

## SB0167S02 compared with SB0167S01

~~{deleted text}~~ shows text that was in SB0167S01 but was deleted in SB0167S02.

inserted text shows text that was not in SB0167S01 but was inserted into SB0167S02.

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

Senator 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;
- ▶ ~~{imposes minimum prison sentences for the}~~ requires the Sentencing Commission to study and update sentencing and release guidelines concerning the offense of sexual exploitation of a minor ~~{under certain conditions}~~;
- ▶ adds the offense of aggravated sexual exploitation of a minor to statutes that reference sexual exploitation of a minor, including statutes related to:

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- custody and visitation for an individual other than a parent;
  - enhancements for offenses committed in concert with three or more persons or in relation to a criminal street gang;
  - unlawful distribution of a counterfeit intimate image;
  - lewdness involving a child;
  - prostitution;
  - penalties for repeat and habitual sex offenders;
  - the Sex and Kidnap Offender Registry; and
  - adoption; and
- makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a coordination clause.

### **Utah Code Sections Affected:**

#### AMENDS:

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

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

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

**63M-7-404**, as last amended by Laws of Utah 2021, Chapter 173

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

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

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

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

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

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

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

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

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

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

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

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

77-41-102, as last amended by Laws of Utah 2021, Chapter 2 and further amended by  
Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2

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

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

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

ENACTS:

76-5b-201.1, Utah Code Annotated 1953

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

76-5b-201.1, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

(e) the continuation of the relationship between the individual and the child is in the

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child's best interest;

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

(g) the parent:

(i) is absent; or

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

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

(a) currently resides; or

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

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

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

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

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

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

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

(c) the child's guardian;

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

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

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

(8) The court may order a custody evaluation to be conducted in any action brought

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under this chapter.

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

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

- (a) child abuse, as described in Section 76-5-109;
- (b) child abuse homicide, as described in Section 76-5-208;
- (c) child kidnapping, as described in Section 76-5-301.1;
- (d) human trafficking of a child, as described in Section 76-5-308.5;
- (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- (f) rape of a child, as described in Section 76-5-402.1;
- (g) object rape of a child, as described in Section 76-5-402.3;
- (h) sodomy on a child, as described in Section 76-5-403.1;
- (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;
- (j) sexual exploitation of a minor, as described in Section 76-5b-201; [or]
- (k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- ~~(l)~~ (l) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11) (a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) An individual described in Subsection (10) may only be considered for custody of a child if the following criteria are met by clear and convincing evidence:

- (i) the individual is a relative, as defined in Section 80-3-102, of the child;
- (ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- (iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to

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an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

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

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

(A) the child's age;

(B) the child's gender;

(C) the child's development;

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

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

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the individual can provide evidence of the following:

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

(B) that an emotional bond exists with the child; and

(C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the child are met;

(vii) (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the individual with the disqualifying offense and the child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

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(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

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

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

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

For purposes of this part:

(1) "Applicant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) electronic communication harassment, as described in Section 76-9-201;

(f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and ~~[Section 76-5b-201]~~ Sections 76-5b-201 and 76-5b-201.1;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;

(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507; or

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508.

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

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

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



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(1) As used in this section:

(a) (i) "Applicant" means:

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

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

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

(D) a department contractor;

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

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

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

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

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

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

(e) "Personal identifying information" means:

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

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

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

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

(i) personal identifying information;

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

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

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

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

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

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

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

(3) The office:

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

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

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

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

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

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

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

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

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

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

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

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

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

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

(h) as necessary to comply with the federal requirement to check a state's child abuse

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and neglect registry regarding any individual working in a congregate care program, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

(iii) prostitution;

(iv) an offense included in:

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

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

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

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

(v) aggravated arson, as described in Section 76-6-103;

(vi) aggravated burglary, as described in Section 76-6-203;

(vii) aggravated robbery, as described in Section 76-6-302;

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

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

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

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Subsection (6).

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

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

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

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

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

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

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

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

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

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

(A) under 28 years old; or

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

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

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

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

(i) the date of the offense or incident;

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

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

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical, mental, or financial harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;

(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and

(ix) any other pertinent information presented to or publicly available to the committee members.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.

(d) At the conclusion of the comprehensive review described in Subsection (6)(a), the office may not deny an application to an applicant solely because the applicant was convicted of an offense that occurred 10 or more years before the day on which the applicant submitted the information required under Subsection (2)(a) if:

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(i) the applicant has not committed another misdemeanor or felony offense after the day on which the conviction occurred; and

(ii) the applicant has never been convicted of an offense described in Subsection (14)(c).

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).

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

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

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

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

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

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

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

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

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

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

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

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

(iii) (A) the individual has submitted the background check information described in



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Subsection (2) to the office;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the individual:

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

(ii) is directly supervised by an individual who:

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

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

(d) the individual is the parent or guardian of the child, or the guardian of the

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vulnerable adult;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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- (A) child abuse, as described in Section 76-5-109;
  - (B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;
  - (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
  - (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
  - (E) aggravated murder, as described in Section 76-5-202;
  - (F) murder, as described in Section 76-5-203;
  - (G) manslaughter, as described in Section 76-5-205;
  - (H) child abuse homicide, as described in Section 76-5-208;
  - (I) homicide by assault, as described in Section 76-5-209;
  - (J) kidnapping, as described in Section 76-5-301;
  - (K) child kidnapping, as described in Section 76-5-301.1;
  - (L) aggravated kidnapping, as described in Section 76-5-302;
  - (M) human trafficking of a child, as described in Section 76-5-308.5;
  - (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
  - (O) sexual exploitation of a minor, as described in Section 76-5b-201;
  - (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
  - ~~(P)~~ (Q) aggravated arson, as described in Section 76-6-103;
  - ~~(Q)~~ (R) aggravated burglary, as described in Section 76-6-203;
  - ~~(R)~~ (S) aggravated robbery, as described in Section 76-6-302; or
  - ~~(S)~~ (T) domestic violence, as described in Section 77-36-1; or
  - (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).
- (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:
- (i) aggravated assault, as described in Section 76-5-103;
  - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
  - (iii) mayhem, as described in Section 76-5-105;

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(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;  
(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

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

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

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

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

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

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in criminal sentencing;

(iv) better define responsibility in criminal sentencing; and

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

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

(i) increase equity in criminal supervision lengths;

(ii) respond to public comment;

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

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

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

(vi) enhance the discretion of the sentencing judges while preserving the role of the

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Board of Pardons and Parole;

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

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

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

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

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

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

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

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

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

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

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

(i) who have violated one or more conditions of probation; and

(ii) whose probation has been revoked by the court.

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

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

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

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

(6) The commission shall establish graduated and evidence-based processes to facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, in order to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:

- (a) responses to be used when an individual violates a condition of probation or parole;
- (b) responses to recognize positive behavior and progress related to an individual's case

action plan;

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

- (d) a range of sanctions that may not exceed a period of incarceration of more than:
  - (i) three consecutive days; and
  - (ii) a total of five days in a period of 30 days.

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

- (a) compliance with the terms of probation or parole; and
- (b) positive conduct that exceeds those terms.

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

- (i) nonjudicially adjusted;
- (ii) placed on diversion;
- (iii) placed on probation;
- (iv) placed on community supervision;

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- (v) placed in an out-of-home placement; or
- (vi) placed in a secure care facility.
- (b) In establishing guidelines under this Subsection (8), the commission shall consider:
  - (i) the seriousness of the negative and positive behavior;
  - (ii) the juvenile's conduct post-adjudication; and
  - (iii) the delinquency history of the juvenile.
- (c) The guidelines shall include:
  - (i) responses that are swift and certain;
  - (ii) a continuum of community-based options for juveniles living at home;
  - (iii) responses that target the individual's criminogenic risk and needs; and
  - (iv) incentives for compliance, including earned discharge credits.
- (9) The commission shall establish supervision length guidelines in accordance with

this section before October 1, 2018.

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

Section ~~{4}~~5. Section **63M-7-502** is amended to read:

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

As used in this part:

- (1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section 76-2-202.
- (2) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.
- (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (4) "Claimant" means any of the following claiming reparations under this part:
  - (a) a victim;
  - (b) a dependent of a deceased victim; or
  - (c) an individual or representative who files a reparations claim on behalf of a victim.
- (5) "Child" means an unemancipated individual who is under 18 years old.



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

- (a) the offender;
- (b) the insurance of the offender or the victim;
- (c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;
- (d) social security, Medicare, and Medicaid;
- (e) state-required temporary nonoccupational income replacement insurance or disability income insurance;
- (f) workers' compensation;
- (g) wage continuation programs of any employer;
- (h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;
- (i) a contract providing prepaid hospital and other health care services or benefits for disability; or
- (j) veteran's benefits, including veteran's hospitalization benefits.

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

- (i) is or would be subject to prosecution in this state under Section 76-1-201;
- (ii) occurs or is attempted;
- (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- (iv) is punishable by fine, imprisonment, or death if the individual engaging in the conduct possessed the capacity to commit the conduct; and
- (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"

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does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

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

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

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

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

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

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

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

(a) convicted of a crime;

(b) found delinquent; or

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

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

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

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

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

(15) "Fraudulent claim" means a filed reparations based on material misrepresentation

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of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) "Reparations claim" means a claimant's request or application made to the office

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for a reparations award.

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

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

(30) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.

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

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

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

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

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

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

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

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

(i) criminally injurious conduct; or

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

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

(c) "Victim" includes a resident of this state who is injured or killed by an act of

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terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States.

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

Section ~~5~~6. Section **76-1-302** is amended to read:

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

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

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

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

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

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

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

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

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

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

(4) A prosecution is commenced upon:

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

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- (b) the filing of a complaint or information; or
- (c) the issuance of a citation.

Section ~~67~~7. Section **76-3-203.1** is amended to read:

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

- (1) As used in this section:
  - (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.
  - (b) "In concert with three or more persons" means:
    - (i) the defendant was aided or encouraged by at least three other persons in committing the offense and was aware of this aid or encouragement; and
    - (ii) each of the other persons:
      - (A) was physically present; and
      - (B) participated as a party to any offense listed in Subsection (4), (5), or (6).
  - (c) "In concert with three or more persons" means, regarding intent:
    - (i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and
    - (ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.
- (2) A person who commits any offense in accordance with this section is subject to an enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a reasonable doubt that the person acted:
  - (a) in concert with three or more persons;
  - (b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or
  - (c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.
- (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.
  - (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:
    - (i) for a class B misdemeanor, as a class A misdemeanor; and

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- (ii) for a class A misdemeanor, as a third degree felony.
- (b) The following offenses are subject to Subsection (4)(a):
  - (i) criminal mischief as defined in Section 76-6-106; and
  - (ii) graffiti as defined in Section 76-6-107.
- (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:
  - (i) for a class B misdemeanor, as a class A misdemeanor;
  - (ii) for a class A misdemeanor, as a third degree felony; and
  - (iii) for a third degree felony, as a second degree felony.
- (b) The following offenses are subject to Subsection (5)(a):
  - (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);
  - (ii) any offense of obstructing government operations under [~~Title 76,~~] Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;
    - (iii) tampering with a witness or other violation of Section 76-8-508;
    - (iv) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;
    - (v) extortion or bribery to dismiss a criminal proceeding as defined in Section 76-8-509;
    - (vi) any weapons offense under [~~Title 76,~~] Chapter 10, Part 5, Weapons; and
    - (vii) any violation of [~~Title 76,~~] Chapter 10, Part 16, Pattern of Unlawful Activity Act.
  - (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:
    - (i) for a class B misdemeanor, as a class A misdemeanor;
    - (ii) for a class A misdemeanor, as a third degree felony;
    - (iii) for a third degree felony, as a second degree felony; and
    - (iv) for a second degree felony, as a first degree felony.
  - (b) The following offenses are subject to Subsection (6)(a):
    - (i) assault and related offenses under [~~Title 76,~~] Chapter 5, Part 1, Assault and Related Offenses;
    - (ii) any criminal homicide offense under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
    - (iii) kidnapping and related offenses under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping,

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Trafficking, and Smuggling;

- (iv) any felony sexual offense under [~~Title 76;~~] Chapter 5, Part 4, Sexual Offenses;
- (v) sexual exploitation of a minor as defined in Section 76-5b-201;
- (vi) aggravated sexual exploitation of a minor as defined in Section 76-5b-201.1;
- ~~(vi)~~ (vii) robbery and aggravated robbery under [~~Title 76;~~] Chapter 6, Part 3,

Robbery; and

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

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

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

Section ~~{7}~~8. Section **76-3-203.5** is amended to read:

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

(1) As used in this section:

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

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

(c) "Violent felony" means:

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

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

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

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

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



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- (E) aggravated assault by prisoner, Section 76-5-103.5;
- (F) mayhem, Section 76-5-105;
- (G) stalking, Subsection 76-5-106.5(2) or (3);
- (H) threat of terrorism, Section 76-5-107.3;
- (I) child abuse, Subsection 76-5-109(2)(a) or (b);
- (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- (K) abuse or neglect of a child with a disability, Section 76-5-110;
- (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- (N) criminal homicide offenses under [~~Title 76;~~] Chapter 5, Part 2, Criminal Homicide;
- (O) kidnapping, child kidnapping, and aggravated kidnapping under [~~Title 76;~~] Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (P) rape, Section 76-5-402;
- (Q) rape of a child, Section 76-5-402.1;
- (R) object rape, Section 76-5-402.2;
- (S) object rape of a child, Section 76-5-402.3;
- (T) forcible sodomy, Section 76-5-403;
- (U) sodomy on a child, Section 76-5-403.1;
- (V) forcible sexual abuse, Section 76-5-404;
- (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- (X) aggravated sexual assault, Section 76-5-405;
- (Y) sexual exploitation of a minor, Section 76-5b-201;
- (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- ~~(Z)~~ (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- ~~(AA)~~ (BB) aggravated burglary and burglary of a dwelling under [~~Title 76;~~] Chapter 6, Part 2, Burglary and Criminal Trespass;
- ~~(BB)~~ (CC) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- ~~(CC)~~ (DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- ~~(DD)~~ (EE) tampering with a witness under Subsection 76-8-508(1);
- ~~(EE)~~ (FF) retaliation against a witness, victim, or informant under Section

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76-8-508.3;

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

~~[(GG)]~~ (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);

~~[(HH)]~~ (II) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

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

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

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

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

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

~~[(NN)]~~ (OO) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

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

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

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

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

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

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

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and

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date of conviction or commitment of any case relied upon by the prosecution.

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

- (A) the defendant is the person who was convicted or committed;
- (B) the defendant was represented by counsel or had waived counsel; or
- (C) the defendant's plea was understandingly or voluntarily entered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a grievous sexual offense;

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

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

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

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

Section ~~78~~9. Section **76-3-407** is amended to read:

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

(1) As used in this section:

(a) "Prior sexual offense" means:

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

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

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

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

~~[(iv)] (v)~~ a felony attempt to commit an offense described in Subsections (1)(a)(i) through ~~[(iii)] (iv)~~; or

~~[(v)] (vi)~~ an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through

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~~(iv)~~ (v).

(b) "Sexual offense" means:

(i) an offense that is a felony of the second or third degree, or an attempted offense, which attempt is a felony of the second or third degree, described in ~~[Title 76,]~~ Chapter 5, Part 4, Sexual Offenses;

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

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

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

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

~~(v)~~ (vi) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through ~~(iv)~~ (v).

(2) Notwithstanding any other provision of law, the maximum penalty for a sexual offense is increased by five years for each conviction of the defendant for a prior sexual offense that arose from a separate criminal episode, if the trier of fact finds that:

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

(b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a) before the defendant was convicted of the sexual offense for which the defendant is being sentenced.

(3) The increased maximum term described in Subsection (2) shall be in addition to, and consecutive to, any other prison term served by the defendant.

Section ~~9~~10. Section **76-5b-201** is amended to read:

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

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

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

~~(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or]~~

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

~~(b) if the person is a minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (1)(a):]~~

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~~[(2)(a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a second degree felony.]~~

~~[(b) A violation of Subsection (1) for knowingly producing child pornography is a first degree felony if the person produces original child pornography depicting a first degree felony that involves:]~~

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

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

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

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

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

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

(1) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child pornography.

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

(3) It is a separate offense under this section:

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

(b) for each time the same minor is depicted in different child pornography.

(4) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(b) For a charge of violating this section [~~for knowingly possessing or intentionally viewing child pornography~~], it is an affirmative defense that:

(i) the defendant:

(A) did not solicit the child pornography from the minor depicted in the child pornography;

(B) is not more than two years older than the minor depicted in the child pornography; and

(C) upon request of a law enforcement agent or the minor depicted in the child pornography, removes from an electronic device or destroys the child pornography and all copies of the child pornography in the defendant's possession; and

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(ii) the child pornography does not depict an offense under [~~Title 76,~~] Chapter 5, Part 4, Sexual Offenses.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

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

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

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

Section ~~{10}~~11. Section **76-5b-201.1** is enacted to read:

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

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

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

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

(b) knowingly produces child pornography; **or**

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

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~~minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section 76-5b-201;~~

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

~~(i) prepubescent; or~~

~~(ii) under 14 years old; or~~

~~(e) having been previously convicted of a grievous sexual offense, commits a violation of Section 76-5b-201, sexual exploitation of a minor.~~

~~(3) (a) A}.~~

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

(b) ~~{When sentencing}~~ If an actor ~~{for}~~ is under 18 years old at the time of the offense, a violation of Subsection (2) ~~{(b), the sentencing court shall impose}~~ is a ~~{sentence of imprisonment of at least five years and which may be for life if the child pornography produced by the actor in violation of Subsection (2)(b):~~

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

~~(ii) depicts:~~

~~(A) a first degree felony that involves the minor being physically abused; or~~

~~(B) the actor or another individual engaging in conduct with the minor that is a violation of Section 76-5-404.1, sexual abuse of a child.~~

~~(c) Notwithstanding Subsection (3)(b), when sentencing an actor for a violation of Subsection (2)(b), the sentencing court shall impose a sentence of imprisonment of at least 15 years and which may be for life if the child pornography produced by the actor in violation of Subsection (2)(b):~~

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

~~(ii) depicts the actor or another individual engaging in conduct with the minor that is a violation of Section 76-5-404.1, aggravated sexual abuse of a child.~~

~~(d) Notwithstanding Subsections (3)(b) and (c), when sentencing an actor for a violation of Subsection (2)(b), the sentencing court shall impose a sentence of imprisonment of at least 25 years and which may be for life if the child pornography produced by the actor in violation of Subsection (2)(b):~~

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

~~(ii) depicts a first degree felony that involves the actor or another individual engaging~~



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~~in conduct with the minor that is a violation of:~~

~~— (A) Section 76-5-402.1, rape of a child;~~

~~— (B) Section 76-5-402.3, object rape of a child; or~~

~~— (C) Section 76-5-403.1, sodomy on a child;~~

~~— (c) When sentencing an actor for a violation of Subsection (2)(c) or (c), the sentencing court shall impose a sentence of imprisonment of at least three years and which may be for life;} second degree felony.~~

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

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

(b) for each time the same minor is depicted in different child pornography.

(5) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(b) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

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

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

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

Section ~~44~~12. Section **76-5b-205** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

(4) This section does not apply to:

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

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply to a hosting company, as defined in Section

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76-10-1230, if:

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

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

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

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

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

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

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

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

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

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

Section ~~{12}~~13. Section **76-9-702.5** is amended to read:

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

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

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

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

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

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

(A) in a public place; or

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

(iii) masturbates; or

(iv) performs any other act of lewdness; or

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

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

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

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

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

Section ~~13~~14. Section **76-10-1302** is amended to read:

### **76-10-1302. Prostitution.**

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

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

(b) takes steps in arranging a meeting through any form of advertising, agreeing to

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meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee or the functional equivalent of a fee; or

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

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

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

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

- (a) assault, Section 76-5-102;
- (b) aggravated assault, Section 76-5-103;
- (c) mayhem, Section 76-5-105;
- (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
- (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (f) rape, Section 76-5-402;
- (g) rape of a child, Section 76-5-402.1;
- (h) object rape, Section 76-5-402.2;
- (i) object rape of a child, Section 76-5-402.3;
- (j) forcible sodomy, Section 76-5-403;
- (k) sodomy on a child, Section 76-5-403.1;
- (l) forcible sexual abuse, Section 76-5-404;

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

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

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

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

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

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

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

~~(s)~~ (t) theft by extortion under Subsection 76-6-406(2)(a) or (b).

Section ~~(14)~~ 15. Section **76-10-1602** is amended to read:

### **76-10-1602. Definitions.**

As used in this part:

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

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

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

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

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or a felony:

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

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

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

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

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

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

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a threat of terrorism, Section 76-5-107.3;

(l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) human trafficking, human trafficking of a child, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-308.5, 76-5-309, and 76-5-310;

(o) sexual exploitation of a minor or aggravated sexual exploitation of a minor, [Section] Sections 76-5b-201 and 76-5b-201.1;

(p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;



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- (q) causing a catastrophe, Section 76-6-105;
- (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- (s) burglary of a vehicle, Section 76-6-204;
- (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- (v) theft, Section 76-6-404;
- (w) theft by deception, Section 76-6-405;
- (x) theft by extortion, Section 76-6-406;
- (y) receiving stolen property, Section 76-6-408;
- (z) theft of services, Section 76-6-409;
- (aa) forgery, Section 76-6-501;
- (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- (cc) deceptive business practices, Section 76-6-507;
- (dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (ee) bribery of a labor official, Section 76-6-509;
- (ff) defrauding creditors, Section 76-6-511;
- (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- (ii) bribery or threat to influence contest, Section 76-6-514;
- (jj) making a false credit report, Section 76-6-517;
- (kk) criminal simulation, Section 76-6-518;
- (ll) criminal usury, Section 76-6-520;
- (mm) fraudulent insurance act, Section 76-6-521;
- (nn) retail theft, Section 76-6-602;
- (oo) computer crimes, Section 76-6-703;
- (pp) identity fraud, Section 76-6-1102;
- (qq) mortgage fraud, Section 76-6-1203;
- (rr) sale of a child, Section 76-7-203;
- (ss) bribery to influence official or political actions, Section 76-8-103;

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- (tt) threats to influence official or political action, Section 76-8-104;
- (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- (vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- (xx) obstruction of justice, Section 76-8-306;
- (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (zz) false or inconsistent material statements, Section 76-8-502;
- (aaa) false or inconsistent statements, Section 76-8-503;
- (bbb) written false statements, Section 76-8-504;
- (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (fff) tampering with evidence, Section 76-8-510.5;
- (ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act;
- (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (iii) unemployment insurance fraud, Section 76-8-1301;
- (jjj) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
- (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section

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76-10-1002;

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

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

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

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

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

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

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

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

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

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

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

(bbbb) distribution of pornographic films, Section 76-10-1222;

(cccc) indecent public displays, Section 76-10-1228;

(dddd) prostitution, Section 76-10-1302;

(eeee) aiding prostitution, Section 76-10-1304;

(ffff) exploiting prostitution, Section 76-10-1305;

(gggg) aggravated exploitation of prostitution, Section 76-10-1306;

(hhhh) communications fraud, Section 76-10-1801;

(iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and  
Currency Transaction Reporting Act;

(jjjj) vehicle compartment for contraband, Section 76-10-2801;

(kkkk) any act prohibited by the criminal provisions of the laws governing taxation in  
this state; and

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

Section ~~15~~16. Section **77-22-2.5** is amended to read:

**77-22-2.5. Court orders for criminal investigations for records concerning an**

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### electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

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

(ii) "Electronic communication" does not include:

(A) a wire or oral communication;

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

(C) a communication from a tracking device; or

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

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

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

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

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

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

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

(i) sexual exploitation of a minor or attempted sexual exploitation of a minor in violation of Section 76-5b-201;

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

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

~~(iii)~~ (iv) dealing in or attempting to deal in material harmful to a minor in violation of

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Section 76-10-1206;

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

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

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

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

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

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

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

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

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

(iii) records of session times and durations;

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

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

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

## **SB0167S02 compared with SB0167S01**

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

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

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

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

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

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

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

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

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

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

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

Section ~~16~~17. Section **77-36-1** is amended to read:

### **77-36-1. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

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

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

(f) electronic communication harassment, as described in Section 76-9-201;

(g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(h) mayhem, as described in Section 76-5-105;

(i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and ~~[Section 76-5b-201, Sexual exploitation of a minor --- Offenses;]~~ sexual exploitation of a minor and aggravated sexual exploitation of a minor, as described in Sections 76-5b-201 and 76-5b-201.1;

(j) stalking, as described in Section 76-5-106.5;

(k) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;

(l) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(m) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,

## **SB0167S02 compared with SB0167S01**

Part 3, Robbery;

(n) possession of a deadly weapon with criminal intent, as described in Section 76-10-507;

(o) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;

(p) disorderly conduct, as defined in Section 76-9-102, if a conviction or adjudication of disorderly conduct is the result of a plea agreement in which the perpetrator was originally charged with a domestic violence offense otherwise described in this Subsection (4), except that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

(q) child abuse, as described in Section 76-5-109.1;

(r) threatening use of a dangerous weapon, as described in Section 76-10-506;

(s) threatening violence, as described in Section 76-5-107;

(t) tampering with a witness, as described in Section 76-8-508;

(u) retaliation against a witness or victim, as described in Section 76-8-508.3;

(v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;

(w) sexual battery, as described in Section 76-9-702.1;

(x) voyeurism, as described in Section 76-9-702.7;

(y) damage to or interruption of a communication device, as described in Section 76-6-108; or

(z) an offense described in Subsection 78B-7-806(1).

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

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

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

(8) "Married and living together" means a couple whose marriage was solemnized



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under Section 30-1-4 or 30-1-6 and who are living in the same residence.

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

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

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

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

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

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

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

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

Section ~~{17}~~18. Section **77-41-102** is amended to read:

### **77-41-102. Definitions.**

As used in this chapter:

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

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

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

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

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

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

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the

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United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

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

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

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

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

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

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

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

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

(iv) Section 76-5-308, human trafficking for labor and human smuggling;

(v) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years old;

(vi) Section 76-5-308.5, human trafficking of a child for labor;

(vii) Section 76-5-310, aggravated human trafficking and aggravated human smuggling, on or after May 10, 2011;

(viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

(ix) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iii);

(b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a); and

(ii) who is:

(A) a Utah resident; or

(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this

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state;

(c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of original conviction;

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

(C) who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, who is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

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

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

(ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction; or

(B) as a result of the conviction, who is required to register in the individual's state of residence;

(e) who is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

(f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (9)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense and:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday; or

(B) if the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605, the individual remains in the division's custody until 30 days before the individual's 25th birthday.

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

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

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

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

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

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

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

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

(17) "Sex offender" means any individual:

(a) convicted in this state of:

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

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

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

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

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

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

(vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);

(viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection 76-5-401.1(3);

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

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

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

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- (xii) Section 76-5-402.2, object rape;
- (xiii) Section 76-5-402.3, object rape of a child;
- (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- (xv) Section 76-5-403.1, sodomy on a child;
- (xvi) Section 76-5-404, forcible sexual abuse;
- (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- (xviii) Section 76-5-405, aggravated sexual assault;
- (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;
- (xx) Section 76-5b-201, sexual exploitation of a minor;
- (xxi) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- ~~[(xxi)] (xxii)~~ Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- ~~[(xxii)] (xxiii)~~ Section 76-7-102, incest;
- ~~[(xxiii)] (xxiv)~~ Section 76-9-702, lewdness, if the individual has been convicted of the offense four or more times;
- ~~[(xxiv)] (xxv)~~ Section 76-9-702.1, sexual battery, if the individual has been convicted of the offense four or more times;
- ~~[(xxv)] (xxvi)~~ any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
- ~~[(xxvi)] (xxvii)~~ Section 76-9-702.5, lewdness involving a child;
- ~~[(xxvii)] (xxviii)~~ a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- ~~[(xxviii)] (xxix)~~ Section 76-10-1306, aggravated exploitation of prostitution; or
- ~~[(xxix)] (xxx)~~ attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (17)(a);
- (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a); and
- (ii) who is:
  - (A) a Utah resident; or

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(B) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

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

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

(C) who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) who, in any 12-month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

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

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

(ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent offense in any jurisdiction; or

(B) who is, as a result of the conviction, required to register in the individual's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection (17)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense and:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday; or

(B) if the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605, the individual remains in the division's custody until 30 days before the individual's 25th birthday.

(18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in

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any jurisdiction.

Section ~~{18}~~19. Section 77-41-106 is amended to read:

### **77-41-106. Registerable offenses.**

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

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

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

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

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

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

(g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

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

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

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

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

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

(7) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

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

(10) Section 76-5-404.1, sexual abuse of a child;

(11) Section 76-5b-201, sexual exploitation of a minor;

(12) Section 76-5b-201.1, aggravated sexual exploitation of a minor;

~~{12}~~ (13) Subsection 76-5b-204(4), aggravated sexual extortion; or

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~~[(13)]~~ (14) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

Section ~~{19}~~20. Section 78B-6-117 is amended to read:

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

(1) A minor child may be adopted by an adult individual, in accordance with this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsections (3) and (4), a single adult.

(3) A child may not be adopted by an individual who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state unless the individual is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

(4) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a married couple, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

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

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

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

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

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

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

(B) became aware of the individual with whom the child is placed through a source



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other than the division or the child-placing agency that assists with the adoption of the child; or

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

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

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

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

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

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

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

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

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

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

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

(j) sexual exploitation of a minor, as described in Section 76-5b-201; ~~or~~

(k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or

~~(l)~~ (l) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

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

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

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

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

(iii) the individual can provide evidence of successful treatment or rehabilitation

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directly related to the disqualifying offense;

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

- (A) the child's age;
- (B) the child's gender;
- (C) the child's development;
- (D) the nature and seriousness of the disqualifying offense;
- (E) the preferences of a child 12 years old or older;
- (F) any available assessments, including custody evaluations, home studies,

pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

- (G) any other relevant information;

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

- (A) the relationship with the child is of long duration;
- (B) that an emotional bond exists with the child; and
- (C) that adoption by the individual who has committed the disqualifying offense

ensures the best interests of the child are met; and

(vi) the adoption is by:

- (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102

and there is not another relative without a disqualifying offense filing an adoption petition.

(c) The individual with the disqualifying offense bears the burden of proof regarding why adoption with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

(ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:

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- (A) an impartial custody evaluation shall be completed; and
- (B) a guardian ad litem shall be assigned.

(7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Section ~~20~~21. Section **80-1-102** is amended to read:

### **80-1-102. Juvenile code definitions.**

As used in this title:

(1) (a) "Abuse" means:

- (i) (A) nonaccidental harm of a child;
- (B) threatened harm of a child;
- (C) sexual exploitation;
- (D) sexual abuse; or
- (E) human trafficking of a child in violation of Section 76-5-308.5; or

(ii) that a child's natural parent:

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

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

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

(b) "Abuse" does not include:

- (i) reasonable discipline or management of a child, including withholding privileges;
- (ii) conduct described in Section 76-2-401; or
- (iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

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

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

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

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

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facts alleged in the petition have been proved.

(b) "Adjudication" does not mean a finding of not competent to proceed in accordance with Section 80-6-402.

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

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

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

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

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

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

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 62A-4a-205.

(9) "Child placement agency" means:

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

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

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

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

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

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

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

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

(14) "Correctional facility" means:

(a) a county jail; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(26) "Evidence-based" means a program or practice that has had multiple randomized

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control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

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

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

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

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

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

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

(a) marriage;

(b) enlistment in the armed forces;

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

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

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

(32) "Harm" means:

(a) physical or developmental injury or damage;

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

(c) sexual abuse; or

(d) sexual exploitation.

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

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

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

## **SB0167S02 compared with SB0167S01**

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

(b) "Incest" includes:

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

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

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

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

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

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

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

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

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

(i) monitored by a juvenile probation officer; and

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

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

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

(42) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(43) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(44) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile Justice Services, that is responsible for minors taken into temporary custody under Section

## **SB0167S02 compared with SB0167S01**

80-6-201.

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

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

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

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

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

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

(46) "Mental illness" means:

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

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

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

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

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

(a) a child; or

(b) an individual:

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

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

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

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

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

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



## SB0167S02 compared with SB0167S01

76-5-416.

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

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

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

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

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

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

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

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

(vi) educational neglect.

(b) "Neglect" does not include:

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

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

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

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

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

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

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

## **SB0167S02 compared with SB0167S01**

(F) engaging in a similar independent activity.

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

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

(a) the assigned juvenile probation officer; and

(b) (i) the minor; or

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

(54) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

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

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

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

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

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

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

(58) "Prosecuting attorney" means:

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

(b) any district attorney or deputy district attorney;

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

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

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

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

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

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

- (a) the minor is permitted to remain in the minor's home; and
- (b) supervision and assistance to correct the abuse, neglect, or dependency is provided

by an agency designated by the juvenile court.

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

- (i) is found to be closely related to intellectual disability;
- (ii) results in impairment of general intellectual functioning or adaptive behavior

similar to that of an intellectually disabled individual;

- (iii) is likely to continue indefinitely; and
- (iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

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

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

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

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

(63) "Runaway" means a child, other than an emancipated child, who willfully leaves the home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.

(64) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the

## **SB0167S02 compared with SB0167S01**

minor.

(65) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

(66) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice Services:

(a) before disposition of an offense that is alleged to have been committed by the minor; or

(b) under Section 80-6-704.

(67) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

(b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and

(c) is committed by the juvenile court to the Division of Juvenile Justice Services for secure care under Sections 80-6-703 and 80-6-705.

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

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

(70) "Sexual abuse" means:

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

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

(i) there is an indication of force or coercion;

(ii) the children are related, as described in Subsection (34), including siblings by marriage while the marriage exists or by adoption;

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or

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

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children;

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

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

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7; or

(d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(71) "Sexual exploitation" means knowingly:

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

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

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

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

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

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

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

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

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

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(74) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(75) "Status offense" means an offense that would not be an offense but for the age of the offender.

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

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

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

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

(80) "Therapist" means:

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

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

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

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

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

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

or

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

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

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

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

(c) without taking:

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

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

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

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

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

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

(88) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice Services for secure care under Sections 80-6-703 and 80-6-705.

Section ~~21~~22. **Coordinating S.B. 167 with S.B. 123 -- Technical amendment.**

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

(1) Subsection 76-5b-201.1(1) to read:

"(1) As used in this section:

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

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

(2) Subsection 76-5b-205(3)(c) to read:

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