

## CRIMINAL CODE TASK FORCE AMENDMENTS

## 2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Karen Mayne

## LONG TITLE

### **Committee Note:**

The Criminal Code Evaluation Task Force recommended this bill.

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

### **General Description:**

This bill modifies criminal offenses and penalties in the Utah Code.

## **Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "health professional" as the term relates to certain sexual offenses;
- ▶ modifies certain criminal offenses and penalties relating to:
  - dealing in material harmful to minors between a young adult and adolescent;
  - obstruction of alcoholic beverage control investigations;
  - registration as a sex offender;
  - rendering a dead body unavailable for postmortem investigation;
  - repeated violations of the Minimum Wage Act; and
  - theft;
- ▶ repeals the criminal offenses of adultery and sodomy;
- ▶ provides immunity from prosecution for the offenses of prostitution and sexual assault under certain circumstances; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       None

32 **Utah Code Sections Affected:**

33 **AMENDS:**

34       **26-2-18.5**, as enacted by Laws of Utah 2009, Chapter 223

35       **31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283

36       **32B-4-505**, as enacted by Laws of Utah 2010, Chapter 276

37       **34-40-204**, as last amended by Laws of Utah 1997, Chapter 375

38       **53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3

39       **62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322

40       **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397

41       **76-5-403**, as last amended by Laws of Utah 2013, Chapter 81

42       **76-5-404**, as last amended by Laws of Utah 2018, Chapter 192

43       **76-5-406**, as last amended by Laws of Utah 2018, Chapter 176

44       **76-5-407**, as last amended by Laws of Utah 2000, Chapter 128

45       **76-6-412**, as last amended by Laws of Utah 2018, Chapter 265

46       **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282

47       **76-7-305**, as last amended by Laws of Utah 2018, Chapter 282

48       **76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345

49       **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433

50       **76-10-1313**, as last amended by Laws of Utah 2018, Chapter 308

51       **77-41-107**, as last amended by Laws of Utah 2015, Chapter 210

52 **REPEALS:**

53       **76-7-103**, as last amended by Laws of Utah 1991, Chapter 241

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

55       Section 1. Section **26-2-18.5** is amended to read:

56       **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

57       (1) As used in this section:

(a) "Medical examiner" [is as] means the same as that term is defined in Section 26-4-2.

(b) "Unavailable for postmortem investigation" [is as] means the same as that term is defined in Section 26-4-2.

(2) It is unlawful for a person to engage in any conduct that makes a dead body unavailable for postmortem investigation, unless, before engaging in that conduct, the person obtains a permit from the medical examiner to render the dead body unavailable for postmortem investigation, under Section 26-4-29[-], if the person intends to make the body unavailable for postmortem investigation.

(3) A person who violates Subsection (2) is guilty of a [class B misdemeanor] third degree felony.

(4) If a person engages in conduct that constitutes both a violation of this section and a violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 [supersede] supersede the provisions and penalties of this section.

Section 2. Section **31A-22-726** is amended to read:

**31A-22-726. Abortion coverage restriction in health benefit plan and on health insurance exchange.**

(1) As used in this section, "permitted abortion coverage" means coverage for abortion:

(a) that is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(b) of a fetus that has a defect that is documented by a physician or physicians to be uniformly diagnosable and uniformly lethal; or

(c) where the woman is pregnant as a result of:

(i) rape, as described in Section 76-5-402;

(ii) rape of a child, as described in Section 76-5-402.1; or

(iii) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102.

(2) A person may not offer coverage for an abortion in a health benefit plan, unless the coverage is a type of permitted abortion coverage.

(3) A person may not offer a health benefit plan that provides coverage for an abortion

90 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~  
91 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

92 [¶4] (3) A person may not offer a health benefit plan that provides coverage for an  
93 abortion in a health insurance exchange created under the federal Patient Protection and  
94 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion  
95 coverage.

96 Section 3. Section **32B-4-505** is amended to read:

97 **32B-4-505. Obstructing a search, official proceeding, or investigation.**

98 (1) A person who is in the premises or has charge over premises may not refuse or fail  
99 to admit to the premises or obstruct the entry of any of the following who demands entry when  
100 acting under this title:

- 101 (a) a commissioner;
- 102 (b) an authorized representative of the commission or department; or
- 103 (c) a law enforcement officer.

104 (2) A person who is in the premises or has charge of the premises may not interfere  
105 with any of the following who is conducting an investigation under this title at the premises:

- 106 (a) a commissioner;
- 107 (b) an authorized representative of the commission or department; or
- 108 (c) a law enforcement officer.

109 (3) A person is guilty of a ~~second degree felony~~ class A misdemeanor if, believing  
110 that an official proceeding or investigation is pending or about to be instituted under this title,  
111 that person:

- 112 (a) alters, destroys, conceals, or removes a record with a purpose to impair ~~its~~ the  
record's verity or availability in the proceeding or investigation; or
- 114 (b) makes, presents, or uses anything that the person knows to be false with a purpose  
115 to deceive any of the following who may be engaged in a proceeding or investigation under this  
116 title:
  - 117 (i) a commissioner;
  - 118 (ii) an authorized representative of the commission or department;
  - 119 (iii) a law enforcement officer; or
  - 120 (iv) other person.

121       Section 4. Section **34-40-204** is amended to read:

122       **34-40-204. Criminal penalty -- Enforcement.**

123       ~~(1) [(a) Repeated violation of this chapter is a class B misdemeanor.]~~

124       ~~[(b) "Repeated violations" does not include]~~ As used in this section, "violation"

125       includes separate violations as to individual employees arising out of the same investigation or  
126       enforcement action.

127       (2) (a) A violation of this chapter is an infraction.

128       (b) A second violation of this chapter is a class C misdemeanor.

129       (c) A third or subsequent violation of this chapter is a class B misdemeanor.

130       ~~[(2) Upon the third violation by the same employer within a three-year period, the]~~

131       (3) Upon an employer's violation of this section, the commission may prosecute a

132       criminal action in the name of the state.

133       ~~[(3)] (4) The county attorney, district attorney, or attorney general shall provide~~

134       assistance in prosecutions under this section at the request of the commission.

135       Section 5. Section **53G-6-707** is amended to read:

136       **53G-6-707. Interstate compact students -- Inclusion in attendance count --**

137       **Foreign exchange students -- Annual report -- Requirements for exchange student  
138       agencies.**

139       (1) A school district or charter school may include the following students in the  
140       district's or school's membership and attendance count for the purpose of apportionment of  
141       state money:

142       (a) a student enrolled under an interstate compact, established between the State Board  
143       of Education and the state education authority of another state, under which a student from one  
144       compact state would be permitted to enroll in a public school in the other compact state on the  
145       same basis as a resident student of the receiving state; or

146       (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact  
147       on Placement of Children.

148       (2) A school district or charter school may:

149       (a) enroll foreign exchange students that do not qualify for state money; and

150       (b) pay for the costs of those students with other funds available to the school district  
151       or charter school.

160 (5) (a) A local school board or charter school governing board shall require each  
161 approved exchange student agency to provide it with a sworn affidavit of compliance prior to  
162 the beginning of each school year.

163 (b) The affidavit shall include the following assurances:

164 (i) that the agency has complied with all applicable policies of the board;

165 (ii) that a household study, including a background check of all adult residents, has  
166 been made of each household where an exchange student is to reside, and that the study was of  
167 sufficient scope to provide reasonable assurance that the exchange student will receive proper  
168 care and supervision in a safe environment;

169 (iii) that host parents have received training appropriate to their positions, including  
170 information about enhanced criminal penalties under Subsection 76-5-406[(+10)](2)(j) for  
171 persons who are in a position of special trust;

172 (iv) that a representative of the exchange student agency shall visit each student's place  
173 of residence at least once each month during the student's stay in Utah;

174 (v) that the agency will cooperate with school and other public authorities to ensure  
175 that no exchange student becomes an unreasonable burden upon the public schools or other  
176 public agencies;

177 (vi) that each exchange student will be given in the exchange student's native language  
178 names and telephone numbers of agency representatives and others who could be called at any  
179 time if a serious problem occurs; and

180 (vii) that alternate placements are readily available so that no student is required to  
181 remain in a household if conditions appear to exist which unreasonably endanger the student's  
182 welfare.

183 (6) (a) A local school board or charter school governing board shall provide each  
184 approved exchange student agency with a list of names and telephone numbers of individuals  
185 not associated with the agency who could be called by an exchange student in the event of a  
186 serious problem.

187 (b) The agency shall make a copy of the list available to each of its exchange students  
188 in the exchange student's native language.

189 (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school  
190 shall enroll a foreign exchange student if the foreign exchange student:

191 (a) is sponsored by an agency approved by the State Board of Education;

192 (b) attends the same school during the same time period that another student from the  
193 school is:

194 (i) sponsored by the same agency; and  
195 (ii) enrolled in a school in a foreign country; and  
196 (c) is enrolled in the school for one year or less.

197 Section 6. Section **62A-15-602** is amended to read:

198 **62A-15-602. Definitions.**

199 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of  
200 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah  
201 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part  
202 12, Essential Treatment and Intervention Act:

203 (1) "Adult" means an individual 18 years of age or older.

204 (2) "Approved treatment facility or program" means a treatment provider that meets the  
205 standards described in Subsection 62A-15-103(2)(a)(v).

206 (3) "Commitment to the custody of a local mental health authority" means that an adult  
207 is committed to the custody of the local mental health authority that governs the mental health  
208 catchment area where the adult resides or is found.

209 (4) "Community mental health center" means an entity that provides treatment and  
210 services to a resident of a designated geographical area, that operates by or under contract with  
211 a local mental health authority, and that complies with state standards for community mental  
212 health centers.

213 (5) "Designated examiner" means:

214 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as  
215 specially qualified by training or experience in the diagnosis of mental or related illness; or

216 (b) a licensed mental health professional designated by the division as specially  
217 qualified by training and who has at least five years' continual experience in the treatment of  
218 mental illness.

219 (6) "Designee" means a physician who has responsibility for medical functions  
220 including admission and discharge, an employee of a local mental health authority, or an  
221 employee of a person that has contracted with a local mental health authority to provide mental  
222 health services under Section [17-43-304](#).

223 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered  
224 treatment at a local substance abuse authority or an approved treatment facility or program for  
225 the treatment of an adult's substance use disorder.

226 (8) "Harmful sexual conduct" means the following conduct upon an individual without  
227 the individual's consent, including the nonconsensual circumstances described in Subsections  
228 ~~76-5-406~~<sup>(1) through (12)</sup> (2)(a) through (l):

229 (a) sexual intercourse;  
230 (b) penetration, however slight, of the genital or anal opening of the individual;  
231 (c) any sexual act involving the genitals or anus of the actor or the individual and the  
232 mouth or anus of either individual, regardless of the gender of either participant; or  
233 (d) any sexual act causing substantial emotional injury or bodily pain.

234 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.

235 (10) "Local substance abuse authority" means the same as that term is defined in  
236 Section 62A-15-102 and described in Section 17-43-201.

237 (11) "Mental health facility" means the Utah State Hospital or other facility that  
238 provides mental health services under contract with the division, a local mental health  
239 authority, a person that contracts with a local mental health authority, or a person that provides  
240 acute inpatient psychiatric services to a patient.

241 (12) "Mental health officer" means an individual who is designated by a local mental  
242 health authority as qualified by training and experience in the recognition and identification of  
243 mental illness, to:

244 (a) apply for and provide certification for a temporary commitment; or

245 (b) assist in the arrangement of transportation to a designated mental health facility.

246 (13) "Mental illness" means:

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

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

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

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

254 (14) "Patient" means an individual who is:

255 (a) under commitment to the custody or to the treatment services of a local mental  
256 health authority; or

257 (b) undergoing essential treatment and intervention.

258 (15) "Physician" means an individual who is:

259 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

260 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical

261 Practice Act.  
262 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of  
263 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
264 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

265 (17) "Substantial danger" means that due to mental illness, an individual is at serious  
266 risk of:

267 (a) suicide;

268 (b) serious bodily self-injury;

269 (c) serious bodily injury because the individual is incapable of providing the basic  
270 necessities of life, including food, clothing, or shelter;

271 (d) causing or attempting to cause serious bodily injury to another individual; or  
272 (e) engaging in harmful sexual conduct.

273 (18) "Treatment" means psychotherapy, medication, including the administration of  
274 psychotropic medication, or other medical treatments that are generally accepted medical or  
275 psychosocial interventions for the purpose of restoring the patient to an optimal level of

276 functioning in the least restrictive environment.

277 Section 7. Section **76-3-406** is amended to read:

278 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**  
**279 offense, or hospitalization may not be granted.**

280 (1) Notwithstanding Sections **76-3-201** and **77-18-1** and Title 77, Chapter 16a,  
281 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section  
282 **76-5-406.5**, probation may not be granted, the execution or imposition of sentence may not be  
283 suspended, the court may not enter a judgment for a lower category of offense, and  
284 hospitalization may not be ordered, the effect of which would in any way shorten the prison  
285 sentence for **[any person]** an individual who commits a capital felony or a first degree felony  
286 involving:

287 (a) Section **76-5-202**, aggravated murder;  
288 (b) Section **76-5-203**, murder;  
289 (c) Section **76-5-301.1**, child kidnaping;  
290 (d) Section **76-5-302**, aggravated kidnaping;  
291 (e) Section **76-5-402**, rape, if the **[person]** individual is sentenced under Subsection  
292 **76-5-402**(3)(b), (3)(c), or (4);  
293 (f) Section **76-5-402.1**, rape of a child;  
294 (g) Section **76-5-402.2**, object rape, if the **[person]** individual is sentenced under  
295 Subsection **76-5-402.2**(1)(b), (1)(c), or (2);  
296 (h) Section **76-5-402.3**, object rape of a child;  
297 (i) Section **76-5-403**, forcible sodomy, if the **[person]** individual is sentenced under  
298 Subsection **76-5-403**[**(4)**] **(3)(b)**, [**(4)**] **(3)(c)**, or [**(5)**] **(4)**;  
299 (j) Section **76-5-403.1**, sodomy on a child;  
300 (k) Section **76-5-404**, forcible sexual abuse, if the **[person]** individual is sentenced  
301 under Subsection **76-5-404**(2)(b) or (3);  
302 (l) Subsections **76-5-404.1**(4) and (5), aggravated sexual abuse of a child;  
303 (m) Section **76-5-405**, aggravated sexual assault; or  
304 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).  
305 (2) The provisions of this section do not apply if the sentencing court finds that the  
306 defendant was under the age of 18 at the time of the offense and could have been adjudicated in

307 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the  
308 offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

309       Section 8. Section 76-5-403 is amended to read:

310       **76-5-403. Forcible sodomy.**

311       (1) ~~A person commits sodomy when the actor engages in any sexual act with a person~~  
312 ~~who is 14 years of age or older involving the genitals of one person and mouth or anus of~~  
313 ~~another person, regardless of the sex of either participant.] As used in this section, "sodomy"~~  
314 ~~means engaging in any sexual act with an individual who is 14 years of age or older involving~~  
315 ~~the genitals of one individual and the mouth or anus of another individual, regardless of the sex~~  
316 ~~of either participant.~~

317       (2) ~~A person~~ An individual commits forcible sodomy when the actor commits  
318 sodomy upon another without the other's consent.

319       ~~[(3) Sodomy is a class B misdemeanor.]~~

320       ~~[(4)] (3)~~ Forcible sodomy is a first degree felony, punishable by a term of  
321 imprisonment of:

322       (a) except as provided in Subsection ~~[4]~~ (3)(b) or (c), not less than five years and  
323 which may be for life;

324       (b) except as provided in Subsection ~~[4]~~ (3)(c) or ~~[5]~~ (4), 15 years and which may  
325 be for life, if the trier of fact finds that:

326       (i) during the course of the commission of the forcible sodomy the defendant caused  
327 serious bodily injury to another; or

328       (ii) at the time of the commission of the rape, the defendant was younger than 18 years  
329 of age and was previously convicted of a grievous sexual offense; or

330       (c) life without parole, if the trier of fact finds that at the time of the commission of the  
331 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

332       ~~[5]~~ (4) If, when imposing a sentence under Subsection ~~[4]~~ (3)(b), a court finds that a  
333 lesser term than the term described in Subsection ~~[4]~~ (3)(b) is in the interests of justice and  
334 states the reasons for this finding on the record, the court may impose a term of imprisonment  
335 of not less than:

336       (a) 10 years and which may be for life; or  
337       (b) six years and which may be for life.

338 [6] (5) The provisions of Subsection [5] (4) do not apply when [a person] an  
339 individual is sentenced under Subsection [4] (3)(a) or (c).

340 [7] (6) Imprisonment under Subsection [4] (3)(b), [4] (3)(c), or [5] (4) is  
341 mandatory in accordance with Section 76-3-406.

342 Section 9. Section 76-5-404 is amended to read:

343 **76-5-404. Forcible sexual abuse.**

344 (1) An individual commits forcible sexual abuse if the victim is 14 years of age or  
345 older and, under circumstances not amounting to rape, object rape, forcible sodomy, or  
346 attempted rape or forcible sodomy, the actor touches the anus, buttocks, pubic area, or any part  
347 of the genitals of another, or touches the breast of a female, or otherwise takes indecent  
348 liberties with another, with intent to cause substantial emotional or bodily pain to any  
349 individual or with the intent to arouse or gratify the sexual desire of any individual, without the  
350 consent of the other, regardless of the sex of any participant.

351 (2) Forcible sexual abuse is:

352 (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable  
353 by a term of imprisonment of not less than one year nor more than 15 years; or

354 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a  
355 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that  
356 during the course of the commission of the forcible sexual abuse the defendant caused serious  
357 bodily injury to another.

358 (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser  
359 term than the term described in Subsection (2)(b) is in the interests of justice and states the  
360 reasons for this finding on the record, the court may impose a term of imprisonment of not less  
361 than:

362 (a) 10 years and which may be for life; or  
363 (b) six years and which may be for life.

364 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with  
365 Section 76-3-406.

366 Section 10. Section 76-5-406 is amended to read:

367 **76-5-406. Sexual offenses against the victim without consent of victim --**  
368 **Circumstances.**

369                   (1) As used in this section:  
370                    (a) "Health professional" means an individual who is licensed or who holds the  
371                    individual out to be licensed, or who otherwise provides professional physical or mental health  
372                    services, diagnosis, treatment, or counseling, including an athletic trainer, physician,  
373                    osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,  
374                    social service worker, clinical social worker, certified social worker, marriage and family  
375                    therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse  
376                    specialist, or substance abuse counselor.

377                    (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized  
378                    member of the clergy.

379                    (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

380                    (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of  
381                    a child, object rape, attempted object rape, object rape of a child, attempted object rape of a  
382                    child, [sodomy, attempted sodomy,] forcible sodomy, attempted forcible sodomy, sodomy on a  
383                    child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,  
384                    sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,  
385                    attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the  
386                    victim under any of the following circumstances:

387                    [~~(1)~~] (a) the victim expresses lack of consent through words or conduct;

388                    [~~(2)~~] (b) the actor overcomes the victim through the actual application of physical force  
389                    or violence;

390                    [~~(3)~~] (c) the actor is able to overcome the victim through concealment or by the  
391                    element of surprise;

392                    [~~(4)~~ (~~a~~) (~~i~~)] (d) (i) the actor coerces the victim to submit by threatening to retaliate in  
393                    the immediate future against the victim or any other person, and the victim perceives at the  
394                    time that the actor has the ability to execute this threat; or

395                    (ii) the actor coerces the victim to submit by threatening to retaliate in the future  
396                    against the victim or any other person, and the victim believes at the time that the actor has the  
397                    ability to execute this threat;

398                    [~~(b)~~ as used in this Subsection (4), "to retaliate" includes threats of physical force,  
399                    kidnapping, or extortion;]

400 [5] (e) the actor knows the victim is unconscious, unaware that the act is occurring, or  
401 physically unable to resist;

402 [6] (f) the actor knows or reasonably should know that the victim has a mental  
403 disease or defect, which renders the victim unable to:

404 [a] (i) appraise the nature of the act;

405 [b] (ii) resist the act;

406 [c] (iii) understand the possible consequences to the victim's health or safety; or

407 [d] (iv) appraise the nature of the relationship between the actor and the victim[-];

408 [7] (g) the actor knows that the victim submits or participates because the victim  
409 erroneously believes that the actor is the victim's spouse;

410 [8] (h) the actor intentionally impaired the power of the victim to appraise or control  
411 his or her conduct by administering any substance without the victim's knowledge;

412 [9] (i) the victim is younger than 14 years of age;

413 [10] (j) the victim is younger than 18 years of age and at the time of the offense the  
414 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a  
415 position of special trust in relation to the victim as defined in Section 76-5-404.1;

416 [11] (k) the victim is 14 years of age or older, but younger than 18 years of age, and  
417 the actor is more than three years older than the victim and entices or coerces the victim to  
418 submit or participate, under circumstances not amounting to the force or threat required under  
419 Subsection [2 or 4] (2)(b) or (d); or

420 [12] (l) the actor is a health professional or religious counselor, [as those terms are  
421 defined in this Subsection (12);] the act is committed under the guise of providing professional  
422 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed  
423 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment  
424 to the extent that resistance by the victim could not reasonably be expected to have been  
425 manifested[; for purposes of this Subsection (12);]

426 [a] "health professional" means an individual who is licensed or who holds himself or  
427 herself out to be licensed, or who otherwise provides professional physical or mental health  
428 services, diagnosis, treatment, or counseling including, but not limited to, a physician,  
429 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,  
430 social service worker, clinical social worker, certified social worker, marriage and family

431 ~~therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse~~  
432 ~~specialist, or substance abuse counselor, and]~~

433 ~~[(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized~~  
434 ~~member of the clergy].~~

435 Section 11. Section **76-5-407** is amended to read:

436 **76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to**  
437 **constitute offense.**

438 (1) The provisions of this part do not apply to consensual conduct between [persons]  
439 individuals married to each other.

440 (2) In any prosecution for:

441 (a) the following offenses, any sexual penetration, however slight, is sufficient to  
442 constitute the relevant element of the offense:

443 (i) unlawful sexual activity with a minor, a violation of Section **76-5-401**, involving  
444 sexual intercourse;

445 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section  
446 **76-5-401.2**, involving sexual intercourse; or

447 (iii) rape, a violation of Section **76-5-402**; or  
448 (b) the following offenses, any touching, however slight, is sufficient to constitute the  
449 relevant element of the offense:

450 (i) unlawful sexual activity with a minor, a violation of Section **76-5-401**, involving  
451 acts of sodomy;

452 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section  
453 **76-5-401.2**, involving acts of sodomy;

454 ~~[(iii) sodomy, a violation of Subsection **76-5-403(1)**;~~]

455 ~~[(iv)] (iii) forcible sodomy, a violation of Subsection **76-5-403(2)**;~~

456 ~~[(v)] (iv) rape of a child, a violation of Section **76-5-402.1**; or~~

457 ~~[(vi)] (v) object rape of a child, a violation of Section **76-5-402.3**.~~

458 (3) In any prosecution for the following offenses, any touching, even if accomplished  
459 through clothing, is sufficient to constitute the relevant element of the offense:

460 (a) sodomy on a child, a violation of Section **76-5-403.1**; or

461 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section

462 76-5-404.1.

463 Section 12. Section **76-6-412** is amended to read:

464 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

465 (1) Theft of property and services as provided in this chapter is punishable:

466 (a) as a second degree felony if the:

467 (i) value of the property or services is or exceeds \$5,000;

468 (ii) property stolen is a firearm or an operable motor vehicle; or

469 (iii) property is stolen from the person of another;

470 (b) as a third degree felony if:

471 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

472 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice

473 before convicted of any of the following offenses, if each prior offense was committed within

474 10 years [of] before the date of the current conviction or the date of the offense upon which the

475 current conviction is based and at least one of those convictions is for a class A misdemeanor:

476 (A) any theft, any robbery, or any burglary with intent to commit theft;

477 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

478 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

479 [~~(iii) in a case not amounting to a second degree felony, the property taken is a stallion,~~

480 ~~mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,~~

481 ~~poultry, or a fur-bearing animal raised for commercial purposes; or]~~

482 [~~(iv)~~ (iii) (A) the value of property or services is or exceeds \$500 but is less than  
483 \$1,500;

484 (B) the theft occurs on a property where the offender has committed any theft within  
485 the past five years; and

486 (C) the offender has received written notice from the merchant prohibiting the offender  
487 from entering the property pursuant to Subsection **78B-3-108**(4);

488 [~~(v)~~ (iv) the actor has been previously convicted of a felony violation of any of the  
489 offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was  
490 committed within 10 years before the date of the current conviction or the date of the offense  
491 upon which the current conviction is based;

492 (c) as a class A misdemeanor if:

- (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
- (ii) (A) the value of property or services is less than \$500;
- (B) the theft occurs on a property where the offender has committed any theft within the past five years; and
- (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years ~~of~~ before the date of the current conviction or the date of the offense upon which the current conviction is based; or

(d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c).

(2) Any individual who violates Subsection 76-6-408(1) or Subsection 76-6-413(1), or commits theft of [property described in Subsection 76-6-412(1)(b)(iii)] a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes, is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

Section 13. Section **76-7-302** is amended to read:

**76-7-302. Circumstances under which abortion authorized.**

(1) As used in this section, "viable" means that the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.

(2) An abortion may be performed in this state only by a physician.

(3) An abortion may be performed in this state only under the following circumstances:

(a) the unborn child is not viable; or

(b) the unborn child is viable, if:

(i) the abortion is necessary to avert:

(A) the death of the woman on whom the abortion is performed; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function  
woman on whom the abortion is performed;

524 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the  
525 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly  
526 lethal; or

527 (iii) (A) the woman is pregnant as a result of:

528 (I) rape, as described in Section 76-5-402;

529 (II) rape of a child, as described in Section 76-5-402.1; or

530 (III) incest, as described in Subsection 76-5-406(+10) (2)(j) or Section 76-7-102; and

531 (B) before the abortion is performed, the physician who performs the abortion:

532 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to  
533 law enforcement; and

534 (II) complies with the requirements of Section 62A-4a-403.

535 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is  
536 necessary to perform the abortion in another location due to a medical emergency.

537 Section 14. Section **76-7-305** is amended to read:

538           **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**  
539       **-- Exceptions.**

540 (1) A person may not perform an abortion, unless, before performing the abortion, the  
541 physician who will perform the abortion obtains a voluntary and informed written consent from  
542 the woman on whom the abortion is performed, that is consistent with:

543 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,  
544 Current Opinions; and

545 (b) the provisions of this section.

546 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and  
547 informed only if, at least 72 hours before the abortion:

548 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse  
549 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or  
550 physician's assistant presents the information module to the pregnant woman;

551 (b) the pregnant woman views the entire information module and presents evidence to  
552 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire  
553 information module;

554 (c) after receiving the evidence described in Subsection (2)(b), the individual described

555 in Subsection (2)(a):

556 (i) documents that the pregnant woman viewed the entire information module;

557 (ii) gives the pregnant woman, upon her request, a copy of the documentation

558 described in Subsection (2)(c)(i); and

559 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician

560 who is to perform the abortion, upon request of that physician or the pregnant woman;

561 (d) after the pregnant woman views the entire information module, the physician who

562 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse

563 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or

564 physician's assistant, in a face-to-face consultation in any location in the state, orally informs

565 the woman of:

566 (i) the nature of the proposed abortion procedure;

567 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

568 fetus;

569 (iii) the risks and alternatives to the abortion procedure or treatment;

570 (iv) the options and consequences of aborting a medication-induced abortion, if the

571 proposed abortion procedure is a medication-induced abortion;

572 (v) the probable gestational age and a description of the development of the unborn

573 child at the time the abortion would be performed;

574 (vi) the medical risks associated with carrying her child to term; and

575 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant

576 woman, upon her request; and

577 (e) after the pregnant woman views the entire information module, a staff member of

578 the abortion clinic or hospital provides to the pregnant woman:

579 (i) on a document that the pregnant woman may take home:

580 (A) the address for the department's website described in Section [76-7-305.5](#); and

581 (B) a statement that the woman may request, from a staff member of the abortion clinic

582 or hospital where the woman viewed the information module, a printed copy of the material on

583 the department's website; and

584 (ii) a printed copy of the material on the department's website described in Section

585 [76-7-305.5](#), if requested by the pregnant woman.

586 (3) Before performing an abortion, the physician who is to perform the abortion shall:  
587 (a) in a face-to-face consultation, provide the information described in Subsection  
588 (2)(d), unless the attending physician or referring physician is the individual who provided the  
589 information required under Subsection (2)(d); and

590 (b) (i) obtain from the pregnant woman a written certification that the information  
591 required to be provided under Subsection (2) and this Subsection (3) was provided in  
592 accordance with the requirements of Subsection (2) and this Subsection (3); and  
593 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

594 (4) When a serious medical emergency compels the performance of

595 physician shall inform the woman prior to the abortion, if possible, of the medical indications  
596 supporting the physician's judgment that an abortion is necessary.

597 (5) If an ultrasound is performed on a woman before an abortion is performed, the  
598 individual who performs the ultrasound, or another qualified individual, shall:

599 (a) inform the woman that the ultrasound images will be simultaneously displayed in a  
600 manner to permit her to:

601 (i) view the images, if she chooses to view the images; or

602 (ii) not view the images, if she chooses not to view the images;

603 (b) simultaneously display the ultrasound images in order to permit the woman to:

604 (i) view the images, if she chooses to view the images; or

605 (ii) not view the images, if she chooses not to view the images;

606 (c) inform the woman that, if she desires, the person performing the ultrasound, or  
607 another qualified person shall provide a detailed description of the ultrasound images,  
608 including:

609 (i) the dimensions of the unborn child;

610 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

611 (iii) the presence of external body parts or internal organs, if present and viewable; and

612 (d) provide the detailed description described in Subsection [67] (5)(c), if the woman  
613 requests it.

614 (6) The information described in Subsections (2), (3), and (5) is not required to be  
615 provided to a pregnant woman under this section if the abortion is performed for a reason  
616 described in:



648 (10) (a) The department shall provide an ultrasound, in accordance with the provisions  
649 of Subsection (5)(b), at no expense to the pregnant woman.

650 (b) A local health department shall refer a pregnant woman who requests an ultrasound  
651 described in Subsection (10)(a) to the department.

652 (11) A physician is not guilty of violating this section if:

653 (a) the information described in Subsection (2) is provided less than 72 hours before  
654 the physician performs the abortion; and

655 (b) in the physician's professional judgment, the abortion was necessary in a case  
656 where:

657 (i) a ruptured membrane, documented by the attending or referring physician, will  
658 cause a serious infection; or

659 (ii) a serious infection, documented by the attending or referring physician, will cause a  
660 ruptured membrane.

661 Section 15. Section **76-10-1206** is amended to read:

**76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies.**

664 (1) A person is guilty of dealing in material harmful to minors when, knowing or  
665 believing that [a person] an individual is a minor, or having negligently failed to determine the  
666 proper age of a minor, the person intentionally:

667 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or [a  
668 ~~person~~ the actor] an individual whom the person believes to be a minor, any material harmful  
669 to minors;

670 (b) produces, performs, or directs any performance, before a minor or [a person the  
671 ~~actor~~] an individual whom the person believes to be a minor, that is harmful to minors; or

672 (c) participates in any performance, before a minor or ~~a person the actor~~ an individual  
673 whom the person believes to be a minor, that is harmful to minors.

674 (2) (a) [Each] Except as provided in Subsection (2)(b), each separate offense under this  
675 section committed by a person 18 years of age or older is a third degree felony punishable by:

676 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article  
677 exhibited up to the maximum allowed by law; and

678 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

679           **(b) Each separate offense under this section committed by a person 18 years of age or**  
680           **older against a minor 16 years of age or older, but younger than 18 years of age, is a class A**  
681           **misdemeanor if the person is less than seven years older than the minor at the time of the**  
682           **offense.**

683           **[(b)] (c) Each separate offense under this section committed by a person 16 or 17 years**

684           of age is a class A misdemeanor.

685           **[(e)] (d) Each separate offense under this section committed by a person younger than**

686           16 years of age is a class B misdemeanor.

687           **[(d)] (e) Subsection (2)(a) supersedes Section 77-18-1.**

688           **(3) (a) [H] Except for a defendant described in Subsection (2)(b), if a defendant 18**  
689           years of age or older has been previously convicted or adjudicated to be under the jurisdiction  
690           of the juvenile court under this section, each separate subsequent offense is a second degree  
691           felony punishable by:

692           (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article  
693           exhibited up to the maximum allowed by law; and

694           (ii) incarceration, without suspension of sentence, for a term of not less than one year.

695           (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years  
696           of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile  
697           court under this section, each separate subsequent offense is a third degree felony.

698           (c) Subsection (3)(a) supersedes Section 77-18-1.

699           (d) (i) This section does not apply to an Internet service provider, as defined in Section  
700           76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec.  
701           2510, a telecommunications service, information service, or mobile service as defined in 47  
702           U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or  
703           a cable operator as defined in 47 U.S.C. Sec. 522, if:

704           (A) the distribution of pornographic material by the Internet service provider occurs  
705           only incidentally through the provider's function of:

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

707           (II) providing a connection between one person and another person;

708           (B) the provider does not intentionally aid or abet in the distribution of the  
709           pornographic material; and

710 (C) the provider does not knowingly receive from or through a person who distributes  
711 the pornographic material a fee greater than the fee generally charged by the provider, as a  
712 specific condition for permitting the person to distribute the pornographic material.

713 (ii) This section does not apply to a hosting company, as defined in Section  
714 [76-10-1230](#), if:

715 (A) the distribution of pornographic material by the hosting company occurs only  
716 incidentally through the hosting company's function of providing data storage space or data  
717 caching to a person;

718 (B) the hosting company does not intentionally engage, aid, or abet in the distribution  
719 of the pornographic material; and

720 (C) the hosting company does not knowingly receive from or through a person who  
721 distributes the pornographic material a fee greater than the fee generally charged by the  
722 provider, as a specific condition for permitting the person to distribute, store, or cache the  
723 pornographic material.

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

726 (5) A person 18 years of age or older who knowingly solicits, requests, commands,  
727 encourages, or intentionally aids another person younger than 18 years of age to engage in  
728 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the  
729 penalties under Subsection (2)(a).

730 Section 16. Section **76-10-1302** is amended to read:

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

732 (1) An individual is guilty of prostitution when the individual:

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

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

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

740 (2) (a) Except as provided in Subsection (2)(b) [or] and Section 76-10-1309,

741 prostitution is a class B misdemeanor.

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

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

747 (i) "Child" means the same as that term is defined in Section 76-10-1301.

748 (ii) "Child engaged in prostitution" means a child who engages in conduct described in  
749 Subsection (1).

750 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to  
751 commit or engage in any sexual activity with another person for a fee or the functional  
752 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

753 (iv) "Division" means the Division of Child and Family Services created in Section  
754 62A-4a-103.

755 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

756 (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law  
757 enforcement officer shall:

758 (i) conduct an investigation;

759 (ii) refer the child to the division;

760 (iii) if an arrest is made, bring the child to a receiving center, if available; and

761 (iv) contact the child's parent or guardian, if practicable.

762 (c) When law enforcement has referred the child to the division under Subsection  
763 (3)(b)(ii):

764 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child  
765 and Family Services; and

766 (ii) the child may not be subjected to delinquency proceedings under Title 62A,  
767 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

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

772 good faith:

773 (a) assault, Section 76-5-102;

774 (b) aggravated assault, Section 76-5-103;

775 (c) mayhem, Section 76-5-105;

776 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse

777 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;

778 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or

779 aggravated human trafficking, human smuggling or aggravated human smuggling, or human

780 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and

781 Smuggling:

782 (f) rape, Section 76-5-402;

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

784 (h) object rape, Section 76-5-402.2;

785 (i) object rape of a child, Section 76-5-402.3;

786 (j) forcible sodomy, Section 76-5-403;

787 (k) sodomy on a child, Section 76-5-403.1;

788 (l) forcible sexual abuse, Section 76-5-404;

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

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

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

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

793 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,

794 Burglary and Criminal Trespass:

795 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or

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

797 Section 17. Section **76-10-1313** is amended to read:

798 **76-10-1313. Sexual solicitation -- Penalty.**

799 (1) An individual is guilty of sexual solicitation when the individual:

800 (a) offers or agrees to commit any sexual activity with another individual for a fee, or  
801 the functional equivalent of a fee;

802 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another

803 individual to commit any sexual activity; or

804 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee  
805 or to pay another individual to commit any sexual activity for a fee or the functional equivalent  
806 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any  
807 of the following acts:

808 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the  
809 female breast below the top of the areola;

810 (ii) masturbation;

811 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the  
812 female breast; or

813 (iv) any act of lewdness.

814 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's  
815 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in  
816 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

817 (3) ~~(a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).]~~

818 ~~(b) An~~ Except as provided in Section 76-10-1309 and Subsections (4) and (5), an  
819 individual who is convicted [a second time] of sexual solicitation under this section or under a  
820 local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A  
821 misdemeanor[; except as provided in Section 76-10-1309].

822 (4) An individual who is convicted a third time under this section or a local ordinance  
823 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

824 (5) If an individual commits an act of sexual solicitation and the individual solicited is  
825 a child, the offense is a third degree felony if the solicitation does not amount to human  
826 trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human  
827 trafficking or aggravated human smuggling, a violation of Section 76-5-310.

828 (6) A prosecutor may not prosecute an individual for a violation of Subsection (1) if  
829 the individual engages in a violation of Subsection (1) at or near the time the individual  
830 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses  
831 described in Subsection 76-10-1302(4), and the individual reports the offense or attempt to law  
832 enforcement in good faith.

833 Section 18. Section 77-41-107 is amended to read:

834           **77-41-107. Penalties.**

835           (1) An offender who knowingly fails to register under this chapter or provides false or  
836 incomplete information is guilty of:

837           (a) a third degree felony and shall be sentenced to serve a term of incarceration for not  
838 less than [90] 30 days and also at least one year of probation if:

839           (i) the offender is required to register for a felony conviction or adjudicated delinquent  
840 for what would be a felony if the juvenile were an adult of an offense listed in Subsection  
841 **77-41-102**(9)(a) or (17)(a); or

842           (ii) the offender is required to register for the offender's lifetime under Subsection  
843 **77-41-105**(3)(c); or

844           (b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for  
845 not fewer than [90] 30 days and also at least one year of probation if the offender is required to  
846 register for a misdemeanor conviction or is adjudicated delinquent for what would be a  
847 misdemeanor if the juvenile were an adult of an offense listed in Subsection **77-41-102**(9)(a) or  
848 (17)(a).

849           (2) (a) Neither the court nor the Board of Pardons and Parole may release [a person] an  
850 individual who violates this chapter from serving the term required under Subsection (1).

851           (b) This Subsection (2) supersedes any other provision of the law contrary to this  
852 chapter.

853           (3) The offender shall register for an additional year for every year in which the  
854 offender does not comply with the registration requirements of this chapter.

855           Section 19. **Repealer.**

856           This bill repeals:

857           Section **76-7-103**, **Adultery**.