

## HB0328S03 compared with HB0328S02

~~{deleted text}~~ shows text that was in HB0328S02 but was deleted in HB0328S03.

inserted text shows text that was not in HB0328S02 but was inserted into HB0328S03.

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~~{Representative Angela Romero}~~Senator Wayne A. Harper proposes the following substitute bill:

### VICTIMS OF SEXUAL OFFENSES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: ~~{~~Wayne A. Harper

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#### LONG TITLE

##### General Description:

This bill amends provisions related to victims of sexual offenses.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ moves a statute regarding custody and parent-time for a child conceived as a result of a sexual offense;
- ▶ amends the requirements for retaining or disposing of a sexual assault kit;
- ▶ requires agency to provide a victim with notice of intent when the agency intends to destroy or dispose of a sexual assault kit;
- ▶ addresses the rights for victims of sexual offenses, including rights related to sexual

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assault kits;

- ▶ allows for the termination of parental rights of a parent who ~~committed~~was convicted of a sexual offense that resulted in conception of the child when termination is in the best interests of the child; 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:

**30-3-10**, as last amended by Laws of Utah 2023, Chapters 44, 327

**53-10-902**, as renumbered and amended by Laws of Utah 2022, Chapter 430

**77-11c-101**, as renumbered and amended by Laws of Utah 2023, Chapter 448

**77-11c-201**, as enacted by Laws of Utah 2023, Chapter 448

**77-11c-202**, as enacted by Laws of Utah 2023, Chapter 448

**77-11c-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

**77-11c-401**, as renumbered and amended by Laws of Utah 2023, Chapter 448

**77-37-2**, as enacted by Laws of Utah 1987, Chapter 194

**77-37-3**, as last amended by Laws of Utah 2023, Chapter 448

**80-4-301**, as last amended by Laws of Utah 2022, Chapter 335

REPEALS AND REENACTS:

**53-10-905**, as renumbered and amended by Laws of Utah 2022, Chapter 430

REPEALS:

**76-5-414**, as enacted by Laws of Utah 2013, Chapter 193

### Utah Code Sections Affected By Coordination Clause:

**77-11c-301**, as renumbered and amended by Laws of Utah 2023, Chapter 448

**77-11c-302**, as enacted in **S.B. 76 (2024 General Session)**

**77-11c-401**, as renumbered and amended by Laws of Utah 2023, Chapter 448

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

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Section 1. Section **30-3-10** is amended to read:

**30-3-10. Custody and parent-time of a child -- Custody factors -- Child conceived as a result of a sexual offense.**

(1) If a married couple having one or more minor children are separated, or the married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time.

(2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child and may consider among other factors the court finds relevant, the following for each parent:

(a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the parent, or a household member of the parent;

(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the child, including the child's:

(i) physical needs;

(ii) emotional needs;

(iii) educational needs;

(iv) medical needs; and

(v) any special needs;

(c) the parent's capacity and willingness to function as a parent, including:

(i) parenting skills;

(ii) co-parenting skills, including:

(A) ability to appropriately communicate with the other parent;

(B) ability to encourage the sharing of love and affection; and

(C) willingness to allow frequent and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and

(iii) ability to provide personal care rather than surrogate care;

(d) in accordance with Subsection (10), the past conduct and demonstrated moral character of the parent;

(e) the emotional stability of the parent;

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- (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
  - (g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;
  - (h) the parent's reasons for having relinquished custody or parent-time in the past;
  - (i) duration and depth of desire for custody or parent-time;
  - (j) the parent's religious compatibility with the child;
  - (k) the parent's financial responsibility;
  - (l) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the child's best interests;
  - (m) who has been the primary caretaker of the child;
  - (n) previous parenting arrangements in which the child has been happy and well-adjusted in the home, school, and community;
  - (o) the relative benefit of keeping siblings together;
  - (p) the stated wishes and concerns of the child, taking into consideration the child's cognitive ability and emotional maturity;
  - (q) the relative strength of the child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the child; and
  - (r) any other factor the court finds relevant.
- (3) There is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases when there is:
- (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household member of the parent;
  - (b) special physical or mental needs of a parent or child, making joint legal custody unreasonable;
  - (c) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or
  - (d) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.
- (4) (a) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9.

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(b) A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.

(5) (a) A child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony.

(b) (i) The court may inquire of the child's and take into consideration the child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the child's custody or parent-time otherwise.

(ii) The desires of a child 14 years old or older shall be given added weight, but is not the single controlling factor.

(c) (i) If an interview with a child is conducted by the court pursuant to Subsection (5)(b), the interview shall be conducted by the judge in camera.

(ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a child is the only method to ascertain the child's desires regarding custody.

(6) (a) Except as provided in Subsection (6)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:

(i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; and

(ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(7) This section does not establish a preference for either parent solely because of the gender of the parent.

(8) This section establishes neither a preference nor a presumption for or against joint

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physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

(9) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are service members and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

(10) In considering the past conduct and demonstrated moral standards of each party under Subsection (2)(d) or any other factor a court finds relevant, the court may not:

(a) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or

(b) discriminate against a parent because of the parent's status as a:

(i) cannabis production establishment agent, as that term is defined in Section 4-41a-102;

(ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;

(iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or

(iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(11) Notwithstanding any other provision of this chapter, the court may not grant custody or parent-time of a child to a parent convicted of a sexual offense, as defined in Section 77-37-2, that resulted in the conception of the child unless:

(a) the nonconvicted biological parent, or the legal guardian of the child, consents to custody or parent-time and the court determines it is in the best interest of the child to award custody or parent-time to the convicted parent; or

(b) after the date of the conviction, the convicted parent and the nonconvicted parent cohabit and establish a mutual custodial environment for the child.

(12) A denial of custody or parent-time under Subsection (11) does not:

(a) terminate the parental rights of the parent denied parent-time or custody; or

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(b) affect the obligation of the convicted parent to financially support the child.

Section 2. Section **53-10-902** is amended to read:

### **53-10-902. Definitions.**

[For purposes of] As used in this part:

(1) "Collecting facility" means a hospital, health care facility, or other facility that performs sexual assault examinations.

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

(3) "Restricted kit" means a sexual assault kit:

(a) that is collected by a collecting facility; and

(b) for which a victim who is 18 years old or older at the time of the sexual assault kit evidence collection declines:

(i) to have his or her sexual assault kit processed; and

(ii) to have the sexual assault examination form shared with any entity outside of the collection facility.

(4) "Sexual assault kit" means a package of items that is used by medical personnel to gather and preserve biological and physical evidence following an allegation of [~~sexual assault~~] a sexual offense.

(5) "Sexual offense" means the same as that term is defined in Section 77-37-2.

[~~(5)~~] (6) "Trauma-informed, victim-centered" means policies, procedures, programs, and practices that:

(a) have demonstrated an ability to minimize retraumatization associated with the criminal justice process by recognizing the presence of trauma symptoms and acknowledging the role that trauma has played in the life of a victim [~~of sexual assault or sexual abuse~~]; and

(b) encourage law enforcement officers to interact with victims [~~of sexual assault or sexual abuse~~] with compassion and sensitivity in a nonjudgmental manner.

(7) "Victim" means an individual against whom a sexual offense has been committed or allegedly been committed.

Section 3. Section **53-10-905** is repealed and reenacted to read:

### **53-10-905. Sexual assault kit retention and disposal -- Notification.**

(1) As used in this section:

(a) "Agency" means the same as that term is defined in Section 77-11a-101.

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(b) "Agency" includes an evidence collecting or retaining entity as defined in Section 77-11c-101.

(2) An agency with custody of a sexual assault kit shall preserve the sexual assault kit in accordance with Title 77, Chapter 11c, Retention of Evidence.

(3) An agency shall send a notice to a victim that the agency intends to dispose of a sexual assault kit if:

(a) the agency intends to dispose of the sexual assault kit before the applicable time period described in Sections 77-11c-201, 77-11c-301, or 77-11c-401 expires; and

(b) the victim provided a written request to the agency investigating the sexual offense that the victim receive notice of when the agency intends to dispose of the sexual assault kit.

(4) An agency shall send a notice of intent to dispose of a sexual assault kit to the victim:

(a) at least 180 days before the day on which the agency intends to dispose of the sexual assault kit; and

(b) by certified mail, return receipt requested, or a delivery service that provides proof of delivery.

(5) If a victim receives a notice of intent to dispose of a sexual assault kit, the victim may submit a written request, within the 180-day period described in Subsection (4)(a), that the agency retain the sexual assault kit.

(6) A notice of intent to dispose of a sexual assault kit shall provide the victim with information on how to submit a written request described in Subsection (5).

(7) If an agency receives a written request to retain the sexual assault kit from the victim within the 180-day period described in Subsection (4)(a), the agency shall retain the sexual assault kit for the applicable time period described in Section 77-11c-201, 77-11c-301, or 77-11c-401.

Section 4. Section **77-11c-101** is amended to read:

### **77-11c-101. Definitions.**

As used in this chapter:

(1) "Acquitted" means the same as that term is defined in Section 77-11b-101.

(2) "Adjudicated" means that:

(a) (i) a judgment of conviction by plea or verdict of an offense has been entered by a



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court; and

(ii) a sentence has been imposed by the court; or

(b) a judgment has been entered for an adjudication of an offense by a juvenile court under Section 80-6-701.

(3) "Adjudication" means:

(a) a judgment of conviction by plea or verdict of an offense; or

(b) an adjudication for an offense by a juvenile court under Section 80-6-701.

(4) "Agency" means the same as that term is defined in Section 77-11a-101.

(5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the United States Supreme Court.

(6) (a) "Biological evidence" means an item that contains blood, semen, hair, saliva, epithelial cells, latent fingerprint evidence that may contain biological material suitable for DNA testing, or other identifiable human biological material that:

(i) is collected as part of an investigation or prosecution of a violent felony offense;

and

(ii) may reasonably be used to incriminate or exculpate a person for the violent felony offense.

(b) "Biological evidence" includes:

(i) material that is catalogued separately, including:

(A) on a slide or swab; or

(B) inside a test tube, if the evidentiary sample that previously was inside the test tube has been consumed by testing;

(ii) material that is present on other evidence, including clothing, a ligature, bedding, a drinking cup, a cigarette, or a weapon, from which a DNA profile may be obtained;

(iii) the contents of a sexual assault ~~examination~~ kit; and

(iv) for a violent felony offense, material described in this Subsection (6) that is in the custody of an evidence collecting or retaining entity on May 4, 2022.

(7) "Claimant" means the same as that term is defined in Section 77-11a-101.

(8) "Computer" means the same as that term is defined in Section 77-11a-101.

(9) "Continuous chain of custody" means:

(a) for a law enforcement agency or a court, that legal standards regarding a continuous

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chain of custody are maintained; and

(b) for an entity that is not a law enforcement agency or a court, that the entity maintains a record in accordance with legal standards required of the entity.

(10) "Contraband" means the same as that term is defined in Section 77-11a-101.

(11) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(12) "Court" means a municipal, county, or state court.

(13) "DNA" means deoxyribonucleic acid.

(14) "DNA profile" means a unique identifier of an individual derived from DNA.

(15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(16) "Evidence" means property, contraband, or an item or substance that:

(a) is seized or collected as part of an investigation or prosecution of an offense; and

(b) may reasonably be used to incriminate or exculpate an individual for an offense.

(17) (a) "Evidence collecting or retaining entity" means an entity within the state that collects, stores, or retrieves biological evidence.

(b) "Evidence collecting or retaining entity" includes:

(i) a medical or forensic entity;

(ii) a law enforcement agency;

(iii) a court; and

(iv) an official, employee, or agent of an entity or agency described in this Subsection

(17).

(c) "Evidence collecting or retaining entity" does not include a collecting facility as defined in Section 53-10-902.

(18) "Exhibit" means property, contraband, or an item or substance that is admitted into evidence for a court proceeding.

(19) "In custody" means an individual who:

(a) is incarcerated, civilly committed, on parole, or on probation; or

(b) is required to register under Title 77, Chapter 41, Sex and Kidnap Offender

Registry.

(20) "Law enforcement agency" means the same as that term is defined in Section 77-11a-101.

(21) "Medical or forensic entity" means a private or public hospital, medical facility, or

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other entity that secures biological evidence or conducts forensic examinations related to criminal investigations.

(22) "Physical evidence" includes evidence that:

(a) is related to:

(i) an investigation;

(ii) an arrest; or

(iii) a prosecution that resulted in a judgment of conviction; and

(b) is in the actual or constructive possession of a law enforcement agency or a court or an agent of a law enforcement agency or a court.

(23) "Property" means the same as that term is defined in Section 77-11a-101.

(24) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.

(25) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.

(26) "Victim" means the same as that term is defined in Section 53-10-902.

~~[(25)]~~ (27) "Violent felony offense" means the same as the term "violent felony" is defined in Section 76-3-203.5.

~~[(26)]~~ (28) "Wildlife" means the same as that term is defined in Section 23A-1-101.

Section 5. Section **77-11c-201** is amended to read:

### **77-11c-201. Retention of evidence of misdemeanor offenses.**

(1) An agency shall retain evidence of a misdemeanor offense for the longer of:

(a) the length of the statute of limitations for the offense if:

(i) no charges are filed for the offense; or

(ii) the offense remains unsolved;

(b) 60 days after the day on which any individual charged with the offense is acquitted if each individual charged with the offense is acquitted;

(c) 90 days after the day on which any individual is adjudicated for the offense if:

(i) each individual charged with the offense has been adjudicated;

(ii) there is no appeal pending in:

(A) an appellate court for any individual adjudicated for the offense; or

(B) the district court for a trial de novo for any individual adjudicated by a justice court for the offense; and

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(iii) there is no post-trial motion pending in the court:

(A) for a new trial under Rule 24 of the Utah Rules of Criminal Procedure;

(B) to amend or make additional findings of fact under Rule 52(b) of the Utah Rules of Civil Procedure; or

(C) for relief under Rule 60(b) of the Utah Rules of Civil Procedure;

(d) 30 days after the day on which any individual is adjudicated by a district court for the offense on a trial de novo from the justice court if:

(i) each individual charged with the offense has been adjudicated by a justice court or a district court on a trial de novo from the justice court; and

(ii) there is no appeal pending in:

(A) an appellate court for any individual adjudicated for the offense; or

(B) the district court for a trial de novo for any individual adjudicated by a justice court for the offense; [or]

(e) 30 days after the day on which an appellate court issues a remittitur for an appeal of any individual adjudicated for the offense if:

(i) the appellate court's final decision upholds the individual's adjudication;

(ii) each individual charged with the offense has been adjudicated; and

(iii) there is no appeal pending in:

(A) an appellate court for any individual adjudicated for the offense; or

(B) the district court for a trial de novo for any individual adjudicated by a justice court for the offense[~~;~~]; or

(f) 20 years from the day on which the evidence is collected if the evidence is a sexual assault kit.

(2) Subsection (1) does not require an agency to return or dispose of evidence of a misdemeanor offense.

(3) An agency shall ensure that evidence of a misdemeanor offense is subject to a continuous chain of custody.

Section 6. Section **77-11c-202** is amended to read:

**77-11c-202. Requirements for not retaining evidence -- Preservation of sufficient evidence.**

(1) An agency is not required to retain evidence of a misdemeanor offense under

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Section 77-11c-201 if:

(a) (i) the agency determines that:

(A) the size, bulk, or physical character of the evidence renders retention

impracticable; or

(B) the evidence poses a security or safety problem for the agency;

(ii) the agency preserves sufficient evidence of the property, contraband, item, or substance for use as evidence in a prosecution of the offense in accordance with this section;

(iii) the agency sends a written request under Subsection 77-11c-203(1) to the prosecuting attorney for permission to release or dispose of the evidence; and

(iv) the prosecuting attorney grants the agency's written request in accordance with Section 77-11c-203;

(b) a court orders the agency to return evidence that is property to a claimant under Section 77-11a-305; or

(c) the evidence is wildlife or parts of wildlife.

(2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a misdemeanor offense that is a sexual assault kit before the day on which the time period described in Section 77-11c-201 expires if:

(a) the agency sends a notice to the victim as described in Section 53-10-905; and

(b) the victim submits a written request for retention of the evidence within the 180-day period described in Section 53-10-905.

~~[(2)]~~ (3) (a) Subsection (1) does not require an agency to return or dispose of evidence of a misdemeanor offense.

(b) Subsection (1)(a) does not apply when the release or disposal of evidence of a misdemeanor offense is in compliance with a memorandum of understanding between the agency and the prosecuting attorney.

~~[(3)]~~ (4) If evidence is a controlled substance, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:

(a) collecting and preserving a sample of the controlled substance and a sample of biological evidence from the controlled substance for independent testing and use as evidence;

(b) taking a photographic or video record of the controlled substance with identifying case numbers;

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(c) maintaining a written report of a chemical analysis of the controlled substance if a chemical analysis was performed by the agency; and

(d) if the controlled substance exceeds 10 pounds, retain at least one pound of the controlled substance that is randomly selected from the controlled substance.

~~[(4)]~~ (5) If evidence is drug paraphernalia, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:

(a) collecting and preserving a sample of the controlled substance from the drug paraphernalia for independent testing and use as evidence;

(b) maintaining a written report of a chemical analysis of the drug paraphernalia if a chemical analysis was performed by the agency; and

(c) taking a photographic or video record of the drug paraphernalia with identifying case numbers.

~~[(5)]~~ (6) If evidence is a computer, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:

(a) extracting all data from the computer that would be evidence in a prosecution of an individual for the offense;

(b) collecting a sample of biological evidence from the computer for independent testing and use as evidence; and

(c) taking a photographic or video record of the computer with identifying case numbers.

~~[(6)]~~ (7) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the property, contraband, item, or substance by:

(a) collecting and preserving a sample of biological evidence from the property, contraband, item, or substance for independent testing and use as evidence; and

(b) taking a photographic or video record of the property, contraband, item, or substance with identifying case numbers.

*The following section is affected by a coordination clause at the end of this bill.*

Section 7. Section **77-11c-301** is amended to read:

### **77-11c-301. Retention of evidence for felony offenses.**

(1) Except as provided in Subsection (4) and Subsection 23A-5-201(3), an agency shall retain evidence of a felony offense:

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(a) at the discretion of the prosecuting attorney; or

(b) until all direct appeals and retrials are final.

(2) If the prosecuting attorney decides to retain control over the evidence of the felony offense in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, the prosecuting attorney may decline to authorize the disposal of the evidence.

(3) An agency shall ensure that evidence of a felony offense is subject to a continuous chain of custody.

(4) An agency shall retain and preserve biological evidence of a violent felony offense in accordance with Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

(5) (a) Notwithstanding Subsection (1), an agency shall retain evidence of a felony offense that is a sexual assault kit for at least 20 years from the day on which the evidence is collected.

(b) An agency may not dispose of evidence of a felony offense that is a sexual assault kit before the day on which the time period described in Subsection (5)(a) expires if:

(i) the agency sends a notice to the victim in accordance with Section 53-10-905; and

(ii) the victim submits a written request for retention of the evidence within the 180-day period described in Section 53-10-905.

*The following section is affected by a coordination clause at the end of this bill.*

Section 8. Section **77-11c-401** is amended to read:

**77-11c-401. Preservation of biological evidence -- Procedures -- Inventory request.**

(1) Except as provided in Section 77-11c-402, an evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense in accordance with this part.

(2) An evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense[?] ~~+~~ for the longer of:

~~[(a) for the longer of:]~~

~~[(+)]~~ (a) the length of the statute of limitations for the violent felony offense if:

~~[(A)]~~ (i) no charges are filed for the violent felony offense; or

~~[(B)]~~ (ii) the violent felony offense remains unsolved;

~~[(+)]~~ (b) the length of time that the individual convicted of the violent felony offense or

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any lesser included violent offense remains in custody; ~~[or]~~

~~[(iii)]~~ (c) the length of time that a co-defendant remains in custody; or

(d) 20 years from the day on which the biological evidence is collected if the biological evidence is the contents of a sexual assault kit.

~~[(b)]~~ (3) An evidence collecting or retaining entity shall ensure that biological evidence under Subsection (2) is:

(a) preserved in an amount and manner sufficient to:

(i) develop a DNA profile; and

(ii) if practicable, allow for independent testing of the biological evidence by a defendant; and

~~[(c)]~~ (b) subject to a continuous chain of custody.

~~[(3)]~~ (4) (a) Upon request by a defendant under Title 63G, Chapter 2, Government Records Access and Management Act, the evidence collecting or retaining entity shall prepare an inventory of the biological evidence preserved in connection with the defendant's criminal case.

(b) If the evidence collecting or retaining entity cannot locate biological evidence requested under Subsection ~~[(3)(a)]~~ (4)(a), the custodian for the entity shall provide a sworn affidavit to the defendant that:

(i) describes the efforts taken to locate the biological evidence; and

(ii) affirms that the biological evidence could not be located.

~~[(4) The evidence collecting or retaining entity may dispose of biological evidence before the day on which the period described in Subsection (2)(a) expires if:]~~

~~[(a) no other provision of federal or state law requires the evidence collecting or retaining entity to preserve the biological evidence;]~~

~~[(b) the evidence collecting or retaining entity sends notice in accordance with Subsection (5); and]~~

~~[(c) an individual notified under Subsection (5)(a) does not within 180 days after the day on which the evidence collecting or retaining entity receives proof of delivery under Subsection (5):]~~

~~[(i) file a motion for testing of the biological evidence under Section 78B-9-301; or]~~

~~[(ii) submit a written request under Subsection (5)(b)(ii):]~~



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(5) (a) If the evidence collecting or retaining entity intends to dispose of ~~the~~ biological evidence of a violent felony offense before the day on which the period described in Subsection ~~[(2)(a)]~~ (2) expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the biological evidence that:

~~[(a)]~~ (i) is sent by certified mail, return receipt requested, or a delivery service that provides proof of delivery, to:

~~[(i)]~~ (A) an individual who remains in custody based on a criminal conviction related to the biological evidence;

~~[(ii)]~~ (B) the private attorney or public defender of record for each individual described in Subsection ~~[(5)(a)(i)]~~ (5)(a)(i)(A);

~~[(iii)]~~ (C) if applicable, the prosecuting agency responsible for the prosecution of each individual described in Subsection ~~[(5)(a)(i)]~~ (5)(a)(i)(A); and

~~[(iv)]~~ (D) the Utah attorney general; and

~~[(b)]~~ (ii) explains that the party receiving the notice may:

~~[(i)]~~ (A) file a motion for testing of biological evidence under Section 78B-9-301 if the party is the individual convicted of the violent felony offense; or

~~[(ii)]~~ (B) submit a written request that the evidence collecting or retaining entity retain the biological evidence.

(b) An individual must file a motion, or submit a written request, described in Subsection (5)(a)(ii) within 180 days after the day on which the evidence collection or retaining entity receives proof of delivery under Subsection (5).

(c) An evidence collection or retaining entity shall send a notice of intent to dispose of biological evidence that is the contents of a sexual assault kit to a victim in accordance with Section 53-10-905.

(6) The evidence collecting or retaining entity may not dispose of biological evidence of a violent felony offense before the day on which the time period described in Subsection (2) expires if:

(a) the evidence collecting or retaining entity is required by federal or state law to preserve the biological evidence; or

(b) (i) the evidence collecting or retaining entity sends notice in accordance with:

(A) Subsection (5); and

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(B) Section 53-10-905 if the biological evidence is the contents of a sexual assault kit;  
and

(ii) an individual notified under Subsection (5)(a) or Section 53-10-905;

(A) files a motion for testing of the biological evidence under Section 78B-9-301 within the 180-day period described in Subsection (5)(b); or

(B) submits a written request for retention of the biological evidence within the 180-day period described in Subsection (5)(b) or Section 53-10-905.

~~[(6)] (7) (a)~~ Subject to Subsections ~~[(6)(b)] (7)(b)~~ and (c), if the evidence collecting or retaining entity receives a written request to retain the biological evidence ~~[under Subsection (5)(b)(ii)]~~, the evidence collecting or retaining entity shall retain the biological evidence ~~[while the defendant remains in custody]~~ for the time period described in Subsection (2).

(b) Subject to Subsection ~~[(6)(c)] (7)(c)~~, the evidence collecting or retaining entity is not required to preserve physical evidence that may contain biological evidence if the physical evidence's size, bulk, or physical character renders retention impracticable.

(c) If the evidence collecting or retaining entity determines that retention is impracticable, before returning or disposing of the physical evidence, the evidence collecting or retaining entity shall:

(i) remove the portions of the physical evidence likely to contain biological evidence related to the violent felony offense; and

(ii) preserve the removed biological evidence in a quantity sufficient to permit future DNA testing.

~~[(7)] (8)~~ To comply with the preservation requirements described in this section, a law enforcement agency or a court may:

(a) retain the biological evidence; or

(b) if a continuous chain of custody can be maintained, return the biological evidence to the custody of the other law enforcement agency that originally provided the biological evidence to the law enforcement agency.

Section 9. Section ~~77-37-2~~ is amended to read:

### **77-37-2. Definitions.**

~~[In]~~ As used in this chapter:

(1) "Alleged sexual offender" means the same as that term is defined in Section

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53-10-801.

~~[(1)]~~ (2) "Child" means a person who is younger than 18 years ~~[of age]~~ old, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.

~~[(2)]~~ (3) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.

(4) "HIV infection" means the same as that term is defined in Section 53-10-801.

(5) "Sexual assault kit" means the same as that term is defined in Section 53-10-902.

(6) "Sexual offense" means any conduct described in:

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

(b) Title 76, Chapter 5b, Sexual Exploitation Act;

(c) Section 76-7-102, incest;

(d) Section 76-9-702, lewdness; or

(e) Section 76-9-702.1, sexual battery.

(7) "Victim" means an individual, including a minor, against whom an offense has been allegedly committed.

~~[(3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.]~~

~~[(4)]~~ (8) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

Section 10. Section ~~77-37-3~~ is amended to read:

### **77-37-3. Bill of rights.**

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful

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to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, Title 77, Chapter 38b, Crime Victims Restitution Act, and Section 80-6-710. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Chapter 11a, Seizure of Property and Contraband, and Chapter 11d, Lost or Mislaid Property. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to

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provide timely notice to prosecution of any continuances or other changes that may be required.

~~[(j) Victims of sexual offenses have the following rights:]~~

~~[(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 53-10-803 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 53-10-802;]~~

~~[(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;]~~

~~[(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;]~~

~~[(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and]~~

~~[(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).]~~

~~[(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.]~~

~~[(2) The law enforcement agency investigating a sexual offense may:]~~

~~[(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;]~~

~~[(b) require that the victim's request be in writing; and]~~

~~[(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.]~~

~~[(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:]~~

~~[(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.]~~

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~~[(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.]~~

~~[(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.]~~

~~[(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.]~~

~~[(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).]~~

(2) In addition to the rights of a victim described in Subsection (1), a victim of a sexual offense has the right to:

(a) request voluntary testing for themselves for HIV infection as described in Section 53-10-803;

(b) request mandatory testing of the alleged sexual offender for HIV infection as described in Section 53-10-802;

(c) not to be prevented from, or charged for, a medical forensic examination;

(d) have the evidence from a sexual assault kit, or the contents of the sexual assault kit, preserved for the time periods described in Title 77, Chapter 11c, Retention of Evidence, without any charge to the victim;

(e) be informed whether a DNA profile was obtained from the testing of the evidence in a sexual assault kit or from other crime scene evidence;

(f) be informed whether a DNA profile developed from the evidence in a sexual assault kit, or from other crime scene evidence, has been entered into the Utah Combined DNA Index System;

(g) be informed of any result from a sexual assault kit or from other crime scene evidence if that disclosure would not impede or compromise an ongoing investigation, including:

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(i) whether there is a match between a DNA profile developed from the evidence in a sexual assault kit, or from other crime scene evidence, and a DNA profile contained in the Utah Combined DNA Index System; and

(ii) a toxicology result or other information that is collected from a sexual assault kit as part of a medical forensic examination of the victim;

(h) be informed in writing of policies governing the collection and preservation of a sexual assault kit;

(i) be informed of the status and location of a sexual assault kit;

(j) upon written request by the victim, receive a notice of intent from an agency, as defined in Section 53-10-905, if the agency intends to destroy or dispose of evidence from a sexual assault kit;

(k) be granted further preservation of the sexual assault kit if the agency, as defined in Section 53-10-905, intends to destroy or dispose of evidence from a sexual assault kit and the victim submits a written request as described in Section 53-10-905;

(l) designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (2) or Subsections (3) and (4); and

(m) be informed of all the enumerated rights in this Subsection (2).

(3) Subsections (2)(e) through (g) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(4) A law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (2)(e) through (g) upon the request of the victim of the sexual offense, or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email if an email address is available.

(5) A law enforcement agency investigating a sexual offense shall:

(a) notify the victim of the sexual offense, or the victim's designee, if the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed;

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(b) provide the information described in this section in a timely manner; and

(c) upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(6) The law enforcement agency investigating the sexual offense is responsible for informing the victim of the sexual offense, or the victim's designee, of the rights established under this section.

~~[(4)]~~ (7) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

Section 11. Section **80-4-301** is amended to read:

**80-4-301. Grounds for termination of parental rights -- Findings regarding reasonable efforts by division.**

(1) Subject to the protections and requirements of Section 80-4-104, and if the juvenile court finds termination of parental rights, from the child's point of view, is strictly necessary, the juvenile court may terminate all parental rights with respect to the parent if the juvenile court finds ~~[any one of the following]~~:

(a) ~~[that]~~ the parent has abandoned the child;

(b) ~~[that]~~ the parent has neglected or abused the child;

(c) ~~[that]~~ the parent is unfit or incompetent;

~~(d)~~ (i) the parent ~~{committed an act constituting}~~ was convicted of a sexual offense, as defined in Section 77-37-2, or a comparable offense under the laws of the state where the ~~{act}~~ offense occurred, against the other parent of the child;

(ii) the {act} offense resulted in the conception of the child; and

(iii) termination is in the best interest of the child;

~~[(d)]~~ (e) (i) ~~[that]~~ the child is being cared for in an out-of-home placement under the supervision of the juvenile court or the division;

(ii) ~~[that]~~ the parent has substantially neglected, willfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and



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(iii) [~~that~~] there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

[~~(e)~~] (f) failure of parental adjustment, as defined in this chapter;

[~~(f)~~] (g) [~~that~~] only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

[~~(g)~~] (h) (i) [~~that~~] the parent has voluntarily relinquished the parent's parental rights to the child; and

(ii) [~~that~~] termination is in the child's best interest;

[~~(h)~~] (i) [~~that,~~] after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

[~~(i)~~] (j) the terms and conditions of safe relinquishment of a newborn child have been complied with[~~, in accordance with~~] as described in Part 5, Safe Relinquishment of a Newborn Child.

(2) The juvenile court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the juvenile court has directed the division to provide reunification services to a parent, the juvenile court must find that the division made reasonable efforts to provide those services before the juvenile court may terminate the parent's rights under Subsection (1)(b), (c), [~~(d), (e), (f), or (h)~~] (e), (f), (g), or (i).

(b) Notwithstanding Subsection (3)(a), the juvenile court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the juvenile court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Section 12. **Repealer.**

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This bill repeals:

Section 76-5-414, **Child conceived as a result of sexual offense -- Custody and parent-time.**

Section 13. **Effective date.**

This bill takes effect on May 1, 2024.

Section 14. **Coordinating H.B. 328 with S.B. 76.**

If H.B. 328, Victims of Sexual Offenses Amendments, and S.B. 76, Evidence Retention Amendments, both pass and become law, the Legislature intends that, on May 1, 2024:

(1) Section 77-11c-301 be amended to read:

**"77-11c-301. Retention of evidence for felony offenses.**

~~[(1) Except as provided in Subsection (4) and Subsection 23A-5-201(3), an agency shall retain evidence of a felony offense:]~~

~~[(a) at the discretion of the prosecuting attorney; or]~~

~~[(b) until all direct appeals and retrials are final.]~~

~~[(2) If the prosecuting attorney decides to retain control over the evidence of the felony offense in anticipation of possible collateral attacks upon the judgment or for use in a potential prosecution, the prosecuting attorney may decline to authorize the disposal of the evidence:]~~

(1) Except as provided in Subsection (4), an agency shall retain evidence of a felony offense:

(a) for the longer of:

(i) the length of the statute of limitations for the felony offense if:

(A) charges are not filed for the felony offense; or

(B) the felony offense remains unsolved;

(ii) the length of time that any individual convicted of the felony offense, or a lesser included offense, remains in custody;

(iii) one year after the day on which all direct appeals of the final judgment for any individual convicted of the felony offense, or a lesser included offense, are exhausted;

(iv) the length of time that a petition for postconviction relief, and any appeal of the petition, is pending if an individual convicted of the felony offense files the petition within the one-year time period described in Subsection (1)(a)(iii); or

(v) 20 years from the day on which the evidence is collected if the evidence is the

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contents of a sexual assault kit; or

(b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the felony offense resulted in an acquittal or dismissal.

~~[(3)]~~ (2) An agency shall ensure that evidence of a felony offense is subject to a continuous chain of custody.

(3) Subsection (1) does not require an agency to return or dispose of evidence of a felony offense.

(4) An agency shall retain and preserve biological evidence of a violent felony offense in accordance with Part 4, Preservation of Biological Evidence for Violent Felony Offenses.";

(2) Section 77-11c-302 that is enacted by S.B. 76 be amended to read:

~~[(3)]~~ 77-11c-302. Requirements for not retaining evidence of felony offense --

**Preservation of sufficient evidence.**

(1) An agency is not required to retain evidence of a felony offense under Section 77-11c-301 if:

(a) (i) the agency determines that:

(A) the size, bulk, or physical character of the evidence renders retention impracticable or the evidence poses a security or safety problem for the agency; and

(B) the evidence no longer has any significant evidentiary value;

(ii) the agency preserves sufficient evidence from the property, contraband, item, or substance for use as evidence in a prosecution of the offense; and

(iii) a prosecuting attorney or a court authorizes the agency to return or dispose of the evidence as described in Section 77-11c-303;

(b) a court orders the agency to return evidence that is property to a claimant under Section 77-11a-305; or

(c) the evidence is wildlife or parts of wildlife.

(2) Notwithstanding Subsection (1), the agency may not dispose of evidence of a felony offense that is a sexual assault kit before the day on which the time period described in Section 77-11c-301 expires if:

(a) the agency sends a notice to the victim in accordance with Section 53-10-905; and

(b) the victim submits a written request for retention of the evidence within the 180-day period described in Section 53-10-905.

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(3) Subsection (1) does not require an agency to return or dispose of evidence of a felony offense.

(4) Subsection (1) does not apply to biological evidence of a violent felony offense because an agency is required to retain biological evidence of a violent felony offense as described in Part 4, Preservation of Biological Evidence for Violent Felony Offenses.

(5) If the evidence described in Subsection (1) is a controlled substance, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the controlled substance by:

(a) collecting and preserving a sample of the controlled substance for independent testing and use as evidence;

(b) taking a photographic or video record of the controlled substance with identifying case numbers;

(c) maintaining a written report of a chemical analysis of the controlled substance if a chemical analysis was performed by the agency;

(d) if the controlled substance exceeds 10 pounds, retaining at least one pound of the controlled substance that is randomly selected from the controlled substance; and

(e) for a violent felony offense, collecting and preserving biological evidence from the controlled substance as described in Section 77-11c-401.

(6) If the evidence described in Subsection (1) is drug paraphernalia, an agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the drug paraphernalia by:

(a) collecting and preserving a sample of the controlled substance from the drug paraphernalia for independent testing and use as evidence;

(b) maintaining a written report of a chemical analysis of the drug paraphernalia if a chemical analysis was performed by the agency;

(c) taking a photographic or video record of the drug paraphernalia with identifying case numbers; and

(d) for a violent felony offense, collecting and preserving biological evidence from the drug paraphernalia as described in Section 77-11c-401.

(7) If the evidence described in Subsection (1) is a computer, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the computer by:

(a) extracting all data from the computer that would be evidence in a prosecution of an individual for the offense;

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(b) taking a photographic or video record of the computer with identifying case numbers; and

(c) for a violent felony offense, collecting and preserving biological evidence from the computer as described in Section 77-11c-401.

(8) For any other type of evidence, the agency shall preserve sufficient evidence under Subsection (1)(a)(ii) of the property, contraband, item, or substance by:

(a) taking a photographic or video record of the property, contraband, item, or substance with identifying case numbers; and

(b) for a violent felony offense, collecting and preserving biological evidence as described in Section 77-11c-401."; and

(3) Section 77-11c-401 be amended to read:

**77-11c-401. Preservation of biological evidence -- Procedures -- Inventory request.**

(1) Except as provided in Section 77-11c-402, an evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense in accordance with this part.

(2) An evidence collecting or retaining entity shall preserve biological evidence of a violent felony offense:

(a) for the longer of:

(i) the length of the statute of limitations for the violent felony offense if:

(A) no charges are filed for the violent felony offense; or

(B) the violent felony offense remains unsolved;

~~[(ii) the length of time that the individual convicted of the violent felony offense or any lesser included violent offense remains in custody; or]~~

~~[(iii) the length of time that a co-defendant remains in custody;]~~

(ii) the length of time that any individual convicted of the violent felony offense, or a lesser included offense, remains in custody;

(iii) one year after the day on which all direct appeals of the judgment for any individual convicted of the violent felony offense, or a lesser included offense, are exhausted;

(iv) the length of time that a petition for postconviction relief, and any appeal of the petition, is pending if an individual convicted of the violent felony offense files the petition

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within the one-year time period described in Subsection (2)(a)(iii); or

(v) 20 years from the day on which the biological evidence is collected if the biological evidence is the contents of a sexual assault kit; or

(b) at the discretion of the prosecuting attorney or federal prosecutor if the prosecution of the violent felony offense resulted in an acquittal or dismissal.

~~[(b)]~~ (3) An evidence collecting or retaining entity shall ensure that biological evidence under Subsection (2) is:

(a) preserved in an amount and manner sufficient to:

(i) develop a DNA profile; and

(ii) if practicable, allow for independent testing of the biological evidence by a defendant; and

~~[(c)]~~ (b) subject to a continuous chain of custody.

~~[(3)]~~ (4) (a) Upon request by a defendant under Title 63G, Chapter 2, Government Records Access and Management Act, the evidence collecting or retaining entity shall prepare an inventory of the biological evidence preserved in connection with the defendant's criminal case.

(b) If the evidence collecting or retaining entity cannot locate biological evidence requested under Subsection ~~[(3)(a)]~~ (4)(a), the custodian for the entity shall provide a sworn affidavit to the defendant that:

(i) describes the efforts taken to locate the biological evidence; and

(ii) affirms that the biological evidence could not be located.

~~[(4)]~~The evidence collecting or retaining entity may dispose of biological evidence before the day on which the period described in Subsection (2)(a) expires if:]

~~[(a)]~~ no other provision of federal or state law requires the evidence collecting or retaining entity to preserve the biological evidence;]

~~[(b)]~~ the evidence collecting or retaining entity sends notice in accordance with Subsection (5); and]

~~[(c)]~~ an individual notified under Subsection (5)(a) does not within 180 days after the day on which the evidence collecting or retaining entity receives proof of delivery under Subsection (5):]

~~[(i)]~~ file a motion for testing of the biological evidence under Section 78B-9-301; or]

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~~[(ii) submit a written request under Subsection (5)(b)(ii).]~~

(5) (a) If the evidence collecting or retaining entity intends to dispose of ~~[the]~~ biological evidence of a violent felony offense before the day on which the period described in Subsection ~~[(2)(a)]~~ (2) expires, the evidence collecting or retaining entity shall send a notice of intent to dispose of the biological evidence that:

~~[(a)]~~ (i) is sent by certified mail, return receipt requested, or a delivery service that provides proof of delivery, to:

~~[(i)]~~ (A) an individual who remains in custody based on a criminal conviction related to the biological evidence;

~~[(ii)]~~ (B) the private attorney or public defender of record for each individual described in Subsection ~~[(5)(a)(i)]~~ (5)(a)(i)(A);

(C) the entity that employed the private attorney or public defender at the time of the criminal conviction;

~~[(iii)]~~ (D) if applicable, the prosecuting agency responsible for the prosecution of each individual described in Subsection ~~[(5)(a)(i)]~~ (5)(a)(i)(A); and

~~[(iv)]~~ (E) the Utah attorney general; and

~~[(b)]~~ (ii) explains that the party receiving the notice may:

~~[(i)]~~ (A) file a motion for testing of biological evidence under Section 78B-9-301 if the party is the individual convicted of the violent felony offense; or

~~[(ii)]~~ (B) submit a written request that the evidence collecting or retaining entity retain the biological evidence.

(b) An individual must file a motion, or submit a written request, described in Subsection (5)(a)(ii) within 180 days after the day on which the evidence collection or retaining entity receives proof of delivery under Subsection (5)(a).

(c) An evidence collection or retaining entity shall send a notice of intent to dispose of biological evidence that is the contents of a sexual assault kit to a victim in accordance with Section 53-10-905.

(6) The evidence collecting or retaining entity may not dispose of biological evidence of a violent felony offense before the day on which the time period described in Subsection (2) expires if:

(a) the evidence collecting or retaining entity is required by federal or state law to

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preserve the biological evidence; or

(b) (i) the evidence collecting or retaining entity sends notice in accordance with:

(A) Subsection (5); and

(B) Section 53-10-905 if the biological evidence is the contents of a sexual assault kit;

and

(ii) an individual notified under Subsection (5)(a) or Section 53-10-905:

(A) files a motion for testing of the biological evidence under Section 78B-9-301

within the 180-day period described in Subsection (5)(b); or

(B) submits a written request for retention of the biological evidence within the 180-day period described in Subsection (5)(b) or Section 53-10-905.

~~[(6)] (7) (a) Subject to Subsections ~~[(6)(b)]~~ (7)(b) and (c), if the evidence collecting or retaining entity receives a written request to retain the biological evidence ~~[under Subsection (5)(b)(ii)],~~ the evidence collecting or retaining entity shall retain the biological evidence ~~[while the defendant remains in custody]~~ for the time period described in Subsection (2).~~

~~[(b) Subject to Subsection (6)(c), the evidence collecting or retaining entity is not required to preserve physical evidence that may contain biological evidence if the physical evidence's size, bulk, or physical character renders retention impracticable.]~~

(b) Subject to Subsection (7)(c), the evidence collecting or retaining entity may only return or dispose of physical evidence of a violent felony offense as described in Part 3, Retention of Evidence for Felony Offenses.

(c) If the evidence collecting or retaining entity ~~[determines that retention is impracticable]~~ is not required to retain physical evidence of the violent felony offense under Part 3, Retention of Evidence for Felony Offenses, before returning or disposing of the physical evidence, the evidence collecting or retaining entity shall:

(i) remove the portions of the physical evidence likely to contain biological evidence related to the violent felony offense; and

(ii) preserve the removed biological evidence in a quantity sufficient to permit future DNA testing.

~~[(7)] (8) To comply with the preservation requirements described in this section, a law enforcement agency or a court may:~~

(a) retain the biological evidence; or



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(b) if a continuous chain of custody can be maintained, return the biological evidence to the custody of the other law enforcement agency that originally provided the biological evidence to the law enforcement agency."