

HB0257S03 compared with HB0257S02

~~text~~ shows text that was in HB0257S02 but was deleted in HB0257S03.

text shows text that was not in HB0257S02 but was inserted into HB0257S03.

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Senator Daniel McCay proposes the following substitute bill:

~~(SEX-BASED)~~ SEX-BASED DESIGNATIONS FOR PRIVACY, ~~(~~
~~ANTI-BULLYING)~~ ANTI-BULLYING, AND WOMEN'S
OPPORTUNITIES

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill establishes a standard regarding distinctions on the basis of sex and applies the standard in certain facilities and opportunities where designations on the basis of sex address individual privacy, bullying, and women's opportunities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ defines certain terms for the entire Utah Code;
- ▶ establishes a legal standard for distinctions on the basis of sex in certain publicly

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- owned ~~{and publicly funded}~~ or controlled circumstances;
- ▶ establishes acceptable and prohibited distinctions on the basis of sex;
 - ▶ enacts provisions regarding ~~{publicly owned or publicly funded}~~ sex-designated restroom, shower, or locker room facilities ~~{where}~~ that students use within the ~~{general}~~ public ~~{has an expectation of privacy}~~ education system;
 - ▶ requires local education agencies to establish a privacy plan with parents and students in certain cases to address gender identity and fear of bullying;
 - ▶ enacts provisions regarding sex-designated shower or locker room facilities where the general public has an expectation of privacy;
 - ▶ establishes components of the crimes of voyeurism and criminal trespass for certain actions within a covered sex-designated ~~{facility}~~ shower or locker room;
 - ▶ requires government entities to:
 - report allegations of certain criminal offenses to law enforcement;
 - adopt a privacy compliance plan;
 - provide a single-occupant facility in new construction; and
 - consider the feasibility of certain retrofit or remodel projects;
 - ▶ provides indemnification for government entities for certain claims;
 - ▶ requires the state auditor to investigate government entity compliance with certain requirements;
 - ▶ requires the attorney general to impose fines on political subdivisions that fail to cure noncompliance that the state auditor identifies;
 - ▶ amends certain crimes to establish a reasonable expectation of privacy in public restrooms, including enhanced penalties for ~~{}~~ ;
 - committing multiple offenses concurrently within a public restroom, shower, or locker room; and
 - committing certain offenses within a public restroom, shower, or locker room that is designated for the opposite sex;
 - ▶ enacts a criminal offense for loitering in a restroom, shower, or locker room where the general public has an expectation of privacy;
 - ▶ establishes elements of the crime of emergency reporting abuse for making repeated false reports alleging a violation of a sex-designation in a publicly owned or

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~~{publicly funded}~~controlled shower or locker room facility where the general public has an expectation of privacy; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53G-6-1101, as enacted by Laws of Utah 2022, Chapter 398

53G-8-211, as last amended by Laws of Utah 2023, Chapter 161

67-3-1, as last amended by Laws of Utah 2023, Chapters 16, 330, 353, and 480

67-5-1, as last amended by Laws of Utah 2023, Chapter 330

68-3-12.5, as last amended by Laws of Utah 2021, Chapter 93

76-6-206, as last amended by Laws of Utah 2023, Chapter 111

76-9-202, as last amended by Laws of Utah 2022, Chapter 161

76-9-702, as last amended by Laws of Utah 2023, Chapter 123

76-9-702.5, as last amended by Laws of Utah 2022, Chapter 185

76-9-702.7, as last amended by Laws of Utah 2023, Chapter 411

ENACTS:

63G-31-101, Utah Code Annotated 1953

63G-31-102, Utah Code Annotated 1953

63G-31-201, Utah Code Annotated 1953

63G-31-202, Utah Code Annotated 1953

63G-31-203, Utah Code Annotated 1953

63G-31-204, Utah Code Annotated 1953

63G-31-301, Utah Code Annotated 1953

63G-31-302, Utah Code Annotated 1953

63G-31-303, Utah Code Annotated 1953

63G-31-304, Utah Code Annotated 1953

63G-31-401, Utah Code Annotated 1953

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63G-31-402, Utah Code Annotated 1953

76-9-702.8, Utah Code Annotated 1953

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

Section 1. Section **53G-6-1101** is amended to read:

53G-6-1101. Report -- Action plan.

(1) As used in this section:

(a) "Gender-designated interscholastic sport" means a sport that is specifically designated for female or male students.

(b) "Interscholastic sport" means an activity in which a student represents the student's school in the sport in competition against another school.

(c) "School" means a public school that sponsors or offers an interscholastic sport in which students enrolled at the school may participate.

(d) "Title IX" means Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.

(2) Before the beginning of each academic year, the athletic director or another administrator of each school shall report to the school's local governing board regarding:

(a) the number and type of interscholastic sports available at the school, categorized by gender designation;

(b) the number of students competing in a gender-designated interscholastic sport at the school, categorized by gender;

(c) the amount of spending that the school devotes to each gender-designated sport, reported in total amount and on a per-student basis;

(d) a comparison and evaluation of designated practice and game locations in gender-designated interscholastic sports;

(e) any information regarding the school's efforts in compliance with Title 63G, Chapter 31, Part 2, Distinctions on the Basis of Sex, and Title IX [compliance]; and

(f) if there is a discrepancy between male-designated and female-designated sports of 10% or greater, an action plan that the school develops to address the discrepancy.

(3) An LEA governing board that receives the report described in Subsection (2) shall review the report in a public board meeting.

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Section 2. Section **53G-8-211** is amended to read:

53G-8-211. Responses to school-based behavior.

(1) As used in this section:

(a) "Evidence-based" means a program or practice that has:

(i) had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population;

(ii) been rated as effective by a standardized program evaluation tool; or

(iii) been approved by the state board.

(b) "Habitual truant" means a school-age child who:

(i) is in grade 7 or above, unless the school-age child is under 12 years old;

(ii) is subject to the requirements of Section 53G-6-202; and

(iii) (A) is truant at least 10 times during one school year; or

(B) fails to cooperate with efforts on the part of school authorities to resolve the school-age child's attendance problem as required under Section 53G-6-206.

(c) "Minor" means the same as that term is defined in Section 80-1-102.

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

(e) "Prosecuting attorney" means the same as that term is defined in Subsections 80-1-102(65)(b) and (c).

(f) "Restorative justice program" means a school-based program or a program used or adopted by a local education agency that is designed:

(i) to enhance school safety, reduce school suspensions, and limit referrals to law enforcement agencies and courts; and

(ii) to help minors take responsibility for and repair harmful behavior that occurs in school.

(g) "School administrator" means a principal of a school.

(h) "School is in session" means a day during which the school conducts instruction for which student attendance is counted toward calculating average daily membership.

(i) "School resource officer" means a law enforcement officer, as defined in Section 53-13-103, who contracts with, is employed by, or whose law enforcement agency contracts with a local education agency to provide law enforcement services for the local education

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agency.

(j) "School-age child" means the same as that term is defined in Section 53G-6-201.

(k) (i) "School-sponsored activity" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific local education agency or public school, according to LEA governing board policy, and satisfies at least one of the following conditions:

(A) the activity is managed or supervised by a local education agency or public school, or local education agency or public school employee;

(B) the activity uses the local education agency's or public school's facilities, equipment, or other school resources; or

(C) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or Minimum School Program dollars.

(ii) "School-sponsored activity" includes preparation for and involvement in a public performance, contest, athletic competition, demonstration, display, or club activity.

(l) (i) "Status offense" means an offense that would not be an offense but for the age of the offender.

(ii) "Status offense" does not mean an offense that by statute is a misdemeanor or felony.

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense on school property where the student is enrolled:

(a) when school is in session; or

(b) during a school-sponsored activity.

(3) If a minor is alleged to have committed an offense on school property that is a class C misdemeanor, an infraction, or a status offense, the school administrator, the school administrator's designee, or a school resource officer may refer the minor:

(a) to an evidence-based alternative intervention, including:

(i) a mobile crisis outreach team;

(ii) a youth services center, as defined in Section 80-5-102;

(iii) a youth court or comparable restorative justice program;

(iv) an evidence-based alternative intervention created and developed by the school or school district;

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(v) an evidence-based alternative intervention that is jointly created and developed by a local education agency, the state board, the juvenile court, local counties and municipalities, the Department of Health and Human Services; or

(vi) a tobacco cessation or education program if the offense is a violation of Section 76-10-105; or

(b) for prevention and early intervention youth services, as described in Section 80-5-201, by the Division of Juvenile Justice Services if the minor refuses to participate in an evidence-based alternative intervention described in Subsection (3)(a).

(4) Except as provided in Subsection (5), if a minor is alleged to have committed an offense on school property that is a class C misdemeanor, an infraction, or a status offense, a school administrator, the school administrator's designee, or a school resource officer may refer a minor to a law enforcement officer or agency or a court only if:

(a) the minor allegedly committed the same offense on school property on two previous occasions; and

(b) the minor was referred to an evidence-based alternative intervention, or to prevention or early intervention youth services, as described in Subsection (3) for both of the two previous offenses.

(5) If a minor is alleged to have committed a traffic offense that is an infraction, a school administrator, the school administrator's designee, or a school resource officer may refer the minor to a law enforcement officer or agency, a prosecuting attorney, or a court for the traffic offense.

(6) Notwithstanding Subsection (4), a school resource officer may:

(a) investigate possible criminal offenses and conduct, including conducting probable cause searches;

(b) consult with school administration about the conduct of a minor enrolled in a school;

(c) transport a minor enrolled in a school to a location if the location is permitted by law;

(d) take temporary custody of a minor in accordance with Section 80-6-201; or

(e) protect the safety of students and the school community, including the use of reasonable and necessary physical force when appropriate based on the totality of the

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circumstances.

(7) (a) If a minor is referred to a court or a law enforcement officer or agency under Subsection (4), the school or the school district shall appoint a school representative to continue to engage with the minor and the minor's family through the court process.

(b) A school representative appointed under Subsection (7)(a) may not be a school resource officer.

(c) A school district or school shall include the following in the school district's or school's referral to the court or the law enforcement officer or agency:

(i) attendance records for the minor;

(ii) a report of evidence-based alternative interventions used by the school before the referral, including outcomes;

(iii) the name and contact information of the school representative assigned to actively participate in the court process with the minor and the minor's family;

(iv) if the minor was referred to prevention or early intervention youth services under Subsection (3)(b), a report from the Division of Juvenile Justice Services that demonstrates the minor's failure to complete or participate in prevention and early intervention youth services under Subsection (3)(b); and

(v) any other information that the school district or school considers relevant.

(d) A minor referred to a court under Subsection (4) may not be ordered to or placed in secure detention, including for a contempt charge or violation of a valid court order under Section 78A-6-353, when the underlying offense is a status offense or infraction.

(e) If a minor is referred to a court under Subsection (4), the court may use, when available, the resources of the Division of Juvenile Justice Services or the Division of Substance Abuse and Mental Health to address the minor.

(8) If a minor is alleged to have committed an offense on school property that is a class B misdemeanor or a class A misdemeanor, the school administrator, the school administrator's designee, or a school resource officer may refer the minor directly to a court or to the evidence-based alternative interventions in Subsection (3)(a).

(9) A school administrator, a school administrator's designee, and a school resource officer retain the discretion described under this section if the offense is a violation of Section 63G-31-201.

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Section 3. Section **63G-31-101** is enacted to read:

CHAPTER 31. Distinctions on the Basis of Sex

Part 1. General Provisions

63G-31-101. Definitions.

As used in this chapter:

(1) (a) "Changing room" means a space designated for multiple individuals to dress or undress within the same space.

(b) "Changing room" includes:

(i) a dressing room, fitting room, locker room, or shower room; and

(ii) a restroom when a changing room contains or is attached to the restroom.

(2) (a) "Facility" means a publicly owned or controlled building, structure, or other improvement.

(b) "Facility" includes a subset of a publicly owned or controlled building, structure, or other improvement, including a restroom or locker room.

(3) "Government entity" means:

(a) the state; or

(b) any county, municipality, special district, special service district, or other political subdivision or administrative unit of the state, including:

(i) a state institution of higher education as defined in Section 53B-2-101; or

(ii) a local education agency as defined in Section 53G-7-401.

(4) "Intersex individual" means the same as that term is defined in Section 26B-8-101.

(5) "Men's restroom" means a restroom that is designated for the exclusive use of males and not females.

~~(5)~~ (6) (a) "Open to the general public" means that a privacy space is:

(i) freely accessible to a member of the general public;

(ii) accessible to an individual who has purchased a ticket, paid an entry fee, paid a membership fee, or otherwise paid to access the facility containing the relevant privacy space;
or

(iii) accessible to a student of an institution of higher education described in Section 52B-2-101, either freely or as described in Subsection ~~(5)~~ (6)(a)(ii).

(b) "Open to the general public" does not include a privacy space that is:

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(i) only accessible to employees of a government entity; or

(ii) any area that is not normally accessible to the public.

(6)7) "Privacy space" means a restroom or changing room within a publicly owned or controlled facility, where an individual has a reasonable expectation of privacy.

(7)8) "Publicly owned or controlled" means that a government entity has at least a partial ownership interest in or has control of a facility, program, or event.

(8)9) (a) "Restroom" means any space that

(a) includes a toilet.

(b) "Restroom" includes:

(i) sex-designated men's restrooms;

(ii) sex-designated women's restrooms;

(iii) unisex restrooms; and

(b)iv) ~~is contained in or attached to a changing room;~~ single-occupant restrooms.

(9)10) "Sex-designated" means that a facility, program, or event is designated specifically for males or females and not the opposite sex.

(10)11) "Single-occupant" means, in relation to a single-occupant facility, ~~" means a restroom"~~ or privacy space, that the facility or ~~locker room facility~~ privacy space:

(a) ~~with~~ has floor-to-ceiling walls;

(b) ~~with~~ has an entirely encased and locking door; and

(c) ~~that~~ is designated for single occupancy.

(11)12) "~~Unisex facility" means a facility that~~ Unisex" means, in relation to a unisex facility or privacy space, that the facility or privacy space:

(a) is designated for the use of both sexes; or

(b) is not sex-designated.

(13) "Women's restroom" means a restroom that is designated for the exclusive use of females and not males.

Section 4. Section 63G-31-102 is enacted to read:

63G-31-102. Severability.

(1) If any provision of this chapter or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter shall be given effect without the invalidated

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provision or application.

(2) The provisions of this chapter are severable.

Section ~~{4}~~5. Section **63G-31-201** is enacted to read:

Part 2. Distinctions on the Basis of Sex

63G-31-201. Distinctions on the basis of sex.

(1) A government entity may not, on the basis of sex, exclude an individual from participation in, deny an individual from the benefits of, or subject an individual to a sex-based distinction in or under any government or otherwise publicly owned or controlled facility, program, or event, unless the distinction is substantially related to an important government objective.

(2) Each government entity shall ensure the preservation of distinctions on the basis of sex that protect individual privacy and competitive opportunity, as described in this chapter.

(3) (a) ~~As used in this Subsection (3), "athletic facility" does not include a privacy space.~~

(b) To preserve the individual privacy and competitive opportunity of females, an individual is not entitled to and may not access, use, or benefit from a government ~~for otherwise publicly funded~~entity's athletic facility, program, or event if:

- (i) the facility, program, or event is designated for females; and
- (ii) the individual is not female.

~~{b}~~c) To preserve the individual privacy and competitive opportunity of males, an individual is not entitled to and may not access, use, or benefit from a government ~~for otherwise publicly funded~~entity's athletic facility, program, or event if:

- (i) the facility, program, or event is designated for males; and
- (ii) the individual is not male.

Section ~~{5}~~6. Section **63G-31-202** is enacted to read:

63G-31-202. Sex-based distinctions to protect individual privacy.

A distinction on the basis of sex that provides separate accommodations for the sexes is substantially related to the important government objective of protecting individual privacy in the following contexts:

- (1) a privacy space; and
- (2) a correctional facility as defined in Section 77-16b-102.

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Section ~~{6}~~7. Section **63G-31-203** is enacted to read:

63G-31-203. Sex-based distinctions to protect athletic health and competitive opportunity.

A distinction on the basis of sex to provide separate accommodations for the sexes is substantially related to the important government objective of protecting health and competitive opportunity in the availability or quality of an athletic venue, event, or program within the public education system.

Section ~~{7}~~8. Section **63G-31-204** is enacted to read:

63G-31-204. Prohibited sex-based distinctions.

The following actions within the public education system constitute a violation of Section 63G-31-201:

(1) providing a sex-designated facility, program, or event of a higher quality to one sex and of a lesser quality to the opposite sex rather than ensuring equivalent quality or rotational sharing, including the use of athletic facilities or venues;

(2) providing males or females preferred or more advantageous scheduling of facilities, programs, or events in comparison to the opposite sex rather than ensuring equivalent scheduling practices or rotational sharing, including the scheduling of athletic events or practices;

(3) providing males or females with more sex-designated opportunities than the opposite sex in excess of a 10% disparity;

(4) requiring males or females to participate or compete against the opposite sex in any sex-designated facility, program, or event; or

(5) requiring or knowingly allowing males or females to use a sex-designated facility in the presence of the opposite sex.

Section ~~{8}~~9. Section **63G-31-301** is enacted to read:

Part 3. Sex-based Distinctions in Privacy Spaces

63G-31-301. Sex-designated privacy spaces in public schools.

(1) To preserve the individual privacy of male and female students in the public education system, a student may only access an operational sex-designated privacy space within a public school that is designated for student use if the student's sex corresponds with the sex designation of the privacy space.

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(2) For a student who makes a request to use a privacy space other than the ~~corresponding~~ sex-designated privacy space ~~described in Subsection (1)~~ that corresponds with the student's sex because of the student's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, the local education agency, as defined in Section 53E-1-102, shall coordinate with the student's parent or legal guardian to develop a privacy plan that provides the student with:

(a) (i) reasonable access to a unisex or single-occupant facility; or

(ii) reasonable access to a faculty or staff restroom; or

(b) if the access described in Subsection (2)(a) is unavailable, reasonable access to private use of an otherwise sex-designated privacy space through staggered scheduling or another policy provision that provides for temporary private access.

(3) A student in a privacy space has a reasonable expectation of privacy, satisfying the privacy element of the offense of voyeurism in Section 76-9-702.7.

(4) An individual may use the following evidence as a defense to an allegation that the student is not eligible to access and use a sex-designated privacy space under Subsection (1):

(a) the student's unamended birth certificate that corresponds with the sex designation of privacy space, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or

(b) documentation of a medical treatment or procedure that is consistent only with the sex designation of the privacy space.

(5) Subsection (1) does not apply to:

(a) a unisex or single-occupant facility; or

(b) an intersex individual.

Section ~~9~~10. Section **63G-31-302** is enacted to read:

63G-31-302. Sex-designated changing rooms in publicly owned facilities open to the general public.

(1) (a) Except as provided in Subsection (1)(b), to preserve the individual privacy of males and females, an individual may only access an operational sex-designated changing room in a government entity's facility that is open to the general public if:

(i) the individual's sex corresponds with the sex designation of the changing room; or

(ii) the individual has:

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(A) legally amended the individual's birth certificate to correspond with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and

(B) undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102 to correspond with the sex designation of the changing room.

(b) Subsection (1)(a) does not apply to:

(i) a minor child who requires assistance to access or use the changing room that corresponds with the sex of the minor's parent, guardian, or relative;

(ii) a dependent minor, as defined in Section 76-5-110, or a dependent adult, as defined in Section 76-5-111 who requires assistance to access or use the changing room that corresponds with the sex of a caretaker;

(iii) an individual providing public safety services, including law enforcement, emergency medical services as defined in Section 26B-4-101, and fire protection;

(iv) an employee of a health care facility, as defined in Section 26B-2-201, to provide health care services to a patient of the health care facility; or

(v) an individual whose employment duties include the maintenance or cleaning of the changing room.

(2) An individual in a changing room has a reasonable expectation of privacy, satisfying the privacy element of the offense of voyeurism in Section 76-9-702.7.

(3) An individual who knowingly enters a changing room in violation of Subsection (1) commits the offense of criminal trespass under Section 76-6-206 if the individual enters or remains in the changing room~~;~~

~~(a) under circumstances which a reasonable person would expect to likely cause affront or alarm to, on, or in the presence of another individual~~;~~ or~~

~~(b) for any purpose other than the intended use of the changing room.~~;~~~~

(4) The surgical provision described in Subsection (1)(a)(ii) does not shield an individual from the offense of lewdness related to genitalia under Subsection 76-9-202(3) or 76-9-202.5(4).

(5) An individual may use the following evidence as a defense against an allegation that the individual is not eligible to access and use a sex-designated changing room under Subsection (1):

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(a) for an individual whose birth sex corresponds with the sex designation of the changing room:

(i) an individual's unamended birth certificate that corresponds with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or

(ii) documentation of a medical treatment or procedure that is consistent only with the sex designation of the changing room; or

(b) for an individual whose birth sex does not correspond with the sex designation of the changing room:

(i) the individual's amended birth certificate, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and

(ii) documentation that demonstrates that the individual has undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102.

(6) Subsection (1) does not apply to:

(a) a unisex or single-occupant facility;

(b) a changing room that is not open to the general public; or

(c) an intersex individual.

Section ~~{10}~~11. Section **63G-31-303** is enacted to read:

63G-31-303. Unisex or single-occupant facilities.

The availability of a unisex facility or single-occupant facility satisfies a government entity's obligations regarding an individual who, because of the individual's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, is uncomfortable using:

(1) for a student, a privacy space in accordance with Section 63G-31-301; or

(2) a changing room in accordance with Section 63G-31-302.

Section ~~{11}~~12. Section **63G-31-304** is enacted to read:

63G-31-304. Government entity facility compliance.

(1) Except as provided under Section 53G-8-211, a government entity shall contact law enforcement if the entity receives a complaint or allegation regarding the following within a privacy space in a facility that is open to the general public:

(a) an offense of lewdness under Section 76-9-702;

(b) an offense of lewdness involving a child under Section 76-9-702.5;

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(c) voyeurism under Section 76-9-702.7;
(d) loitering in a privacy space under Section 76-9-702.8; or
(e) for a changing room described in Section ~~{63G-31-301}~~63G-31-302, an offense of criminal trespass under Subsection ~~{63G-31-301}~~63G-31-302~~(3)2~~.

(2) To preserve the individual privacy of males and females in privacy spaces:

(a) a government entity shall adopt a privacy compliance plan to address compliance with the government entity's duties under this chapter;

(b) for construction of a new facility, a government entity shall ensure that the new construction includes a single-occupant facility; and

(c) for existing privacy spaces, a government entity:

(i) shall consider the feasibility of retrofitting or remodeling to include:

(A) floor-to-ceiling walls and doors or similar privacy protections;

(B) curtains; or

(C) other methods of improving individual privacy within the facility that are comparable to the methods described in Subsections (2)(a)(i) and (ii); and

(ii) may reduce the number of fixtures that state law requires by up to 20% to provide adequate space for the retrofitting or remodeling described in Subsection (2)(a).

(3) A government entity shall ensure sufficient sex-designated privacy spaces through compliance with Sections 15A-3-112 and 15A-3-304 regarding unisex facilities.

Section ~~{12}~~13. Section **63G-31-401** is enacted to read:

Part 4. Enforcement and Indemnification

63G-31-401. Government entity noncompliance.

(1) The state auditor shall:

(a) establish a process to receive and investigate alleged violations of this chapter by a government entity;

(b) provide notice to the relevant government entity of:

(i) each alleged violation of this chapter by the government entity;

(ii) each violation that the state auditor determines to be substantiated, including an opportunity to cure the violation not to exceed 30 calendar days; and

(c) if a government entity fails to cure a violation in accordance with Subsection (1)(b)(ii), report the government entity's failure to:

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(i) for a political subdivision as defined in Section 63G-7-102, the attorney general for enforcement under Subsection (2); and

(ii) for a state entity as defined in Section 67-4-2, the Legislative Management Committee.

(2) (a) The attorney general shall:

(i) enforce this chapter against a political subdivision upon referral by the state auditor under Subsection (1)(c) by imposing a fine of up to \$10,000 per violation per day; and

(ii) deposit fines under Subsection (2)(a) into the General Fund.

(b) A political subdivision may seek judicial review of a fine that the attorney general imposes under this section to determine whether the fine is clearly erroneous.

Section ~~{13}~~14. Section **63G-31-402** is enacted to read:

63G-31-402. Indemnification.

The attorney general shall defend, indemnify, and hold harmless a government entity acting under color of state law to enforce this chapter for any claims or damages, including court costs and attorney fees that:

(1) arise as a result of this chapter; and

(2) are not covered by the government entity's insurance policies or any coverage agreement that the State Risk Management Fund issues.

Section ~~{14}~~15. Section **67-3-1** is amended to read:

67-3-1. Functions and duties.

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

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(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies; and

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all the entity's fiscal affairs;

(ii) whether the entity's administrators have faithfully complied with legislative intent;

(iii) whether the entity's operations have been conducted in an efficient, effective, and

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cost-efficient manner;

(iv) whether the entity's programs have been effective in accomplishing the intended objectives; and

(v) whether the entity's management, control, and information systems are adequate, effective, and secure.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had the entity's financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor:

(a) shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office; and

(b) may:

(i) subpoena witnesses and documents, whether electronic or otherwise; and

(ii) examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding the property at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of revenues against:

(i) persons who by any means have become entrusted with public money or property and have failed to pay over or deliver the money or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and

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disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds;

or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds;

(h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1; and

(i) withhold state allocated funds or the disbursement of property taxes from a local government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity registers and maintains the entity's registration with the lieutenant governor, in accordance with Section 67-1a-15.

(8) (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions;

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the

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state; and

(iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in district court requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an account.

(c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.

(d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:

(i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;

(ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:

(A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.

(e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection (8)(d).

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

(b) If the state auditor receives a notice of non-registration, the state auditor may prohibit the local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, from accessing:

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(i) money held by the state; and

(ii) money held in an account of a financial institution by:

(A) contacting the entity's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the entity access to an account.

(c) The state auditor shall remove the prohibition on accessing funds described in Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in Section 67-1a-15, from the lieutenant governor.

(11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state auditor:

(a) shall authorize a disbursement by a local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if the disbursement is necessary to:

(i) avoid a major disruption in the operations of the local government entity, limited purpose entity, or state or local taxing or fee-assessing unit; or

(ii) meet debt service obligations; and

(b) may authorize a disbursement by a local government entity, limited purpose entity, or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

(12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (12)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

(13) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17,

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Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities, Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(14) (a) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(b) If the state auditor receives notice under Subsection 11-41-104(7) from the Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor may initiate an audit or investigation of the public entity subject to the notice to determine compliance with Section 11-41-103.

(15) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how that work shall be audited; and

(ii) provide additional funding for those audits, if necessary.

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(16) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among special district boards of trustees, officers, and employees and special service district boards, officers, and employees:

(i) prepare a Uniform Accounting Manual for Special Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for special districts under Title 17B, Limited Purpose Local Government Entities - Special Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under this Subsection (16)(a) so that the manual continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) (A) prepare instructional materials, conduct training programs, and render other services considered necessary to assist special districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific special districts and special service districts selected by the state auditor and make the information available to all districts.

(17) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through

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other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent the workpapers would disclose the identity of an individual who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the individual be protected;

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to an individual who is not an employee or head of a governmental entity for the individual's response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State

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Records Committee determination under Subsection (17)(d)(ii), as provided in Section 63G-2-404.

(18) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through the Legislative Management Committee's audit subcommittee that the entity has not implemented that recommendation.

(19) The state auditor shall, with the advice and consent of the Senate, appoint the state privacy officer described in Section 67-3-13.

(20) Except as provided in Subsection (21), the state auditor shall report, or ensure that another government entity reports, on the financial, operational, and performance metrics for the state system of higher education and the state system of public education, including metrics in relation to students, programs, and schools within those systems.

(21) (a) Notwithstanding Subsection (20), the state auditor shall conduct regular audits of:

(i) the scholarship granting organization for the Special Needs Opportunity Scholarship Program, created in Section 53E-7-402;

(ii) the State Board of Education for the Carson Smith Scholarship Program, created in Section 53F-4-302; and

(iii) the scholarship program manager for the Utah Fits All Scholarship Program, created in Section 53F-6-402.

(b) Nothing in this subsection limits or impairs the authority of the State Board of Education to administer the programs described in Subsection (21)(a).

(22) The state auditor shall, based on the information posted by the Office of Legislative Research and General Counsel under Subsection 36-12-12.1(2), for each policy, track and post the following information on the state auditor's website:

(a) the information posted under Subsections 36-12-12.1(2)(a) through (e);

(b) an indication regarding whether the policy is timely adopted, adopted late, or not adopted;

(c) an indication regarding whether the policy complies with the requirements established by law for the policy; and

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(d) a link to the policy.

(23) (a) A legislator may request that the state auditor conduct an inquiry to determine whether a government entity, government official, or government employee has complied with a legal obligation directly imposed, by statute, on the government entity, government official, or government employee.

(b) The state auditor may, upon receiving a request under Subsection (23)(a), conduct the inquiry requested.

(c) If the state auditor conducts the inquiry described in Subsection (23)(b), the state auditor shall post the results of the inquiry on the state auditor's website.

(d) The state auditor may limit the inquiry described in this Subsection (23) to a simple determination, without conducting an audit, regarding whether the obligation was fulfilled.

(24) The state auditor shall:

(a) ensure compliance with Title 63G, Chapter 31, Distinctions on the Basis of Sex, in accordance with Section 63G-31-401; and

(b) report to the Legislative Management Committee, upon request, regarding the state auditor's actions under this Subsection (24).

Section ~~15~~16. Section **67-5-1** is amended to read:

67-5-1. General duties.

(1) The attorney general shall:

(a) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(b) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

(c) after judgment on any cause referred to in Subsection (1)(b), direct the issuance of process as necessary to execute the judgment;

(d) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(e) keep a file of all cases in which the attorney general is required to appear, including

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any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(i) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

(ii) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

(iii) deliver this information to the attorney general's successor in office;

(f) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of the district and county attorneys' offices, including the authority described in Subsection (2);

(g) give the attorney general's opinion in writing and without fee, when required, upon any question of law relating to the office of the requester:

(i) in accordance with Section 67-5-1.1, to the Legislature or either house;

(ii) to any state officer, board, or commission; and

(iii) to any county attorney or district attorney;

(h) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

(i) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(j) when the property of a judgment debtor in any judgment mentioned in Subsection (1)(i) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(k) when in the attorney general's opinion it is necessary for the collection or

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enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(l) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(m) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(n) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(o) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(p) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(q) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(r) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26B, Chapter 3, Part 11, Utah False Claims Act;

(s) investigate and prosecute complaints of abuse, neglect, or exploitation of patients:

(i) in health care facilities that receive payments under the state Medicaid program;

(ii) in board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.

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Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

(iii) who are receiving medical assistance under the Medicaid program as defined in Section 26B-3-101 in a noninstitutional or other setting;

(t) (i) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(A) cost the state more than \$500,000; or

(B) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(ii) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report;

(u) (i) submit a written report to the committees described in Subsection (1)(u)(ii) that summarizes any lawsuit or decision in which a court or the Office of the Attorney General has determined that a state statute is unconstitutional or unenforceable since the attorney general's last report under this Subsection (1)(u), including any:

(A) settlements reached;

(B) consent decrees entered;

(C) judgments issued;

(D) preliminary injunctions issued;

(E) temporary restraining orders issued; or

(F) formal or informal policies of the Office of the Attorney General to not enforce a law; and

(ii) at least 30 days before the Legislature's May and November interim meetings, submit the report described in Subsection (1)(u)(i) to:

(A) the Legislative Management Committee;

(B) the Judiciary Interim Committee; and

(C) the Law Enforcement and Criminal Justice Interim Committee;

(v) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

(i) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

(ii) any other information or analysis requested by the rate committee;

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(w) before the end of each calendar year, create an annual performance report for the Office of the Attorney General and post the report on the attorney general's website;

(x) ensure that any training required under this chapter complies with Title 63G, Chapter 22, State Training and Certification Requirements;

(y) notify the legislative general counsel in writing within three business days after the day on which the attorney general is officially notified of a claim, regardless of whether the claim is filed in state or federal court, that challenges:

(i) the constitutionality of a state statute;

(ii) the validity of legislation; or

(iii) any action of the Legislature; [~~and~~]

(z) (i) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a special advisor to the Office of the Governor and the Office of the Attorney General in matters relating to Native American and tribal issues to:

(A) establish outreach to the tribes and affected counties and communities; and

(B) foster better relations and a cooperative framework; and

(ii) annually report to the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

(A) the status of the work of the special advisor described in Subsection (1)(z)(i); and

(B) whether the need remains for the ongoing appropriation to fund the special advisor described in Subsection (1)(z)(i)[~~;~~]; and

(aa) (i) enforce compliance with Title 63G, Chapter 31, Distinctions on the Basis of Sex, in accordance with Section 63G-31-401; and

(ii) report to the Legislative Management Committee, upon request, regarding the attorney general's enforcement under this Subsection (1)(aa).

(2) (a) The attorney general may require a district attorney or county attorney of the state to, upon request, report on the status of public business entrusted to the district or county attorney's charge.

(b) The attorney general may review investigation results de novo and file criminal charges, if warranted, in any case involving a first degree felony, if:

(i) a law enforcement agency submits investigation results to the county attorney or district attorney of the jurisdiction where the incident occurred and the county attorney or

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district attorney:

(A) declines to file criminal charges; or

(B) fails to screen the case for criminal charges within six months after the law enforcement agency's submission of the investigation results; and

(ii) after consultation with the county attorney or district attorney of the jurisdiction where the incident occurred, the attorney general reasonably believes action by the attorney general would not interfere with an ongoing investigation or prosecution by the county attorney or district attorney of the jurisdiction where the incident occurred.

(c) If the attorney general decides to conduct a review under Subsection (2)(b), the district attorney, county attorney, and law enforcement agency shall, within 14 days after the day on which the attorney general makes a request, provide the attorney general with:

(i) all information relating to the investigation, including all reports, witness lists, witness statements, and other documents created or collected in relation to the investigation;

(ii) all recordings, photographs, and other physical or digital media created or collected in relation to the investigation;

(iii) access to all evidence gathered or collected in relation to the investigation; and

(iv) the identification of, and access to, all officers or other persons who have information relating to the investigation.

(d) If a district attorney, county attorney, or law enforcement agency fails to timely comply with Subsection (2)(c), the attorney general may seek a court order compelling compliance.

(e) If the attorney general seeks a court order under Subsection (2)(d), the court shall grant the order unless the district attorney, county attorney, or law enforcement agency shows good cause and a compelling interest for not complying with Subsection (2)(c).

Section ~~16~~17. Section **68-3-12.5** is amended to read:

68-3-12.5. Definitions for Utah Code.

(1) The definitions listed in this section apply to the Utah Code, unless:

(a) the definition is inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute; or

(b) a different definition is expressly provided for the respective title, chapter, part, section, or subsection.

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(2) "Adjudicative proceeding" means:

(a) an action by a board, commission, department, officer, or other administrative unit of the state that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including an action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of an action described in Subsection (2)(a).

(3) "Administrator" includes "executor" when the subject matter justifies the use.

(4) "Advisory board," "advisory commission," and "advisory council" mean a board, commission, committee, or council that:

(a) is created by, and whose duties are provided by, statute or executive order;

(b) performs its duties only under the supervision of another person as provided by statute; and

(c) provides advice and makes recommendations to another person that makes policy for the benefit of the general public.

(5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.

(6) "City" includes, depending on population, a metro township as defined in Section 10-3c-102.

(7) "County executive" means:

(a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;

(b) the county executive, in the county executive-council optional form of government authorized by Section 17-52a-203; or

(c) the county manager, in the council-manager optional form of government authorized by Section 17-52a-204.

(8) "County legislative body" means:

(a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;

(b) the county council, in the county executive-council optional form of government

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authorized by Section 17-52a-203; and

(c) the county council, in the council-manager optional form of government authorized by Section 17-52a-204.

(9) "Depose" means to make a written statement made under oath or affirmation.

(10) (a) "Equal" means, with respect to biological sex, of the same value.

(b) "Equal" does not mean, with respect to biological sex:

(i) a characteristic of being the same or identical; or

(ii) a requirement that biological sexes be ignored or co-mingled in every circumstance.

~~(10)~~ (11) "Executor" includes "administrator" when the subject matter justifies the use.

(12) "Father" means a parent who is of the male sex.

(13) "Female" means the characteristic of an individual whose biological reproductive system is of the general type that functions in a way that could produce ova.

~~(11)~~ (14) "Guardian" includes a person who:

(a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment; or

(b) is appointed by a court to manage the estate of a minor or incapacitated person.

~~(12)~~ (15) "Highway" includes:

(a) a public bridge;

(b) a county way;

(c) a county road;

(d) a common road; and

(e) a state road.

~~(13)~~ (16) "Intellectual disability" means a significant, subaverage general intellectual functioning that:

(a) exists concurrently with deficits in adaptive behavior; and

(b) is manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

~~(14)~~ (17) "Intermediate care facility for people with an intellectual disability" means an intermediate care facility for the mentally retarded, as defined in Title XIX of the Social

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Security Act.

~~[(15)]~~ (18) "Land" includes:

- (a) land;
- (b) a tenement;
- (c) a hereditament;
- (d) a water right;
- (e) a possessory right; and
- (f) a claim.

(19) "Male" means the characteristic of an individual whose biological reproductive system is of the general type that functions to fertilize the ova of a female.

(20) "Man" means an adult human male.

~~[(16)]~~ (21) "Month" means a calendar month, unless otherwise expressed.

(22) "Mother" means a parent who is of the female sex.

~~[(17)]~~ (23) "Oath" includes "affirmation."

~~[(18)]~~ (24) "Person" means:

- (a) an individual;
- (b) an association;
- (c) an institution;
- (d) a corporation;
- (e) a company;
- (f) a trust;
- (g) a limited liability company;
- (h) a partnership;
- (i) a political subdivision;
- (j) a government office, department, division, bureau, or other body of government;

and

(k) any other organization or entity.

~~[(19)]~~ (25) "Personal property" includes:

- (a) money;
- (b) goods;
- (c) chattels;

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(d) effects;

(e) evidences of a right in action;

(f) a written instrument by which a pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished; and

(g) a right or interest in an item described in Subsections ~~[(19)(a)]~~ (25)(a) through (f).

~~[(20)]~~ (26) "Personal representative," "executor," and "administrator" include:

(a) an executor;

(b) an administrator;

(c) a successor personal representative;

(d) a special administrator; and

(e) a person who performs substantially the same function as a person described in Subsections ~~[(20)(a)]~~ (26)(a) through (d) under the law governing the person's status.

~~[(21)]~~ (27) "Policy board," "policy commission," or "policy council" means a board, commission, or council that:

(a) is authorized to make policy for the benefit of the general public;

(b) is created by, and whose duties are provided by, the constitution or statute; and

(c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.

~~[(22)]~~ (28) "Population" is shown by the most recent state or national census, unless expressly provided otherwise.

~~[(23)]~~ (29) "Process" means a writ or summons issued in the course of a judicial proceeding.

~~[(24)]~~ (30) "Property" includes both real and personal property.

~~[(25)]~~ (31) "Real estate" or "real property" includes:

(a) land;

(b) a tenement;

(c) a hereditament;

(d) a water right;

(e) a possessory right; and

(f) a claim.

~~[(26)]~~ (32) "Review board," "review commission," and "review council" mean a board,

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commission, committee, or council that:

(a) is authorized to approve policy made for the benefit of the general public by another body or person;

(b) is created by, and whose duties are provided by, statute; and

(c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.

~~[(27)]~~ (33) "Road" includes:

(a) a public bridge;

(b) a county way;

(c) a county road;

(d) a common road; and

(e) a state road.

(34) "Sex" means, in relation to an individual, the individual's biological sex, either male or female, at birth, according to distinct reproductive roles as manifested by:

(a) sex and reproductive organ anatomy;

(b) chromosomal makeup; and

(c) endogenous hormone profiles.

~~[(28)]~~ (35) "Signature" includes a name, mark, or sign written with the intent to authenticate an instrument or writing.

~~[(29)]~~ (36) "State," when applied to the different parts of the United States, includes a state, district, or territory of the United States.

~~[(30)]~~ (37) "Swear" includes "affirm."

~~[(31)]~~ (38) "Testify" means to make an oral statement under oath or affirmation.

~~[(32)]~~ (39) "Town" includes, depending on population, a metro township as defined in Section 10-3c-102.

~~[(33)]~~ (40) "Uniformed services" means:

(a) the armed forces;

(b) the commissioned corps of the National Oceanic and Atmospheric Administration;
and

(c) the commissioned corps of the United States Public Health Service.

~~[(34)]~~ (41) "United States" includes each state, district, and territory of the United

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States of America.

~~[(35)]~~ (42) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the text expressly references a portion of the 1953 recodification of the Utah Code as it existed:

- (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
- (b) (i) after the day described in Subsection ~~[(35)(a)]~~ (42)(a); and
- (ii) before the most recent amendment to the referenced portion of the 1953 recodification of the Utah Code.

~~[(36)]~~ (43) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and every structure adapted to be navigated from place to place.

- ~~[(37)]~~ (44) (a) "Veteran" means an individual who:
- (i) has served in the United States Armed Forces for at least 180 days:
 - (A) on active duty; or
 - (B) in a reserve component, to include the National Guard; or
 - (ii) has incurred an actual service-related injury or disability while in the United States Armed Forces regardless of whether the individual completed 180 days; and
 - (iii) was separated or retired under conditions characterized as honorable or general.
- (b) This definition is not intended to confer eligibility for benefits.

~~[(38)]~~ (45) "Will" includes a codicil.

(46) "Woman" means an adult human female.

~~[(39)]~~ (47) "Writ" means an order or precept in writing, issued in the name of:

- (a) the state;
- (b) a court; or
- (c) a judicial officer.

~~[(40)]~~ (48) "Writing" includes:

- (a) printing;
- (b) handwriting; and
- (c) information stored in an electronic or other medium if the information is retrievable in a perceivable format.

Section ~~[(17)]~~ 18. Section **76-6-206** is amended to read:

76-6-206. Criminal trespass.

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(1) (a) As used in this section:

(i) "Enter" means intrusion of the entire body or the entire unmanned aircraft.

(ii) "Graffiti" means the same as that term is defined in Section 76-6-101.

(iii) "Remain unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

(A) the private property or any portion of the private property is not open to the public; and

(B) the person operating the unmanned aircraft is not otherwise authorized to fly the unmanned aircraft over the private property or any portion of the private property.

(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) An actor commits criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the actor enters or remains unlawfully on or causes an unmanned aircraft to enter and remain unlawfully over property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether the actor's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the actor's or unmanned aircraft's entry or presence is unlawful, the actor enters or remains on or causes an unmanned aircraft to enter or remain unlawfully over property to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; [or]

(c) the actor enters a condominium unit in violation of [~~Subsection~~] Section 57-8-7(8)[~~;~~]; or

(d) the actor enters a sex-designated changing room in violation of Subsection 63G-31-302(3).

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(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2)(a) [~~or~~], (b), or (d) is a class B misdemeanor.

(b) [~~Hf~~] The following is a class A misdemeanor:

(i) if a violation of Subsection (2)(a) or (b) is committed in a dwelling[~~, the violation is a class A misdemeanor.~~]; ~~or~~

(ii) if a violation of Subsection (2)(d) is committed while also committing the offense of:

(A) lewdness under Section 76-9-702;

(B) lewdness involving a child under Section 76-9-702.5;

(C) voyeurism under Section 76-9-702.7; or

(D) loitering in a privacy space under Section 76-9-702.8~~;~~ or

(iii) if a violation of Subsection (2)(d) is committed in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.

(c) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was at the time open to the public; and

(b) the defendant complied with all lawful conditions imposed on access to or remaining on the property.

(5) In addition to an order for restitution under Section 77-38b-205, an actor who commits a violation of Subsection (2) may also be liable for:

(a) statutory damages in the amount of three times the value of damages resulting from the violation of Subsection (2) or \$500, whichever is greater; and

(b) reasonable attorney fees not to exceed \$250, and court costs.

(6) Civil damages under Subsection (5) may be collected in a separate action by the property owner or the owner's assignee.

Section ~~18~~19. Section **76-9-202** is amended to read:

76-9-202. Emergency reporting -- Interference -- False report.

(1) As used in this section:

(a) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property.

(b) "Party line" means a subscriber's line or telephone circuit:

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- (i) that consists of two or more connected main telephone stations; and
- (ii) where each telephone station has a distinctive ring or telephone number.

(2) An actor is guilty of emergency reporting abuse if the actor:

(a) intentionally refuses to yield or surrender the use of a party line or a public pay telephone to another individual upon being informed that the telephone is needed to report a fire or summon police, medical, or other aid in case of emergency, unless the telephone is likewise being used for an emergency call;

(b) asks for or requests the use of a party line or a public pay telephone on the pretext that an emergency exists, knowing that no emergency exists;

(c) reports an emergency or causes an emergency to be reported to any public, private, or volunteer entity whose purpose is to respond to fire, police, or medical emergencies, when the actor knows the reported emergency does not exist; ~~or~~

(d) makes a false report, or intentionally aids, abets, or causes a third party to make a false report, to an emergency response service, including a law enforcement dispatcher or a 911 emergency response service, if the false report claims that:

(i) an ongoing emergency exists;

(ii) the emergency described in Subsection (2)(d)(i) currently involves, or involves an imminent threat of, serious bodily injury, serious physical injury, or death; and

(iii) the emergency described in Subsection (2)(d)(i) is occurring at a specified location[-]; or

(e) makes a false report after having previously made a false report, or intentionally aides, abets, or causes a third party to make a false report, to an emergency response service, including a law enforcement dispatcher or a 911 emergency response service, alleging a violation of Section 63G-31-302 regarding a sex-designated changing room.

(3) (a) A violation of Subsection (2)(a) or (b) is a class C misdemeanor.

(b) A violation of Subsection (2)(c) is a class B misdemeanor, except as provided under Subsection (3)(c).

(c) A violation of Subsection (2)(c) is a second degree felony if the report is regarding a weapon of mass destruction, as defined in Section 76-10-401.

(d) A violation of Subsection (2)(d):

(i) except as provided in Subsection (3)(d)(ii), is a third degree felony; or

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(ii) is a second degree felony if:

(A) while acting in response to the report, the emergency responder causes physical injury to an individual at the location described in Subsection (2)(d)(iii); or

(B) the actor makes the false report or aids, abets, or causes a third party to make the false report with intent to ambush, attack, or otherwise harm a responding law enforcement officer or emergency responder.

(e) A violation of Subsection (2)(e) is a class B misdemeanor.

(4) (a) In addition to any other penalty authorized by law, a court shall order an actor convicted of a violation of this section to reimburse:

(i) any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation; and

(ii) an individual described in Subsection (3)(d)(ii) for the costs for the treatment of the physical injury and any psychological injury caused by the offense.

(b) The court may order that the defendant pay less than the full amount of the costs described in Subsection (4)(a) only if the court states on the record the reasons why the reimbursement would be inappropriate.

Section ~~19~~20. Section **76-9-702** is amended to read:

76-9-702. Lewdness.

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, sexual abuse of a minor, unlawful sexual conduct with a 16- or 17-year-old, custodial sexual relations under Section 76-5-412, custodial sexual misconduct under Section 76-5-412.2, custodial sexual relations with youth receiving state services under Section 76-5-413, custodial sexual misconduct with youth receiving state services under Section 76-5-413.2, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years old or older:

(a) an act of sexual intercourse or sodomy;

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

(c) masturbates; or

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(d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

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

(ii) the person has been previously convicted two or more times of violating Subsection (1); ~~or~~

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5~~;~~ ~~or~~

(iv) the person commits the offense of lewdness while also committing the offense of:

(A) criminal trespass in a sex-designated changing room under Subsection 76-6-206(2)(d);

(B) lewdness involving a child under Section 76-9-702.5;

(C) voyeurism under Section 76-9-702.7; or

(D) loitering in a privacy space under Section 76-9-702.8~~;~~ ~~or~~

(v) the person commits the offense of lewdness in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.

(c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(18), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) (a) As used in this Subsection (3):

(i) "Common area of a privacy space" means any area of a privacy space other than:

(A) a toilet stall with a closed door;

(B) immediately in front of a urinal during use; or

(C) a shower stall with a closed door or other closed covering.

(ii) "Privacy space" means the same as that term is defined in Section 76-9-702.8.

(b) The common area of a privacy space constitutes a public place or circumstance described in Subsection (1) where an act or an attempted act described in Subsection (1)

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constitutes lewdness.

(c) Within the common area of a ~~changing room defined in 63G-31-101~~ dressing room, fitting room, locker room, changing facility, or any other space designated for multiple individuals to dress or undress within the same space, exposing, displaying, or otherwise uncovering genitalia that does not correspond with the sex designation of the changing room constitutes an act or an attempted act described in Subsection (1) that constitutes lewdness.

~~(3)~~ (4) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Section ~~20~~ 21. Section 76-9-702.5 is amended to read:

76-9-702.5. Lewdness involving a child.

(1) As used in this section~~;~~:

(a) "[~~it~~] In the presence of" includes within visual contact through an electronic device.

(b) "Common area of a privacy space" means the same as that term is defined in

Section 76-9-702.

(c) "Privacy space" means the same as that term is defined in Section 76-9-702.8.

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

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

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

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

buttocks, the anus, or the pubic area:

(A) in a public place; or

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

(iii) masturbates; or

(iv) performs any other act of lewdness; or

(b) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201 or aggravated sexual exploitation of a child under Section 76-5b-201.1, causes a

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child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child.

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

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

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

(ii) the person has previously been convicted of a violation of this section[-]; ~~or~~

(iii) the person commits the offense of lewdness involving a child while also

committing the offense of:

(A) criminal trespass in a sex-designated changing room under Subsection 76-6-206(2)(d);

(B) lewdness under Section 76-9-702;

(C) voyeurism under Section 76-9-702.7; or

(D) loitering in a privacy space under Section 76-9-702.8~~;~~ or

(iv) the person commits the offense of lewdness involving a child in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.

(4) (a) The common area of a privacy space constitutes a public place or circumstance described in Subsection (1) where an act or an attempted act described in Subsection (1) constitutes lewdness involving a child.

(b) Within the common area of a government entity's ~~changing room defined in 63G-31-101~~ dressing room, fitting room, locker room, changing facility, or any other space designated for multiple individuals to dress or undress within the same space, exposing, displaying, or otherwise uncovering genitalia that does not correspond with the sex designation of the changing room constitutes an act or an attempted act described in Subsection (1) that constitutes lewdness involving a child.

Section ~~21~~22. Section 76-9-702.7 is amended to read:

76-9-702.7. Voyeurism offenses -- Penalties.

(1) A person is guilty of voyeurism who intentionally uses any type of technology to secretly or surreptitiously record, by video, photograph, or other means, an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the

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individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) (a) [~~A~~] Except as provided in Subsection (2)(b), a violation of Subsection (1) is a class A misdemeanor~~[, except that]~~.

(b) The following is a third degree felony:

(i) a violation of Subsection (1) committed against a child under 14 years of age [~~is a third degree felony~~]; or

(ii) a violation of Subsection (1) committed while also committing the offense of:

(A) criminal trespass in a sex-designated changing room under Subsection

76-6-206(2)(d);

(B) lewdness under Section 76-9-702;

(C) lewdness involving a child under Section 76-9-702.5; or

(D) loitering in a privacy space under Section 76-9-702.8~~(f);~~ or

(iii) a violation of Subsection (1) in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

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(5) (a) [~~A~~] Except as provided in Subsection (5)(b), a violation of Subsection (4) is a class B misdemeanor~~[, except that].~~

(b) The following is a class A misdemeanor:

(i) a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor~~[; ~~or~~]~~

(ii) a violation of Subsection (4) committed while also committing the offense of:

(A) criminal trespass in a sex-designated changing room under Subsection 76-6-206(2)(d);

(B) lewdness under Section 76-9-702;

(C) lewdness involving a child under Section 76-9-702.5; or

(D) loitering in a privacy space~~[; ~~or~~]~~

(iii) a violation of Subsection (4) committed in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.

(6) For purposes of this section, an individual has a reasonable expectation of privacy within a public restroom.

Section ~~{22}~~23. Section **76-9-702.8** is enacted to read:

76-9-702.8. Loitering in a privacy space.

(1) As used in this section:

(a) "Privacy space" means the following in which an individual has a reasonable expectation of privacy:

(i) a restroom or any other space that includes a toilet;

(ii) a dressing room, fitting room, locker room, changing facility, or any other space designated for multiple individuals to dress or undress within the same space; or

(iii) any room or space that includes a shower.

(b) "Sex-designated" means that a facility, program, or event is designated specifically for males or females and not the opposite sex.

(2) An actor commits the offense of unlawfully loitering in a privacy space if the actor intentionally or knowingly remains unlawfully or loiters in a privacy space.

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(b) A violation of Subsection (4) is a class A misdemeanor if the actor commits the

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offense ~~is committed~~:

~~(i)~~ while also committing the offense of:

~~(ii) A~~ criminal trespass in a sex-designated changing room under Subsection

76-6-206(2)(d);

~~(iii) B~~ lewdness under Section 76-9-702;

~~(iiii) C~~ lewdness involving a child under Section 76-9-702.5; or

~~(v) D~~ voyeurism under Section 76-9-702.7

~~Section 23~~; or

~~(ii) in a sex-designated privacy space that is not designated for individuals of the actor's~~

~~sex.~~

~~Section 24. Effective date.~~

~~(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~

~~(2) The actions affecting the following sections take effect on May 1, 2024:~~

~~(a) Section 63G-31-401;~~

~~(b) Section 67-3-1; and~~

~~(c) Section 67-5-1.~~