a minor, due to a mental illness,



2227 intellectual disability or related condition, or developmental immaturity, lacks the ability to:

2228 (a) understand the nature of the proceedings against the minor or of the potential  
2229 disposition for the offense charged; or

2230 (b) consult with counsel and participate in the proceedings against the minor with a  
2231 reasonable degree of rational understanding.

2232 (55) "Parole" means a conditional release of a juvenile offender from residency in  
2233 secure care to live outside of secure care under the supervision of the Division of Juvenile  
2234 Justice Services, or another person designated by the Division of Juvenile Justice Services.

2235 (56) "Physical abuse" means abuse that results in physical injury or damage to a child.

2236 (57) (a) "Probation" means a legal status created by court order, following an  
2237 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's  
2238 home under prescribed conditions.

2239 (b) "Probation" includes intake probation or formal probation.

2240 (58) "Prosecuting attorney" means:

2241 (a) the attorney general and any assistant attorney general;

2242 (b) any district attorney or deputy district attorney;

2243 (c) any county attorney or assistant county attorney; and

2244 (d) any other attorney authorized to commence an action on behalf of the state.

2245 (59) "Protective custody" means the shelter of a child by the Division of Child and  
2246 Family Services from the time the child is removed from the home until the earlier of:

2247 (a) the day on which the shelter hearing is held under Section 80-3-301; or

2248 (b) the day on which the child is returned home.

2249 (60) "Protective supervision" means a legal status created by court order, following an  
2250 adjudication on the ground of abuse, neglect, or dependency, whereby:

2251 (a) the minor is permitted to remain in the minor's home; and

2252 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided  
2253 by an agency designated by the juvenile court.

2254 (61) (a) "Related condition" means a condition that:

2255 (i) is found to be closely related to intellectual disability;

2256 (ii) results in impairment of general intellectual functioning or adaptive behavior

2257 similar to that of an intellectually disabled individual;

- 2258 (iii) is likely to continue indefinitely; and  
2259 (iv) constitutes a substantial limitation to the individual's ability to function in society.  
2260 (b) "Related condition" does not include mental illness, psychiatric impairment, or  
2261 serious emotional or behavioral disturbance.
- 2262 (62) (a) "Residual parental rights and duties" means the rights and duties remaining  
2263 with a parent after legal custody or guardianship, or both, have been vested in another person or  
2264 agency, including:
- 2265 (i) the responsibility for support;
  - 2266 (ii) the right to consent to adoption;
  - 2267 (iii) the right to determine the child's religious affiliation; and
  - 2268 (iv) the right to reasonable parent-time unless restricted by the court.
- 2269 (b) If no guardian has been appointed, "residual parental rights and duties" includes the  
2270 right to consent to:
- 2271 (i) marriage;
  - 2272 (ii) enlistment; and
  - 2273 (iii) major medical, surgical, or psychiatric treatment.
- 2274 (63) "Runaway" means a child, other than an emancipated child, who willfully leaves  
2275 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,  
2276 without permission.
- 2277 (64) "Secure care" means placement of a minor, who is committed to the Division of  
2278 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the  
2279 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the  
2280 minor.
- 2281 (65) "Secure care facility" means a facility, established in accordance with Section  
2282 [80-5-503](#), for juvenile offenders in secure care.
- 2283 (66) "Secure detention" means temporary care of a minor who requires secure custody  
2284 in a physically restricting facility operated by, or under contract with, the Division of Juvenile  
2285 Justice Services:
- 2286 (a) before disposition of an offense that is alleged to have been committed by the  
2287 minor; or
  - 2288 (b) under Section [80-6-704](#).

- 2289 (67) "Serious youth offender" means an individual who:
- 2290 (a) is at least 14 years old, but under 25 years old;
- 2291 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
- 2292 of the juvenile court was extended over the individual's case until the individual was 25 years
- 2293 old in accordance with Section 80-6-605; and
- 2294 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for
- 2295 secure care under Sections 80-6-703 and 80-6-705.
- 2296 (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
- 2297 child.
- 2298 (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 2299 child.
- 2300 (70) "Sexual abuse" means:
- 2301 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
- 2302 adult directed towards a child;
- 2303 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
- 2304 committed by a child towards another child if:
- 2305 (i) there is an indication of force or coercion;
- 2306 (ii) the children are related, as described in Subsection (34), including siblings by
- 2307 marriage while the marriage exists or by adoption;
- 2308 (iii) there have been repeated incidents of sexual contact between the two children,
- 2309 unless the children are 14 years old or older; or
- 2310 (iv) there is a disparity in chronological age of four or more years between the two
- 2311 children;
- 2312 (c) engaging in any conduct with a child that would constitute an offense under any of
- 2313 the following, regardless of whether the individual who engages in the conduct is actually
- 2314 charged with, or convicted of, the offense:
- 2315 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
- 2316 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 2317 (ii) child bigamy, Section 76-7-101.5;
- 2318 (iii) incest, Section 76-7-102;
- 2319 (iv) lewdness, Section 76-9-702;

- 2320 (v) sexual battery, Section [76-9-702.1](#);
- 2321 (vi) lewdness involving a child, Section [76-9-702.5](#); or
- 2322 (vii) voyeurism, Section [76-9-702.7](#); or
- 2323 (d) subjecting a child to participate in or threatening to subject a child to participate in
- 2324 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
- 2325 marriage.
- 2326 (71) "Sexual exploitation" means knowingly:
- 2327 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2328 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2329 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 2330 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 2331 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 2332 material depicting a child:
- 2333 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2334 (ii) engaging in sexual or simulated sexual conduct; or
- 2335 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),
- 2336 sexual exploitation of a minor, or [Section 76-5b-201.1](#), aggravated sexual exploitation of a
- 2337 minor, regardless of whether the individual who engages in the conduct is actually charged
- 2338 with, or convicted of, the offense.
- 2339 (72) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 2340 pending a disposition or transfer to another jurisdiction.
- 2341 (73) "Shelter facility" means the same as that term is defined in Section [62A-4a-101](#).
- 2342 (74) "Single criminal episode" means the same as that term is defined in Section
- 2343 [76-1-401](#).
- 2344 (75) "Status offense" means an offense that would not be an offense but for the age of
- 2345 the offender.
- 2346 (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
- 2347 substances.
- 2348 (77) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).
- 2349 (78) "Supported" means the same as that term is defined in Section [62A-4a-101](#).
- 2350 (79) "Termination of parental rights" means the permanent elimination of all parental

2351 rights and duties, including residual parental rights and duties, by court order.

2352 (80) "Therapist" means:

2353 (a) an individual employed by a state division or agency for the purpose of conducting  
2354 psychological treatment and counseling of a minor in the division's or agency's custody; or

2355 (b) any other individual licensed or approved by the state for the purpose of conducting  
2356 psychological treatment and counseling.

2357 (81) "Threatened harm" means actions, inactions, or credible verbal threats, indicating  
2358 that the child is at an unreasonable risk of harm or neglect.

2359 (82) "Ungovernable" means a child in conflict with a parent or guardian, and the  
2360 conflict:

2361 (a) results in behavior that is beyond the control or ability of the child, or the parent or  
2362 guardian, to manage effectively;

2363 (b) poses a threat to the safety or well-being of the child, the child's family, or others;  
2364 or

2365 (c) results in the situations described in Subsections (82)(a) and (b).

2366 (83) "Unregulated custody transfer" means the placement of a child:

2367 (a) with an individual who is not the child's parent, step-parent, grandparent, adult  
2368 sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with  
2369 whom the child is familiar, or a member of the child's federally recognized tribe;

2370 (b) with the intent of severing the child's existing parent-child or guardian-child  
2371 relationship; and

2372 (c) without taking:

2373 (i) reasonable steps to ensure the safety of the child and permanency of the placement;  
2374 and

2375 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or  
2376 guardianship to the individual taking custody of the child.

2377 (84) "Unsupported" means the same as that term is defined in Section [62A-4a-101](#).

2378 (85) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

2379 (86) "Validated risk and needs assessment" means an evidence-based tool that assesses  
2380 a minor's risk of reoffending and a minor's criminogenic needs.

2381 (87) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

2382 (88) "Youth offender" means an individual who is:  
2383 (a) at least 12 years old, but under 21 years old; and  
2384 (b) committed by the juvenile court to the Division of Juvenile Justice Services for  
2385 secure care under Sections [80-6-703](#) and [80-6-705](#).

2386 Section 22. **Coordinating S.B. 167 with S.B. 123 -- Technical amendment.**

2387 If this S.B. 167 and S.B. 123, Criminal Code Recodification, both pass and become  
2388 law, it is the intent of the Legislature that the Office of Legislative Research and General  
2389 Counsel prepare the Utah Code database for publication by amending:

2390 (1) Subsection [76-5b-201.1](#)(1) to read:

2391 "(1) As used in this section:

2392 (a) "Physical abuse" or "physically abused" means the same as the term "physical  
2393 abuse" is defined in Section [80-1-102](#).

2394 (b) The terms defined in Section [76-1-101.5](#) apply to this section."; and

2395 (2) Subsection [76-5b-205](#)(3)(c) to read:

2396 "(c) This section does not apply to an actor who engages in conduct that constitutes a  
2397 violation of this section to the extent that the actor is chargeable, for the same conduct, under  
2398 Section [76-5b-201](#), sexual exploitation of a minor, or Section [76-5b-201.1](#), aggravated sexual  
2399 exploitation of a minor."