

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

**SEXUAL ABUSE MATERIAL AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Chris H. Wilson**

House Sponsor: Paul A. Cutler

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**LONG TITLE**

**General Description:**

This bill addresses the reproduction and possession of sexual abuse material.

**Highlighted Provisions:**

This bill:

- ▶ changes the term "child pornography" to "child sexual abuse material" in the Utah Code;
- ▶ changes the term "vulnerable adult pornography" to "vulnerable adult sexual abuse material" in the Utah Code;
- ▶ prohibits the reproduction of child sexual abuse material evidence;
- ▶ allows a defendant's attorney or a defendant's expert to inspect child sexual abuse material evidence at a government facility before trial;
- ▶ allows a victim, the victim's attorney, or the victim's expert to inspect child sexual abuse material evidence at a government facility before trial upon a showing of good cause; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **9-7-215**, as last amended by Laws of Utah 2017, Chapter 208

30 **24-1-102**, as last amended by Laws of Utah 2022, Chapter 179

31 **62A-1-122**, as last amended by Laws of Utah 2021, Chapter 344

32 **63G-2-103**, as last amended by Laws of Utah 2021, Chapters 211, 283

33 **67-5-21**, as enacted by Laws of Utah 2006, Chapter 350

34 **76-5b-103**, as last amended by Laws of Utah 2022, Chapter 181

35 **76-5b-201**, as last amended by Laws of Utah 2022, Chapters 181, 185

36 **76-5b-201.1**, as enacted by Laws of Utah 2022, Chapter 185 and last amended by

37 Coordination Clause, Laws of Utah 2022, Chapter 185

38 **76-5b-202**, as last amended by Laws of Utah 2022, Chapter 181

39 **76-10-1204.5**, as enacted by Laws of Utah 2016, Chapter 313

40 ENACTS:

41 **77-4-201**, Utah Code Annotated 1953

42 RENUMBERS AND AMENDS:

43 **77-4-101**, (Renumbered from 77-4-1, as enacted by Laws of Utah 1980, Chapter 15)



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

46 Section 1. Section **9-7-215** is amended to read:

47 **9-7-215. Internet and online access policy required.**

48 (1) As used in this section:

49 (a) [~~Child pornography~~ is as] "Child sexual abuse material" means the same as that  
50 term is defined in Section **76-5b-103**.

51 (b) "Harmful to minors" [~~is as~~] means the same as that term is defined in Section  
52 **76-10-1201**.

53 (c) "Obscene" [~~is as~~] means the same as that term is defined in 20 U.S.C. Sec. 9101.

54 (d) "Technology protection measure" means a technology that blocks or filters Internet  
55 access to visual depictions.

56 (2) State funds may not be provided to any public library that provides public access to

57 the Internet unless the library:

58 (a) (i) has in place a policy of Internet safety for minors, including the operation of a  
59 technology protection measure:

60 (A) with respect to any computer or other device while connected to the Internet  
61 through a network provided by the library, including a wireless network; and

62 (B) that protects against access to visual depictions that are:

63 (I) child [~~pornography~~] sexual abuse material;

64 (II) harmful to minors; or

65 (III) obscene; and

66 (ii) is enforcing the operation of the technology protection measure described in  
67 Subsection (2)(a)(i) during any use by a minor of a computer or other device that is connected  
68 to the Internet through a network provided by the library, including a wireless network; and

69 (b) (i) has in place a policy of Internet safety, including the operation of a technology  
70 protection measure:

71 (A) with respect to any computer or other device while connected to the Internet  
72 through a network provided by the library, including a wireless network; and

73 (B) that protects against access to visual depictions that are:

74 (I) child [~~pornography~~] sexual abuse material; or

75 (II) obscene; and

76 (ii) is enforcing the operation of the technology protection measure described in  
77 Subsection (2)(b)(i) during any use of a computer or other device that is connected to the  
78 Internet through a network provided by the library, including a wireless network.

79 (3) This section does not prohibit a public library from limiting Internet access or  
80 otherwise protecting against materials other than the materials specified in this section.

81 (4) An administrator, supervisor, or other representative of a public library may disable  
82 a technology protection measure described in Subsection (2):

83 (a) at the request of a library patron who is not a minor; and

84 (b) to enable access for research or other lawful purposes.

85 Section 2. Section **24-1-102** is amended to read:

86 **24-1-102. Definitions.**

87 As used in this title:

88 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section  
89 24-4-116.

90 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not  
91 guilty.

92 (b) "Acquitted" does not include:

93 (i) a verdict of guilty on a lesser or reduced charge;

94 (ii) a plea of guilty to a lesser or reduced charge; or

95 (iii) dismissal of a charge as a result of a negotiated plea agreement.

96 (3) (a) "Agency" means an agency of this state or a political subdivision of this state.

97 (b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

98 (4) "Claimant" means:

99 (a) an owner of property as defined in this section;

100 (b) an interest holder as defined in this section; or

101 (c) an individual or entity who asserts a claim to any property seized for forfeiture  
102 under this title.

103 (5) "Commission" means the State Commission on Criminal and Juvenile Justice  
104 created in Section 63M-7-201.

105 (6) "Complaint" means a civil or criminal complaint seeking the forfeiture of any real  
106 or personal property under this title.

107 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other  
108 high-speed data processing device that performs logical, arithmetic, and storage functions.

109 (b) "Computer" includes any device that is used for the storage of digital or electronic  
110 files, flash memory, software, or other electronic information.

111 (c) "Computer" does not mean a computer server of an Internet or electronic service  
112 provider, or the service provider's employee, if used to comply with the requirements under 18  
113 U.S.C. Sec. 2258A.

114 (8) "Constructive seizure" means a seizure of property where the property is left in the  
115 control of the owner and an agency posts the property with a notice of intent to seek forfeiture.

116 (9) (a) "Contraband" means any property, item, or substance that is unlawful to  
117 produce or to possess under state or federal law.

118 (b) "Contraband" includes:

119 (i) a controlled substance that is possessed, transferred, distributed, or offered for  
120 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

121 (ii) a computer that:

122 (A) contains or houses child [~~pornography~~] sexual abuse material, or is used to create,  
123 download, transfer, upload to a storage account, or store any electronic or digital files  
124 containing child [~~pornography~~] sexual abuse material; or

125 (B) contains the personal identifying information of another individual, as defined in  
126 Subsection 76-6-1102(1), whether that individual is alive or deceased, and the personal  
127 identifying information has been used to create false or fraudulent identification documents or  
128 financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

129 (10) "Forfeit" means to divest a claimant of an ownership interest in property seized  
130 under this title.

131 (11) "Innocent owner" means a claimant who:

132 (a) held an ownership interest in property at the time of the commission of an offense  
133 subjecting the property to forfeiture under this title, and:

134 (i) did not have actual knowledge of the offense subjecting the property to forfeiture; or

135 (ii) upon learning of the commission of the offense, took reasonable steps to prohibit  
136 the use of the property in the commission of the offense; or

137 (b) acquired an ownership interest in the property and had no knowledge that the  
138 commission of the offense subjecting the property to forfeiture under this title had occurred or  
139 that the property had been seized for forfeiture, and:

140 (i) acquired the property in a bona fide transaction for value;

141 (ii) was an individual, including a minor child, who acquired an interest in the property  
142 through probate or inheritance; or

143 (iii) was a spouse who acquired an interest in property through dissolution of marriage  
144 or by operation of law.

145 (12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a  
146 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest  
147 or encumbrance pertaining to an interest in property, whose interest would be perfected against  
148 a good faith purchaser for value.

149 (b) "Interest holder" does not mean a person:

150 (i) who holds property for the benefit of or as an agent or nominee for another person;  
151 or

152 (ii) who is not in substantial compliance with any statute requiring an interest in  
153 property to be:

154 (A) recorded or reflected in public records in order to perfect the interest against a good  
155 faith purchaser for value; or

156 (B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance  
157 with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for  
158 value.

159 (13) "Known address" means any address provided by a claimant to the peace officer  
160 or agency at the time the property is seized, or the claimant's most recent address on record  
161 with a governmental entity if no address was provided at the time of the seizure.

162 (14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture  
163 action.

164 (15) "Legislative body" means:

165 (a) (i) the Legislature, county commission, county council, city commission, city  
166 council, or town council that has fiscal oversight and budgetary approval authority over an  
167 agency; or

168 (ii) the agency's governing political subdivision; or

169 (b) the lead governmental entity of a multijurisdictional task force, as designated in a  
170 memorandum of understanding executed by the agencies participating in the task force.

171 (16) "Multijurisdictional task force" means a law enforcement task force or other  
172 agency comprised of individuals who are employed by or acting under the authority of different  
173 governmental entities, including federal, state, county, or municipal governments, or any  
174 combination of federal, state, county, or municipal agencies.

175 (17) "Owner" means an individual or entity, other than an interest holder, that  
176 possesses a bona fide legal or equitable interest in real or personal property.

177 (18) "Peace officer" means an employee:

178 (a) of an agency;

179 (b) whose duties consist primarily of the prevention and detection of violations of laws  
180 of this state or a political subdivision of this state; and

181 (c) who is authorized by the agency to seize property under this title.

182 (19) (a) "Proceeds" means:

183 (i) property of any kind that is obtained directly or indirectly as a result of the  
184 commission of an offense; or

185 (ii) any property acquired directly or indirectly from, produced through, realized  
186 through, or caused by an act or omission regarding property under Subsection (19)(a)(i).

187 (b) "Proceeds" includes any property of any kind without reduction for expenses  
188 incurred in the acquisition, maintenance, or production of that property, or any other purpose  
189 regarding property under Subsection (19)(a)(i).

190 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that  
191 subjects the property to forfeiture.

192 (20) "Program" means the State Asset Forfeiture Grant Program created in Section  
193 24-4-117.

194 (21) (a) "Property" means all property, whether real or personal, tangible or intangible.

195 (b) "Property" does not include contraband.

196 (22) "Prosecuting attorney" means:

197 (a) the attorney general and an assistant attorney general;

198 (b) a district attorney or deputy district attorney;

199 (c) a county attorney or assistant county attorney; and

200 (d) an attorney authorized to commence an action on behalf of the state under this title.

201 (23) "Public interest use" means a:

202 (a) use by a government agency as determined by the legislative body of the agency's  
203 jurisdiction; or

204 (b) donation of the property to a nonprofit charity registered with the state.

205 (24) "Real property" means land, including any building, fixture, improvement,  
206 appurtenance, structure, or other development that is affixed permanently to land.

207 Section 3. Section **62A-1-122** is amended to read:

208 **62A-1-122. Child sexual abuse material.**

209 (1) As used in this section:

210 (a) [~~"Child pornography"~~] "Child sexual abuse material" means the same as that term is  
211 defined in Section 76-5b-103.

212 (b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or  
213 transfer of an image.

214 (2) The department or a division within the department may not retain child  
215 [pornography] sexual abuse material longer than is necessary to comply with the requirements  
216 of this section.

217 (3) When the department or a division within the department obtains child  
218 [pornography] sexual abuse material as a result of an employee unlawfully viewing child  
219 [pornography] sexual abuse material, the department or division shall consult with and follow  
220 the guidance of the Division of Human Resource Management regarding personnel action and  
221 local law enforcement regarding retention of the child [pornography] sexual abuse material.

222 (4) When the department or a division within the department obtains child  
223 [pornography] sexual abuse material as a result of a report or an investigation, the department  
224 or division shall immediately secure the child [pornography] sexual abuse material, or the  
225 electronic device if the child [pornography] sexual abuse material is digital, and contact the law  
226 enforcement office that has jurisdiction over the area where the division's case is located.

227 Section 4. Section **63G-2-103** is amended to read:

228 **63G-2-103. Definitions.**

229 As used in this chapter:

230 (1) "Audit" means:

231 (a) a systematic examination of financial, management, program, and related records  
232 for the purpose of determining the fair presentation of financial statements, adequacy of  
233 internal controls, or compliance with laws and regulations; or

234 (b) a systematic examination of program procedures and operations for the purpose of  
235 determining their effectiveness, economy, efficiency, and compliance with statutes and  
236 regulations.

237 (2) "Chronological logs" mean the regular and customary summary records of law  
238 enforcement agencies and other public safety agencies that show:

239 (a) the time and general nature of police, fire, and paramedic calls made to the agency;  
240 and

241 (b) any arrests or jail bookings made by the agency.

242 (3) "Classification," "classify," and their derivative forms mean determining whether a



243 record series, record, or information within a record is public, private, controlled, protected, or  
244 exempt from disclosure under Subsection [63G-2-201](#)(3)(b).

245 (4) (a) "Computer program" means:

246 (i) a series of instructions or statements that permit the functioning of a computer  
247 system in a manner designed to provide storage, retrieval, and manipulation of data from the  
248 computer system; and

249 (ii) any associated documentation and source material that explain how to operate the  
250 computer program.

251 (b) "Computer program" does not mean:

252 (i) the original data, including numbers, text, voice, graphics, and images;

253 (ii) analysis, compilation, and other manipulated forms of the original data produced by  
254 use of the program; or

255 (iii) the mathematical or statistical formulas, excluding the underlying mathematical  
256 algorithms contained in the program, that would be used if the manipulated forms of the  
257 original data were to be produced manually.

258 (5) (a) "Contractor" means:

259 (i) any person who contracts with a governmental entity to provide goods or services  
260 directly to a governmental entity; or

261 (ii) any private, nonprofit organization that receives funds from a governmental entity.

262 (b) "Contractor" does not mean a private provider.

263 (6) "Controlled record" means a record containing data on individuals that is controlled  
264 as provided by Section [63G-2-304](#).

265 (7) "Designation," "designate," and their derivative forms mean indicating, based on a  
266 governmental entity's familiarity with a record series or based on a governmental entity's  
267 review of a reasonable sample of a record series, the primary classification that a majority of  
268 records in a record series would be given if classified and the classification that other records  
269 typically present in the record series would be given if classified.

270 (8) "Elected official" means each person elected to a state office, county office,  
271 municipal office, school board or school district office, local district office, or special service  
272 district office, but does not include judges.

273 (9) "Explosive" means a chemical compound, device, or mixture:

274 (a) commonly used or intended for the purpose of producing an explosion; and  
275 (b) that contains oxidizing or combustive units or other ingredients in proportions,  
276 quantities, or packing so that:  
277 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the  
278 compound or mixture may cause a sudden generation of highly heated gases; and  
279 (ii) the resultant gaseous pressures are capable of:  
280 (A) producing destructive effects on contiguous objects; or  
281 (B) causing death or serious bodily injury.  
282 (10) "Government audit agency" means any governmental entity that conducts an audit.  
283 (11) (a) "Governmental entity" means:  
284 (i) executive department agencies of the state, the offices of the governor, lieutenant  
285 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,  
286 the Board of Examiners, the National Guard, the Career Service Review Office, the State  
287 Board of Education, the Utah Board of Higher Education, and the State Archives;  
288 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal  
289 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative  
290 committees, except any political party, group, caucus, or rules or sifting committee of the  
291 Legislature;  
292 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar  
293 administrative units in the judicial branch;  
294 (iv) any state-funded institution of higher education or public education; or  
295 (v) any political subdivision of the state, but, if a political subdivision has adopted an  
296 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this  
297 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or  
298 as specified in any other section of this chapter that specifically refers to political subdivisions.  
299 (b) "Governmental entity" also means:  
300 (i) every office, agency, board, bureau, committee, department, advisory board, or  
301 commission of an entity listed in Subsection (11)(a) that is funded or established by the  
302 government to carry out the public's business;  
303 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative  
304 undertaking;

- 305 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
- 306 (iv) an association as defined in Section 53G-7-1101;
- 307 (v) the Utah Independent Redistricting Commission; and
- 308 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or
- 309 more law enforcement officers, as defined in Section 53-13-103.
- 310 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
- 311 in Section 53B-8a-103.
- 312 (12) "Gross compensation" means every form of remuneration payable for a given
- 313 period to an individual for services provided including salaries, commissions, vacation pay,
- 314 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
- 315 similar benefit received from the individual's employer.
- 316 (13) "Individual" means a human being.
- 317 (14) (a) "Initial contact report" means an initial written or recorded report, however
- 318 titled, prepared by peace officers engaged in public patrol or response duties describing official
- 319 actions initially taken in response to either a public complaint about or the discovery of an
- 320 apparent violation of law, which report may describe:
- 321 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 322 (ii) names of victims;
- 323 (iii) the nature or general scope of the agency's initial actions taken in response to the
- 324 incident;
- 325 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 326 (v) the name, address, and other identifying information about any person arrested or
- 327 charged in connection with the incident; or
- 328 (vi) the identity of the public safety personnel, except undercover personnel, or
- 329 prosecuting attorney involved in responding to the initial incident.
- 330 (b) Initial contact reports do not include follow-up or investigative reports prepared
- 331 after the initial contact report. However, if the information specified in Subsection (14)(a)
- 332 appears in follow-up or investigative reports, it may only be treated confidentially if it is
- 333 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- 334 (c) Initial contact reports do not include accident reports, as that term is described in
- 335 Title 41, Chapter 6a, Part 4, Accident Responsibilities.

336 (15) "Legislative body" means the Legislature.

337 (16) "Notice of compliance" means a statement confirming that a governmental entity  
338 has complied with an order of the State Records Committee.

339 (17) "Person" means:

340 (a) an individual;

341 (b) a nonprofit or profit corporation;

342 (c) a partnership;

343 (d) a sole proprietorship;

344 (e) other type of business organization; or

345 (f) any combination acting in concert with one another.

346 (18) "Private provider" means any person who contracts with a governmental entity to  
347 provide services directly to the public.

348 (19) "Private record" means a record containing data on individuals that is private as  
349 provided by Section [63G-2-302](#).

350 (20) "Protected record" means a record that is classified protected as provided by  
351 Section [63G-2-305](#).

352 (21) "Public record" means a record that is not private, controlled, or protected and that  
353 is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

354 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,  
355 card, tape, recording, electronic data, or other documentary material regardless of physical form  
356 or characteristics:

357 (i) that is prepared, owned, received, or retained by a governmental entity or political  
358 subdivision; and

359 (ii) where all of the information in the original is reproducible by photocopy or other  
360 mechanical or electronic means.

361 (b) "Record" does not mean:

362 (i) a personal note or personal communication prepared or received by an employee or  
363 officer of a governmental entity:

364 (A) in a capacity other than the employee's or officer's governmental capacity; or

365 (B) that is unrelated to the conduct of the public's business;

366 (ii) a temporary draft or similar material prepared for the originator's personal use or

367 prepared by the originator for the personal use of an individual for whom the originator is  
368 working;

369 (iii) material that is legally owned by an individual in the individual's private capacity;  
370 (iv) material to which access is limited by the laws of copyright or patent unless the  
371 copyright or patent is owned by a governmental entity or political subdivision;

372 (v) proprietary software;

373 (vi) junk mail or a commercial publication received by a governmental entity or an  
374 official or employee of a governmental entity;

375 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections  
376 of a library open to the public;

377 (viii) material that is cataloged, indexed, or inventoried and contained in the collections  
378 of a library open to the public, regardless of physical form or characteristics of the material;

379 (ix) a daily calendar or other personal note prepared by the originator for the  
380 originator's personal use or for the personal use of an individual for whom the originator is  
381 working;

382 (x) a computer program that is developed or purchased by or for any governmental  
383 entity for its own use;

384 (xi) a note or internal memorandum prepared as part of the deliberative process by:  
385 (A) a member of the judiciary;  
386 (B) an administrative law judge;  
387 (C) a member of the Board of Pardons and Parole; or  
388 (D) a member of any other body, other than an association or appeals panel as defined  
389 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;

390 (xii) a telephone number or similar code used to access a mobile communication  
391 device that is used by an employee or officer of a governmental entity, provided that the  
392 employee or officer of the governmental entity has designated at least one business telephone  
393 number that is a public record as provided in Section [63G-2-301](#);

394 (xiii) information provided by the Public Employees' Benefit and Insurance Program,  
395 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be  
396 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);

397 (xiv) information that an owner of unimproved property provides to a local entity as

398 provided in Section 11-42-205;

399 (xv) a video or audio recording of an interview, or a transcript of the video or audio  
400 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

401 (xvi) child [~~pornography~~] sexual abuse material, as defined by Section 76-5b-103;

402 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording  
403 of the closed portion of a meeting or hearing of:

404 (A) a Senate or House Ethics Committee;

405 (B) the Independent Legislative Ethics Commission;

406 (C) the Independent Executive Branch Ethics Commission, created in Section  
407 63A-14-202; or

408 (D) the Political Subdivisions Ethics Review Commission established in Section  
409 63A-15-201; or

410 (xviii) confidential communication described in Section 58-60-102, 58-61-102, or  
411 58-61-702.

412 (23) "Record series" means a group of records that may be treated as a unit for  
413 purposes of designation, description, management, or disposition.

414 (24) "Records officer" means the individual appointed by the chief administrative  
415 officer of each governmental entity, or the political subdivision to work with state archives in  
416 the care, maintenance, scheduling, designation, classification, disposal, and preservation of  
417 records.

418 (25) "Schedule," "scheduling," and their derivative forms mean the process of  
419 specifying the length of time each record series should be retained by a governmental entity for  
420 administrative, legal, fiscal, or historical purposes and when each record series should be  
421 transferred to the state archives or destroyed.

422 (26) "Sponsored research" means research, training, and other sponsored activities as  
423 defined by the federal Executive Office of the President, Office of Management and Budget:

424 (a) conducted:

425 (i) by an institution within the state system of higher education defined in Section  
426 53B-1-102; and

427 (ii) through an office responsible for sponsored projects or programs; and

428 (b) funded or otherwise supported by an external:

429 (i) person that is not created or controlled by the institution within the state system of  
430 higher education; or

431 (ii) federal, state, or local governmental entity.

432 (27) "State archives" means the Division of Archives and Records Service created in  
433 Section 63A-12-101.

434 (28) "State archivist" means the director of the state archives.

435 (29) "State Records Committee" means the State Records Committee created in  
436 Section 63G-2-501.

437 (30) "Summary data" means statistical records and compilations that contain data  
438 derived from private, controlled, or protected information but that do not disclose private,  
439 controlled, or protected information.

440 Section 5. Section 67-5-21 is amended to read:

441 **67-5-21. Internet Crimes Against Children (ICAC) unit creation -- Duties --**  
442 **Employment of staff.**

443 (1) There is created within the Office of the Attorney General the Internet Crimes  
444 Against Children (ICAC) unit to investigate and prosecute cases involving child [~~pornography~~]  
445 sexual abuse material and cases involving enticing minors over the Internet into illegal sexual  
446 acts.

447 (2) The attorney general may employ investigators, prosecutors, and necessary support  
448 staff for the unit created under Subsection (1).

449 Section 6. Section 76-5b-103 is amended to read:

450 **76-5b-103. Definitions.**

451 As used in this chapter:

452 (1) [~~"Child pornography"~~] "Child sexual abuse material" means any visual depiction,  
453 including any live performance, photograph, film, video, picture, or computer or  
454 computer-generated image or picture, whether made or produced by electronic, mechanical, or  
455 other means, of sexually explicit conduct, where:

456 (a) the production of the visual depiction involves the use of a minor engaging in  
457 sexually explicit conduct;

458 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

459 (c) the visual depiction has been created, adapted, or modified to appear that an

460 identifiable minor is engaging in sexually explicit conduct.

461 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,  
462 providing, giving, granting admission to, or otherwise transferring or presenting child  
463 [~~pornography~~] sexual abuse material or vulnerable adult [~~pornography~~] sexual abuse material  
464 with or without consideration.

465 (3) "Identifiable minor" means a person:

466 (a) (i) who was a minor at the time the visual depiction was created, adapted, or  
467 modified; or

468 (ii) whose image as a minor was used in creating, adapting, or modifying the visual  
469 depiction; and

470 (b) who is recognizable as an actual person by the person's face, likeness, or other  
471 distinguishing characteristic, such as a birthmark, or other recognizable feature.

472 (4) "Identifiable vulnerable adult" means a person:

473 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,  
474 or modified; or

475 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the  
476 visual depiction; and

477 (b) who is recognizable as an actual person by the person's face, likeness, or other  
478 distinguishing characteristic, such as a birthmark, or other recognizable feature.

479 (5) "Lacks capacity to consent" is as defined in Section [76-5-111.4](#).

480 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity  
481 performed by live actors in person.

482 (7) "Minor" means a person younger than 18 years old.

483 (8) "Nudity or partial nudity" means any state of dress or undress in which the human  
484 genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is  
485 less than completely and opaquely covered.

486 (9) "Produce" means:

487 (a) the photographing, filming, taping, directing, producing, creating, designing, or  
488 composing of child [~~pornography~~] sexual abuse material or vulnerable adult [~~pornography~~]  
489 sexual abuse material; or

490 (b) the securing or hiring of persons to engage in the photographing, filming, taping,



491 directing, producing, creating, designing, or composing of child [~~pornography~~] sexual abuse  
492 material or vulnerable adult [~~pornography~~] sexual abuse material.

493 (10) "Sexually explicit conduct" means actual or simulated:

494 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,

495 whether between persons of the same or opposite sex;

496 (b) masturbation;

497 (c) bestiality;

498 (d) sadistic or masochistic activities;

499 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any  
500 person;

501 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual  
502 arousal of any person;

503 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

504 (h) the explicit representation of the defecation or urination functions.

505 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of  
506 sexually explicit conduct which duplicates, within the perception of an average person, the  
507 appearance of an actual act of sexually explicit conduct.

508 (12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

509 (13) "Vulnerable adult [~~pornography~~] sexual abuse material" means any visual  
510 depiction, including any live performance, photograph, film, video, picture, or computer or  
511 computer-generated image or picture, whether made or produced by electronic, mechanical, or  
512 other means, of sexually explicit conduct, where:

513 (a) the production of the visual depiction involves the use of a vulnerable adult  
514 engaging in sexually explicit conduct;

515 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

516 or

517 (c) the visual depiction has been created, adapted, or modified to appear that an  
518 identifiable vulnerable adult is engaging in sexually explicit conduct.

519 Section 7. Section 76-5b-201 is amended to read:

520 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

521 (1) Terms defined in Section 76-1-101.5 apply to this section.

522 (2) An actor commits sexual exploitation of a minor when the actor knowingly  
523 possesses or intentionally views child [pornography] sexual abuse material.

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

525 (b) It is a separate offense under this section:

526 (i) for each minor depicted in the child [pornography] sexual abuse material; and

527 (ii) for each time the same minor is depicted in different child [pornography] sexual  
528 abuse material.

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

532 (b) For a charge of violating this section, it is an affirmative defense that:

533 (i) the defendant:

534 (A) did not solicit the child [pornography] sexual abuse material from the minor  
535 depicted in the child [pornography] sexual abuse material;

536 (B) is not more than two years older than the minor depicted in the child [pornography]  
537 sexual abuse material; and

538 (C) upon request of a law enforcement agent or the minor depicted in the child  
539 [pornography] sexual abuse material, removes from an electronic device or destroys the child  
540 pornography and all copies of the child [pornography] sexual abuse material in the defendant's  
541 possession; and

542 (ii) the child [pornography] sexual abuse material does not depict an offense under  
543 Chapter 5, Part 4, Sexual Offenses.

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

546 (6) [~~This section may not be construed to impose criminal or civil liability on~~] The  
547 following are not criminally or civilly liable under this section when acting in good faith  
548 compliance with Section 77-4-201:

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

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

552 (ii) implementing a policy of attempting to prevent the presence of child [pornography]

553 sexual abuse material on tangible or intangible property, or of detecting and reporting the  
554 presence of child [pornography] sexual abuse material on the property;

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

556 (c) an employee of a court who may be required to view child [pornography] sexual  
557 abuse material during the course of and within the scope of the employee's employment;

558 (d) a juror who may be required to view child [pornography] sexual abuse material  
559 during the course of the individual's service as a juror;

560 (e) an attorney or employee of an attorney who is required to view child [pornography]  
561 sexual abuse material during the course of a judicial process and while acting within the scope  
562 of employment;

563 (f) an employee of the Department of Human Services who is required to view child  
564 [pornography] sexual abuse material within the scope of the employee's employment; or

565 (g) an attorney who is required to view child [pornography] sexual abuse material  
566 within the scope of the attorney's responsibility to represent the Department of Human  
567 Services, including the divisions and offices within the Department of Human Services.

568 Section 8. Section **76-5b-201.1** is amended to read:

569 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

570 (1) As used in this section:

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

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

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

575 (a) intentionally distributes child [pornography] sexual abuse material;

576 (b) knowingly produces child [pornography] sexual abuse material; or

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

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

581 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection  
582 (2) is a second degree felony.

583 (c) A violation of Subsection (2)(a) is a second degree felony if the child [pornography]

584 sexual abuse material depicts an individual who is:

585 (i) 14 years old or older; or

586 (ii) pubescent.

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

588 (a) for each minor depicted in the child [pornography] sexual abuse material; and

589 (b) for each time the same minor is depicted in different child [pornography] sexual  
590 abuse material.

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

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

596 (6) ~~[This section may not be construed to impose criminal or civil liability on]~~ The  
597 following are not criminally or civilly liable under this section when acting in good faith  
598 compliance with Section [77-4-201](#):

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

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

602 (ii) implementing a policy of attempting to prevent the presence of child [pornography]  
603 sexual abuse material on tangible or intangible property, or of detecting and reporting the  
604 presence of child [pornography] sexual abuse material on the property;

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

606 (c) an employee of a court who may be required to view child [pornography] sexual  
607 abuse material during the course of and within the scope of the employee's employment;

608 (d) a juror who may be required to view child [pornography] sexual abuse material  
609 during the course of the individual's service as a juror;

610 (e) an attorney or employee of an attorney who is required to view child [pornography]  
611 sexual abuse material during the course of a judicial process and while acting within the scope  
612 of employment;

613 (f) an employee of the Department of Health and Human Services who is required to  
614 view child [pornography] sexual abuse material within the scope of the employee's

615 employment; or

616 (g) an attorney who is required to view child [pornography] sexual abuse material  
617 within the scope of the attorney's responsibility to represent the Department of Health and  
618 Human Services, including the divisions and offices within the Department of Health and  
619 Human Services.

620 Section 9. Section **76-5b-202** is amended to read:

621 **76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.**

622 (1) Terms defined in Section 76-1-101.5 apply to this section.

623 (2) An actor commits sexual exploitation of a vulnerable adult if the actor:

624 (a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute  
625 material that the actor knows is vulnerable adult [pornography] sexual abuse material; or

626 (B) intentionally distributes or views material that the actor knows is vulnerable adult  
627 [pornography] sexual abuse material; and

628 (ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult  
629 [pornography] sexual abuse material lacks capacity to consent to the conduct described in  
630 Subsection (2)(a); or

631 (b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the  
632 vulnerable adult to be, sexually exploited as described in Subsection (2)(a).

633 (3) (a) A violation of Subsection (2) is a third degree felony.

634 (b) It is a separate offense under this section:

635 (i) for each vulnerable adult depicted in the vulnerable adult [pornography] sexual  
636 abuse material; and

637 (ii) for each time the same vulnerable adult is depicted in different vulnerable adult  
638 [pornography] sexual abuse material.

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

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

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

645 (a) any entity or an employee, director, officer, or agent of an entity, when acting

646 within the scope of employment, for the good faith performance of:

- 647 (i) reporting or data preservation duties required under any federal or state law; or
- 648 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult
- 649 ~~[pornography]~~ sexual abuse material on any tangible or intangible property, or of detecting and
- 650 reporting the presence of vulnerable adult ~~[pornography]~~ sexual abuse material on the property;
- 651 or

652 (b) any law enforcement officer acting within the scope of a criminal investigation.

653 Section 10. Section **76-10-1204.5** is amended to read:

654 **76-10-1204.5. Reporting of child sexual abuse material by a computer technician.**

655 (1) As used in this section:

656 (a) ~~["Child pornography"]~~ "Child sexual abuse material" means the same as that term

657 is defined in Section [76-5b-103](#).

658 (b) "Computer technician" or "technician" means an individual who in the course and

659 scope of the individual's employment for compensation installs, maintains, troubleshoots,

660 upgrades, or repairs computer hardware, software, personal computer networks, or peripheral

661 equipment.

662 (c) "Image" means an image of child ~~[pornography]~~ sexual abuse material or an image

663 that a computer technician reasonably believes is child ~~[pornography]~~ sexual abuse material.

664 (2) (a) A computer technician who in the course of employment for compensation

665 views an image on a computer or other electronic device that is or appears to be child

666 ~~[pornography]~~ sexual abuse material shall immediately report the finding of the image to:

667 (i) a state or local law enforcement agency, or the Cyber Tip Line at the National

668 Center for Missing and Exploited Children; or

669 (ii) an employee designated by the employer of the computer technician in accordance

670 with Subsection (3).

671 (b) A computer technician who willfully does not report an image as required under

672 Subsection (2)(a) is guilty of a class B misdemeanor.

673 (c) The identity of the computer technician who reports an image shall be confidential,

674 except as necessary for the criminal investigation and the judicial process.

675 (d) (i) If the computer technician makes or does not make a report under this section in

676 good faith, the technician is immune from any criminal or civil liability related to reporting or

677 not reporting the image.

678 (ii) In this Subsection (2)(d), good faith may be presumed from an employee's or  
679 employer's previous course of conduct when the employee or employer has made appropriate  
680 reports.

681 (e) It is a defense to prosecution under this section that the computer technician did not  
682 report the image because the technician reasonably believed the image did not depict a person  
683 younger than 18 years [~~of age~~] old.

684 (3) (a) An employer of a computer technician may implement a procedure that  
685 requires:

686 (i) the computer technician report an image as is required under Subsection (2)(a) to an  
687 employee designated by the employer to receive the report of the image; and

688 (ii) the designated employee to immediately forward the report provided by the  
689 computer technician to an agency under Subsection (2)(a)(i).

690 (b) Compliance by the computer technician and the designated employee with the  
691 reporting process under Subsection (3)(a) is compliance with the reporting requirement of this  
692 section and establishes immunity under Subsection (2)(d).

693 (4) This section does not apply to an Internet service provider or interactive computer  
694 service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications  
695 service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service,  
696 or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as  
697 defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if the  
698 provider reports the image in compliance with 18 U.S.C. 2258A or a successor federal statute  
699 that requires reporting by a provider of an image of child [~~pornography~~] sexual abuse material.

700 Section 11. Section ~~77-4-101~~, which is renumbered from Section 77-4-1 is renumbered  
701 and amended to read:

702 **CHAPTER 4. PLEADINGS AND PROCEEDINGS BEFORE TRIAL**

703 **Part 1. Suppression of Resistance to Service of Process**

704 [~~77-4-1~~]. **77-4-101. Force by officer -- Arrest.**

705 A public officer authorized to execute process issued by any court may use such force  
706 as is reasonable and necessary to execute service of process. If necessary, he may seize, arrest,  
707 and confine persons resisting or aiding and abetting resistance to his service of process.

708 Section 12. Section 77-4-201 is enacted to read:

709 **Part 2. Evidence**

710 **77-4-201. Reproduction of child sexual abuse material -- Prohibition.**

711 (1) As used in this section:

712 (a) "Child sexual abuse material" means the same as that term is defined in Section  
713 76-5b-103.

714 (b) "Law enforcement agency" means the same as that term is defined in Section  
715 53-1-102.

716 (c) "Victim" means the same as that term is defined in Section 77-37-2.

717 (2) In a proceeding involving child sexual abuse material, the child sexual abuse  
718 material shall remain in the care, custody, and control of:

719 (a) a law enforcement agency; or

720 (b) a court.

721 (3) (a) In a proceeding involving child sexual abuse material, a court shall deny a  
722 request by a defendant to copy, photograph, duplicate, or otherwise reproduce the child sexual  
723 abuse material if the court or a law enforcement agency provides the defendant's attorney or an  
724 individual the defendant may seek to qualify as an expert an adequate opportunity to view and  
725 examine the child sexual abuse material.

726 (b) An individual described in Subsection (3)(a) may view or examine the child sexual  
727 abuse material only at the law enforcement agency or court that has custody and control of the  
728 child sexual abuse material.

729 (c) A defendant who is self represented:

730 (i) may not inspect the child sexual abuse material; and

731 (ii) may request that the court appoint counsel for the purpose of inspecting the child  
732 sexual abuse material on behalf of the defendant.

733 (4) (a) In a proceeding involving child sexual abuse material, a victim, the victim's  
734 attorney, or an individual the victim may, upon a showing of good cause, seek to qualify as an  
735 expert, may view and examine the child sexual abuse material that depicts the victim upon a  
736 showing of good cause.

737 (b) An individual described in Subsection (4)(a) may not copy, photograph, duplicate,  
738 or otherwise reproduce the child sexual abuse material.



739            (c) An individual described in Subsection (4)(a) may view or examine the child sexual  
740 abuse material only at the law enforcement agency or court that has custody and control of the  
741 child sexual abuse material.

742            (d) The court or law enforcement agency may redact the child sexual abuse material  
743 described in this Subsection (4) to protect the privacy of a third party.