

Senator Todd Weiler proposes the following substitute bill:

**CRIMINAL CODE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: Todd Weiler

---

---

**LONG TITLE**

**General Description:**

This bill modifies sexual offenses in the Utah Code.

**Highlighted Provisions:**

This bill:

- ▶ defines "takes indecent liberties" in certain sexual offenses;
- ▶ modifies certain sexual offenses; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-401.1**, as last amended by Laws of Utah 2016, Chapter 372

**76-5-401.2**, as last amended by Laws of Utah 2014, Chapter 135

**76-5-404**, as last amended by Laws of Utah 2010, Chapter 218

**76-5-404.1**, as last amended by Laws of Utah 2014, Chapters 135 and 141

**76-5-412**, as last amended by Laws of Utah 2017, Chapter 65



26 **76-5-413**, as last amended by Laws of Utah 2017, Chapter 330  
 27 **76-9-702**, as last amended by Laws of Utah 2015, Chapter 210  
 28 **78A-6-105**, as last amended by Laws of Utah 2017, Chapters 181, 330, and 401  
 29 **78B-2-308**, as last amended by Laws of Utah 2016, Chapter 379

30 ENACTS:

31 **76-5-416**, Utah Code Annotated 1953



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

34 Section 1. Section **76-5-401.1** is amended to read:

35 **76-5-401.1. Sexual abuse of a minor.**

36 (1) For purposes of this section "minor" is ~~[a person]~~ an individual who is 14 years of  
 37 age or older, but younger than 16 years of age, at the time the sexual activity described in this  
 38 section occurred.

39 (2) ~~[A person]~~ An individual commits sexual abuse of a minor if the ~~[person]~~  
 40 individual is four years or more older than the minor or holds a relationship of special trust as  
 41 an adult teacher, employee, or volunteer, as described in Subsection **76-5-404.1**(1)(c)(xix) and,  
 42 under circumstances not amounting to rape, in violation of Section **76-5-402**, object rape, in  
 43 violation of Section **76-5-402.2**, forcible sodomy, in violation of Section **76-5-403**, aggravated  
 44 sexual assault, in violation of Section **76-5-405**, unlawful sexual activity with a minor, in  
 45 violation of Section **76-5-401**, or an attempt to commit any of those offenses, the ~~[person]~~  
 46 individual touches the anus, buttocks, pubic area, or any part of the genitals of the minor, or  
 47 touches the breast of a female minor, or otherwise takes indecent liberties with the minor, ~~[or~~  
 48 ~~causes a minor to take indecent liberties with the actor or another person,]~~ with the intent to  
 49 cause substantial emotional or bodily pain to any ~~[person]~~ individual or with the intent to  
 50 arouse or gratify the sexual desire of any ~~[person]~~ individual regardless of the sex of any  
 51 participant.

52 (3) (a) Except under Subsection (3)(b), a violation of this section is a class A  
 53 misdemeanor and is not subject to registration under Subsection **77-41-102**(17)(a)(iv) on a first  
 54 offense if the offender was younger than 21 years of age at the time of the offense.

55 (b) A violation of this section is a third degree felony if the actor at the time of the  
 56 commission of the offense:

- 57 (i) is 18 years of age or older;
- 58 (ii) held a position of special trust as a teacher or a volunteer at a school, as that
- 59 position is defined in Subsection 76-5-404.1(1)(c)(xix); and
- 60 (iii) committed the offense against an individual who at the time of the offense was
- 61 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

62 Section 2. Section 76-5-401.2 is amended to read:

63 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.**

64 (1) As used in this section, "minor" means [~~a person~~] an individual who is 16 years of

65 age or older, but younger than 18 years of age, at the time the sexual conduct described in

66 Subsection (2) occurred.

67 (2) (a) [~~A person~~] An individual commits unlawful sexual conduct with a minor if,

68 under circumstances not amounting to an offense listed under Subsection (3), [~~a person~~] an

69 individual who is:

70 (i) seven or more years older but less than 10 years older than the minor at the time of

71 the sexual conduct engages in any conduct listed in Subsection (2)(b), and the [~~person~~]

72 individual knew or reasonably should have known the age of the minor;

73 (ii) 10 or more years older than the minor at the time of the sexual conduct and engages

74 in any conduct listed in Subsection (2)(b); or

75 (iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as

76 described in Subsection 76-5-404.1(1)(c)(xix).

77 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the [~~person~~]

78 individual:

79 (i) has sexual intercourse with the minor;

80 (ii) engages in any sexual act with the minor involving the genitals of one [~~person~~]

81 individual and the mouth or anus of another [~~person~~] individual, regardless of the sex of either

82 participant;

83 (iii) causes the penetration, however slight, of the genital or anal opening of the minor

84 by any foreign object, substance, instrument, or device, including a part of the human body,

85 with the intent to cause substantial emotional or bodily pain to any [~~person~~] individual or with

86 the intent to arouse or gratify the sexual desire of any [~~person~~] individual, regardless of the sex

87 of any participant; or

88 (iv) touches the anus, buttocks, pubic area, or any part of the genitals of the minor, or  
89 touches the breast of a female minor, or otherwise takes indecent liberties with the minor, [~~or~~  
90 ~~causes a minor to take indecent liberties with the actor or another person;~~] with the intent to  
91 cause substantial emotional or bodily pain to any [~~person~~] individual or with the intent to  
92 arouse or gratify the sexual desire of any [~~person~~] individual regardless of the sex of any  
93 participant.

94 (3) The offenses referred to in Subsection (2) are:

95 (a) (i) rape, in violation of Section 76-5-402;

96 (ii) object rape, in violation of Section 76-5-402.2;

97 (iii) forcible sodomy, in violation of Section 76-5-403;

98 (iv) forcible sexual abuse, in violation of Section 76-5-404; or

99 (v) aggravated sexual assault, in violation of Section 76-5-405; or

100 (b) an attempt to commit any offense under Subsection (3)(a).

101 (4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

102 (5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under  
103 Subsection (5)(b).

104 (b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time  
105 of the commission of the offense:

106 (i) is 18 years of age or older;

107 (ii) held a position of special trust as a teacher or a volunteer at a school, as that  
108 position is defined in Subsection 76-5-404.1(1)(c)(xix); and

109 (iii) committed the offense against an individual who at the time of the offense was  
110 enrolled as a student at the school where the actor was employed or was acting as a volunteer.

111 Section 3. Section 76-5-404 is amended to read:

112 **76-5-404. Forcible sexual abuse.**

113 (1) [~~A person~~] An individual commits forcible sexual abuse if the victim is 14 years of  
114 age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted  
115 rape or sodomy, the actor touches the anus, buttocks, pubic area, or any part of the genitals of  
116 another, or touches the breast of a female, or otherwise takes indecent liberties with another,  
117 [~~or causes another to take indecent liberties with the actor or another;~~] with intent to cause  
118 substantial emotional or bodily pain to any [~~person~~] individual or with the intent to arouse or

119 gratify the sexual desire of any [person] individual, without the consent of the other, regardless  
120 of the sex of any participant.

121 (2) Forcible sexual abuse is:

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

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

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

132 (a) 10 years and which may be for life; or

133 (b) six years and which may be for life.

134 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with  
135 Section [76-3-406](#).

136 Section 4. Section **76-5-404.1** is amended to read:

137 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

138 (1) As used in this section:

139 (a) "Adult" means an individual 18 years of age or older.

140 (b) "Child" means an individual under the age of 14.

141 (c) "Position of special trust" means:

142 (i) an adoptive parent;

143 (ii) an athletic manager who is an adult;

144 (iii) an aunt;

145 (iv) a babysitter;

146 (v) a coach;

147 (vi) a cohabitant of a parent if the cohabitant is an adult;

148 (vii) a counselor;

149 (viii) a doctor or physician;

- 150 (ix) an employer;
- 151 (x) a foster parent;
- 152 (xi) a grandparent;
- 153 (xii) a legal guardian;
- 154 (xiii) a natural parent;
- 155 (xiv) a recreational leader who is an adult;
- 156 (xv) a religious leader;
- 157 (xvi) a sibling or a stepsibling who is an adult;
- 158 (xvii) a scout leader who is an adult;
- 159 (xviii) a stepparent;
- 160 (xix) a teacher or any other [person] individual employed by or volunteering at a public
- 161 or private elementary school or secondary school, and who is 18 years of age or older;
- 162 (xx) an uncle;
- 163 (xxi) a youth leader who is an adult; or
- 164 (xxii) any [person] individual in a position of authority, other than those [persons]
- 165 individuals listed in Subsections (1)(c)(i) through (xxi), which enables the [person] individual
- 166 to exercise undue influence over the child.

167 (2) ~~[A person]~~ An individual commits sexual abuse of a child if, under circumstances

168 not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to

169 commit any of these offenses, the actor touches the anus, buttocks, pubic area, or genitalia of

170 any child, the breast of a female child, or otherwise takes indecent liberties with a child, ~~or~~

171 ~~causes a child to take indecent liberties with the actor or another]~~ with intent to cause

172 substantial emotional or bodily pain to any [person] individual or with the intent to arouse or

173 gratify the sexual desire of any [person] individual regardless of the sex of any participant.

174 (3) Sexual abuse of a child is a second degree felony.

175 (4) ~~[A person]~~ An individual commits aggravated sexual abuse of a child when in

176 conjunction with the offense described in Subsection (2) any of the following circumstances

177 have been charged and admitted or found true in the action for the offense:

178 (a) the offense was committed by the use of a dangerous weapon as defined in Section

179 [76-1-601](#), or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or

180 was committed during the course of a kidnapping;

181 (b) the accused caused bodily injury or severe psychological injury to the victim during  
182 or as a result of the offense;

183 (c) the accused was a stranger to the victim or made friends with the victim for the  
184 purpose of committing the offense;

185 (d) the accused used, showed, or displayed pornography or caused the victim to be  
186 photographed in a lewd condition during the course of the offense;

187 (e) the accused, prior to sentencing for this offense, was previously convicted of any  
188 sexual offense;

189 (f) the accused committed the same or similar sexual act upon two or more victims at  
190 the same time or during the same course of conduct;

191 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if  
192 committed in Utah would constitute an offense described in this chapter, and were committed  
193 at the same time, or during the same course of conduct, or before or after the instant offense;

194 (h) the offense was committed by [~~a person~~] an individual who occupied a position of  
195 special trust in relation to the victim;

196 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or  
197 sexual acts by the victim with any other [~~person~~] individual, or sexual performance by the  
198 victim before any other [~~person~~] individual, human trafficking, or human smuggling; or

199 (j) the accused caused the penetration, however slight, of the genital or anal opening of  
200 the child by any part or parts of the human body other than the genitals or mouth.

201 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of  
202 imprisonment of:

203 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and  
204 which may be for life;

205 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact  
206 finds that during the course of the commission of the aggravated sexual abuse of a child the  
207 defendant caused serious bodily injury to another; or

208 (c) life without parole, if the trier of fact finds that at the time of the commission of the  
209 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous  
210 sexual offense.

211 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a

212 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and  
213 states the reasons for this finding on the record, the court may impose a term of imprisonment  
214 of not less than:

215 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

216 (b) for purposes of Subsection (5)(a) or (b):

217 (i) 10 years and which may be for life; or

218 (ii) six years and which may be for life.

219 (7) The provisions of Subsection (6) do not apply when [~~a person~~] an individual is  
220 sentenced under Subsection (5)(c).

221 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18  
222 years of age at the time of the offense.

223 (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

224 Section 5. Section 76-5-412 is amended to read:

225 **76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions**

226 **-- Penalties -- Defenses.**

227 (1) As used in this section:

228 (a) "Actor" means:

229 (i) a correctional officer, as defined in Section 53-13-104;

230 (ii) a special function officer, as defined in Section 53-13-105;

231 (iii) a law enforcement officer, as defined in Section 53-13-103; or

232 (iv) an employee of, or private provider or contractor for, the Department of  
233 Corrections or a county jail.

234 (b) "Person in custody" means [~~a person~~] an individual, either an adult 18 years of age  
235 or older, or a minor younger than 18 years of age, who is:

236 (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the  
237 custody of the Department of Corrections created under Section 64-13-2, but who is being  
238 housed at the Utah State Hospital established under Section 62A-15-601 or other medical  
239 facility;

240 (ii) under correctional supervision, such as at a work release facility or as a parolee or  
241 probationer; or

242 (iii) under lawful or unlawful arrest, either with or without a warrant.



243 (c) "Private provider or contractor" means any person or entity that contracts with the  
244 Department of Corrections or with a county jail to provide services or functions that are part of  
245 the operation of the Department of Corrections or a county jail under state or local law.

246 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts  
247 under Subsection (3):

248 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
249 offense under Subsection (6); and

250 (ii) (A) the actor knows that the individual is a person in custody; or

251 (B) a reasonable person in the actor's position should have known under the  
252 circumstances that the individual was a person in custody.

253 (b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody  
254 is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

255 (c) If the act committed under this Subsection (2) amounts to an offense subject to a  
256 greater penalty under another provision of state law than is provided under this Subsection (2),  
257 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

258 (3) Acts referred to in Subsection (2)(a) are:

259 (a) having sexual intercourse with a person in custody;

260 (b) engaging in any sexual act with a person in custody involving the genitals of one  
261 [person] individual and the mouth or anus of another [person] individual, regardless of the sex  
262 of either participant; or

263 (c) causing the penetration, however slight, of the genital or anal opening of a person in  
264 custody by any foreign object, substance, instrument, or device, including a part of the human  
265 body, with the intent to cause substantial emotional or bodily pain to any [person] individual,  
266 regardless of the sex of any participant.

267 (4) (a) An actor commits custodial sexual misconduct if the actor commits any of the  
268 acts under Subsection (5):

269 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
270 offense under Subsection (6); and

271 (ii) (A) the actor knows that the individual is a person in custody; or

272 (B) a reasonable person in the actor's position should have known under the  
273 circumstances that the individual was a person in custody.

274 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in  
275 custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree  
276 felony.

277 (c) If the act committed under this Subsection (4) amounts to an offense subject to a  
278 greater penalty under another provision of state law than is provided under this Subsection (4),  
279 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

280 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with  
281 the intent to cause substantial emotional or bodily pain to any [person] individual or with the  
282 intent to arouse or gratify the sexual desire of any [person] individual, regardless of the sex of  
283 any participant:

284 (a) touching the anus, buttocks, pubic area, or any part of the genitals of a person in  
285 custody;

286 (b) touching the breast of a female person in custody; or

287 (c) otherwise taking indecent liberties with a person in custody[~~;~~ or].

288 [~~(d) causing a person in custody to take indecent liberties with the actor or another~~  
289 person.]

290 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

291 (a) Section 76-5-401, unlawful sexual activity with a minor;

292 (b) Section 76-5-402, rape;

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

294 (d) Section 76-5-402.2, object rape;

295 (e) Section 76-5-402.3, object rape of a child;

296 (f) Section 76-5-403, forcible sodomy;

297 (g) Section 76-5-403.1, sodomy on a child;

298 (h) Section 76-5-404, forcible sexual abuse;

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

300 (j) Section 76-5-405, aggravated sexual assault.

301 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations  
302 under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to  
303 commit either of these offenses, if the person in custody is younger than 18 years of age, that  
304 the actor:

305 (i) mistakenly believed the person in custody to be 18 years of age or older at the time  
306 of the alleged offense; or

307 (ii) was unaware of the true age of the person in custody.

308 (b) Consent of the person in custody is not a defense to any violation or attempted  
309 violation of Subsection (2) or (4).

310 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)  
311 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

312 Section 6. Section 76-5-413 is amended to read:

313 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**  
314 **services -- Definitions -- Penalties -- Defenses.**

315 (1) As used in this section:

316 (a) "Actor" means:

317 (i) [~~a person~~] an individual employed by the Department of Human Services, as created  
318 in Section 62A-1-102, or an employee of a private provider or contractor; or

319 (ii) [~~a person~~] an individual employed by the juvenile court of the state, or an employee  
320 of a private provider or contractor.

321 (b) "Department" means the Department of Human Services created in Section  
322 62A-1-102.

323 (c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

324 (d) "Private provider or contractor" means any [~~person~~] individual or entity that  
325 contracts with the:

326 (i) department to provide services or functions that are part of the operation of the  
327 department; or

328 (ii) juvenile court to provide services or functions that are part of the operation of the  
329 juvenile court.

330 (e) "Youth receiving state services" means [~~a person~~] an individual:

331 (i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

332 (A) in the custody of the department under Subsection 78A-6-117(2)(c); or

333 (B) receiving services from any division of the department if any portion of the costs of  
334 these services is covered by public money as defined in Section 76-8-401; or

335 (ii) younger than 21 years of age who is:

336 (A) in the custody of the Division of Juvenile Justice Services, or the Division of Child  
337 and Family Services; or

338 (B) under the jurisdiction of the juvenile court.

339 (2) (a) An actor commits custodial sexual relations with a youth receiving state  
340 services if the actor commits any of the acts under Subsection (3):

341 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
342 offense under Subsection (6); and

343 (ii) (A) the actor knows that the individual is a youth receiving state services; or

344 (B) a reasonable person in the actor's position should have known under the  
345 circumstances that the individual was a youth receiving state services.

346 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving  
347 state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second  
348 degree felony.

349 (c) If the act committed under this Subsection (2) amounts to an offense subject to a  
350 greater penalty under another provision of state law than is provided under this Subsection (2),  
351 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

352 (3) Acts referred to in Subsection (2)(a) are:

353 (a) having sexual intercourse with a youth receiving state services;

354 (b) engaging in any sexual act with a youth receiving state services involving the  
355 genitals of one [person] individual and the mouth or anus of another [person] individual,  
356 regardless of the sex of either participant; or

357 (c) causing the penetration, however slight, of the genital or anal opening of a youth  
358 receiving state services by any foreign object, substance, instrument, or device, including a part  
359 of the human body, with the intent to cause substantial emotional or bodily pain to any [person]  
360 individual, regardless of the sex of any participant or with the intent to arouse or gratify the  
361 sexual desire of any [person] individual, regardless of the sex of any participant.

362 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state  
363 services if the actor commits any of the acts under Subsection (5):

364 (i) under circumstances not amounting to commission of, or an attempt to commit, an  
365 offense under Subsection (6); and

366 (ii) (A) the actor knows that the individual is a youth receiving state services; or

367 (B) a reasonable person in the actor's position should have known under the  
368 circumstances that the individual was a youth receiving state services.

369 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth  
370 receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a  
371 third degree felony.

372 (c) If the act committed under this Subsection (4) amounts to an offense subject to a  
373 greater penalty under another provision of state law than is provided under this Subsection (4),  
374 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

375 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with  
376 the intent to cause substantial emotional or bodily pain to any [person] individual or with the  
377 intent to arouse or gratify the sexual desire of any [person] individual, regardless of the sex of  
378 any participant:

379 (a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth  
380 receiving state services;

381 (b) touching the breast of a female youth receiving state services; or

382 (c) otherwise taking indecent liberties with a youth receiving state services[~~;~~or].

383 [~~(d) causing a youth receiving state services to take indecent liberties with the actor or~~  
384 ~~another person.~~]

385 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

386 (a) Section 76-5-401, unlawful sexual activity with a minor;

387 (b) Section 76-5-402, rape;

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

389 (d) Section 76-5-402.2, object rape;

390 (e) Section 76-5-402.3, object rape of a child;

391 (f) Section 76-5-403, forcible sodomy;

392 (g) Section 76-5-403.1, sodomy on a child;

393 (h) Section 76-5-404, forcible sexual abuse;

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

395 (j) Section 76-5-405, aggravated sexual assault.

396 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations  
397 with a youth receiving state services under Subsection (2) or custodial sexual misconduct with

398 a youth receiving state services under Subsection (4), or an attempt to commit either of these  
399 offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

400 (i) mistakenly believed the youth receiving state services to be 18 years of age or older  
401 at the time of the alleged offense; or

402 (ii) was unaware of the true age of the youth receiving state services.

403 (b) Consent of the youth receiving state services is not a defense to any violation or  
404 attempted violation of Subsection (2) or (4).

405 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)  
406 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

407 Section 7. Section 76-5-416 is enacted to read:

408 **76-5-416. Indecent liberties -- Definition.**

409 As used in this part, "takes indecent liberties" means:

410 (1) touching the actor's genitals, anus, buttocks, pubic area, or female breast against  
411 any part of the body of the victim;

412 (2) causing the victim to touch the actor's or another's genitals, pubic area, anus,  
413 buttocks, or female breast;

414 (3) simulating or pretending to engage in sexual intercourse with the victim, including  
415 genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or

416 (4) causing the victim to simulate or pretend to engage in sexual intercourse with the  
417 actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.

418 Section 8. Section 76-9-702 is amended to read:

419 **76-9-702. Lewdness.**

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

427 (a) an act of sexual intercourse or sodomy;

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

429 buttocks, the anus, or the pubic area;

430 (c) masturbates; or

431 (d) any other act of lewdness.

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

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

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

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

439 (iii) the person has previously been convicted of a violation of Subsection (1) and has  
440 also previously been convicted of a violation of Section 76-9-702.5.

441 (c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(17), a plea of  
442 guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77,  
443 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

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

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

449 Section 9. Section 78A-6-105 is amended to read:

450 **78A-6-105. Definitions.**

451 As used in this chapter:

452 (1) (a) "Abuse" means:

453 (i) (A) nonaccidental harm of a child;

454 (B) threatened harm of a child;

455 (C) sexual exploitation;

456 (D) sexual abuse; or

457 (E) human trafficking of a child in violation of Section 76-5-308.5; or

458 (ii) that a child's natural parent:

459 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

460 child;

461 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
462 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

463 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
464 recklessly causing the death of another parent of the child.

465 (b) "Abuse" does not include:

466 (i) reasonable discipline or management of a child, including withholding privileges;

467 (ii) conduct described in Section 76-2-401; or

468 (iii) the use of reasonable and necessary physical restraint or force on a child:

469 (A) in self-defense;

470 (B) in defense of others;

471 (C) to protect the child; or

472 (D) to remove a weapon in the possession of a child for any of the reasons described in  
473 Subsections (1)(b)(iii)(A) through (C).

474 (2) "Abused child" means a child who has been subjected to abuse.

475 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
476 alleged in the petition have been proved. A finding of not competent to proceed pursuant to  
477 Section 78A-6-1302 is not an adjudication.

478 (4) "Adult" means [~~a person~~] an individual 18 years of age or over, except that [~~a~~  
479 ~~person~~] an individual 18 years or over under the continuing jurisdiction of the juvenile court  
480 pursuant to Section 78A-6-120 shall be referred to as a minor.

481 (5) "Board" means the Board of Juvenile Court Judges.

482 (6) "Child" means [~~a person~~] an individual under 18 years of age.

483 (7) "Child placement agency" means:

484 (a) a private agency licensed to receive a child for placement or adoption under this  
485 code; or

486 (b) a private agency that receives a child for placement or adoption in another state,  
487 which agency is licensed or approved where such license or approval is required by law.

488 (8) "Clandestine laboratory operation" means the same as that term is defined in  
489 Section 58-37d-3.

490 (9) "Commit" means, unless specified otherwise:



- 491 (a) with respect to a child, to transfer legal custody; and
- 492 (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- 493 (10) "Court" means the juvenile court.
- 494 (11) "Criminogenic risk factors" means evidence-based factors that are associated with
- 495 a minor's likelihood of reoffending.
- 496 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if
- 497 committed by an adult.
- 498 (13) "Dependent child" includes a child who is homeless or without proper care
- 499 through no fault of the child's parent, guardian, or custodian.
- 500 (14) "Deprivation of custody" means transfer of legal custody by the court from a
- 501 parent or the parents or a previous legal custodian to another person, agency, or institution.
- 502 (15) "Detention" means home detention and secure detention as defined in Section
- 503 [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically
- 504 restricting facility:
- 505 (a) pending court disposition or transfer to another jurisdiction; or
- 506 (b) while under the continuing jurisdiction of the court.
- 507 (16) "Detention risk assessment tool" means an evidence-based tool established under
- 508 Section [78A-6-124](#), on and after July 1, 2018, that assesses a minor's risk of failing to appear in
- 509 court or reoffending pre-adjudication and designed to assist in making detention
- 510 determinations.
- 511 (17) "Division" means the Division of Child and Family Services.
- 512 (18) "Evidence-based" means a program or practice that has had multiple randomized
- 513 control studies or a meta-analysis demonstrating that the program or practice is effective for a
- 514 specific population or has been rated as effective by a standardized program evaluation tool.
- 515 (19) "Formal probation" means a minor is under field supervision by the probation
- 516 department or other agency designated by the court and subject to return to the court in
- 517 accordance with Section [78A-6-123](#) on and after July 1, 2018.
- 518 (20) "Formal referral" means a written report from a peace officer or other person
- 519 informing the court that a minor is or appears to be within the court's jurisdiction and that a
- 520 case must be reviewed.
- 521 (21) "Group rehabilitation therapy" means psychological and social counseling of one

522 or more [~~persons~~] individuals in the group, depending upon the recommendation of the  
523 therapist.

524 (22) "Guardianship of the person" includes the authority to consent to:

525 (a) marriage;

526 (b) enlistment in the armed forces;

527 (c) major medical, surgical, or psychiatric treatment; or

528 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

529 (23) "Habitual truant" means the same as that term is defined in Section [53A-11-101](#).

530 (24) "Harm" means:

531 (a) physical or developmental injury or damage;

532 (b) emotional damage that results in a serious impairment in the child's growth,  
533 development, behavior, or psychological functioning;

534 (c) sexual abuse; or

535 (d) sexual exploitation.

536 (25) (a) "Incest" means engaging in sexual intercourse with [~~a person~~] an individual  
537 whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,  
538 aunt, nephew, niece, or first cousin.

539 (b) The relationships described in Subsection (25)(a) include:

540 (i) blood relationships of the whole or half blood, without regard to legitimacy;

541 (ii) relationships of parent and child by adoption; and

542 (iii) relationships of stepparent and stepchild while the marriage creating the  
543 relationship of a stepparent and stepchild exists.

544 (26) "Intake probation" means a period of court monitoring that does not include field  
545 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to  
546 return to the court in accordance with Section [78A-6-123](#) on and after July 1, 2018.

547 (27) "Intellectual disability" means:

548 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or  
549 below on an individually administered IQ test, for infants, a clinical judgment of significantly  
550 subaverage intellectual functioning;

551 (b) concurrent deficits or impairments in present adaptive functioning, the [~~person's~~]  
552 individual's effectiveness in meeting the standards expected for the [~~person's~~] individual's age

553 by the ~~[person's]~~ individual's cultural group, in at least two of the following areas:  
 554 communication, self-care, home living, social/interpersonal skills, use of community resources,  
 555 self-direction, functional academic skills, work, leisure, health, and safety; and

556 (c) the onset is before the ~~[person]~~ individual reaches the age of 18 years.

557 (28) "Legal custody" means a relationship embodying the following rights and duties:

558 (a) the right to physical custody of the minor;

559 (b) the right and duty to protect, train, and discipline the minor;

560 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
 561 medical care;

562 (d) the right to determine where and with whom the minor shall live; and

563 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

564 (29) "Material loss" means an uninsured:

565 (a) property loss;

566 (b) out-of-pocket monetary loss;

567 (c) lost wages; or

568 (d) medical expenses.

569 (30) "Mental disorder" means a serious emotional and mental disturbance that severely  
 570 limits a minor's development and welfare over a significant period of time.

571 (31) "Minor" means:

572 (a) a child; or

573 (b) ~~[a person]~~ an individual who is:

574 (i) at least 18 years of age and younger than 21 years of age; and

575 (ii) under the jurisdiction of the juvenile court.

576 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or  
 577 families of minors experiencing behavioral health or psychiatric emergencies.

578 (33) "Molestation" means that ~~[a person]~~ an individual, with the intent to arouse or  
 579 gratify the sexual desire of any ~~[person:(a)]~~ individual, touches the anus ~~[or any part of the~~  
 580 genitals of a child; (b)], buttocks, pubic area, or genitalia of any child, or the breast of a female  
 581 child, or takes indecent liberties with a child~~[-or]~~ as defined in Section 76-5-416.

582 ~~[(c) causes a child to take indecent liberties with the perpetrator or another.]~~

583 (34) "Natural parent" means a minor's biological or adoptive parent, and includes the

584 minor's noncustodial parent.

585 (35) (a) "Neglect" means action or inaction causing:

586 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
587 Relinquishment of a Newborn Child;

588 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,  
589 guardian, or custodian;

590 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary  
591 subsistence, education, or medical care, or any other care necessary for the child's health,  
592 safety, morals, or well-being;

593 (iv) a child to be at risk of being neglected or abused because another child in the same  
594 home is neglected or abused; or

595 (v) abandonment of a child through an unregulated custody transfer.

596 (b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii),  
597 means that, after receiving a notice of compulsory education violation under Section  
598 [53A-11-101.5](#), the parent or guardian fails to make a good faith effort to ensure that the child  
599 receives an appropriate education.

600 (c) A parent or guardian legitimately practicing religious beliefs and who, for that  
601 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

602 (d) (i) Notwithstanding Subsection (35)(a), a health care decision made for a child by  
603 the child's parent or guardian does not constitute neglect unless the state or other party to the  
604 proceeding shows, by clear and convincing evidence, that the health care decision is not  
605 reasonable and informed.

606 (ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising  
607 the right to obtain a second health care opinion and from pursuing care and treatment pursuant  
608 to the second health care opinion, as described in Section [78A-6-301.5](#).

609 (36) "Neglected child" means a child who has been subjected to neglect.

610 (37) "Nonjudicial adjustment" means closure of the case by the assigned probation  
611 officer without judicial determination upon the consent in writing of:

612 (a) the assigned probation officer; and

613 (b) (i) the minor; or

614 (ii) the minor and the minor's parent, legal guardian, or custodian.

615 (38) "Not competent to proceed" means that a minor, due to a mental disorder,  
616 intellectual disability, or related condition as defined, lacks the ability to:

617 (a) understand the nature of the proceedings against them or of the potential disposition  
618 for the offense charged; or

619 (b) consult with counsel and participate in the proceedings against them with a  
620 reasonable degree of rational understanding.

621 (39) "Physical abuse" means abuse that results in physical injury or damage to a child.

622 (40) "Probation" means a legal status created by court order following an adjudication  
623 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is  
624 permitted to remain in the minor's home under prescribed conditions.

625 (41) "Protective supervision" means a legal status created by court order following an  
626 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to  
627 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or  
628 dependency is provided by the probation department or other agency designated by the court.

629 (42) "Related condition" means a condition closely related to intellectual disability in  
630 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah  
631 Administrative Code.

632 (43) (a) "Residual parental rights and duties" means those rights and duties remaining  
633 with the parent after legal custody or guardianship, or both, have been vested in another person  
634 or agency, including:

635 (i) the responsibility for support;

636 (ii) the right to consent to adoption;

637 (iii) the right to determine the child's religious affiliation; and

638 (iv) the right to reasonable parent-time unless restricted by the court.

639 (b) If no guardian has been appointed, "residual parental rights and duties" also include  
640 the right to consent to:

641 (i) marriage;

642 (ii) enlistment; and

643 (iii) major medical, surgical, or psychiatric treatment.

644 (44) "Secure facility" means any facility operated by or under contract with the  
645 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for

646 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection  
647 78A-6-117(2)(d).

648 (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a  
649 child.

650 (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
651 child.

652 (47) "Sexual abuse" means:

653 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an  
654 adult directed towards a child;

655 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation  
656 committed by a child towards another child if:

657 (i) there is an indication of force or coercion;

658 (ii) the children are related, as described in Subsection (25);

659 (iii) there have been repeated incidents of sexual contact between the two children,  
660 unless the children are 14 years of age or older; or

661 (iv) there is a disparity in chronological age of four or more years between the two  
662 children; or

663 (c) engaging in any conduct with a child that would constitute an offense under any of  
664 the following, regardless of whether the [person] individual who engages in the conduct is  
665 actually charged with, or convicted of, the offense:

666 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the  
667 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

668 (ii) child bigamy, Section 76-7-101.5;

669 (iii) incest, Section 76-7-102;

670 (iv) lewdness, Section 76-9-702;

671 (v) sexual battery, Section 76-9-702.1;

672 (vi) lewdness involving a child, Section 76-9-702.5; or

673 (vii) voyeurism, Section 76-9-702.7.

674 (48) "Sexual exploitation" means knowingly:

675 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

676 (i) pose in the nude for the purpose of sexual arousal of any [person] individual; or

677 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,  
678 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

679 (b) displaying, distributing, possessing for the purpose of distribution, or selling  
680 material depicting a child:

681 (i) in the nude, for the purpose of sexual arousal of any ~~[person]~~ individual; or

682 (ii) engaging in sexual or simulated sexual conduct; or

683 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,  
684 sexual exploitation of a minor, regardless of whether the ~~[person]~~ individual who engages in  
685 the conduct is actually charged with, or convicted of, the offense.

686 (49) "Shelter" means the temporary care of a child in a physically unrestricted facility  
687 pending court disposition or transfer to another jurisdiction.

688 (50) "Status offense" means a violation of the law that would not be a violation but for  
689 the age of the offender.

690 (51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or  
691 substances.

692 (52) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

693 (53) "Supported" means the same as that term is defined in Section 62A-4a-101.

694 (54) "Termination of parental rights" means the permanent elimination of all parental  
695 rights and duties, including residual parental rights and duties, by court order.

696 (55) "Therapist" means:

697 (a) ~~[a person]~~ an individual employed by a state division or agency for the purpose of  
698 conducting psychological treatment and counseling of a minor in its custody; or

699 (b) any other ~~[person]~~ individual licensed or approved by the state for the purpose of  
700 conducting psychological treatment and counseling.

701 (56) "Unregulated custody transfer" means the placement of a child:

702 (a) with ~~[a person]~~ an individual who is not the child's parent, step-parent, grandparent,  
703 adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and  
704 with whom the child is familiar, or a member of the child's federally recognized tribe;

705 (b) with the intent of severing the child's existing parent-child or guardian-child  
706 relationship; and

707 (c) without taking:

708 (i) reasonable steps to ensure the safety of the child and permanency of the placement;  
709 and

710 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or  
711 guardianship to the [person] individual taking custody of the child.

712 (57) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

713 (58) "Validated risk and needs assessment" means an evidence-based tool that assesses  
714 a minor's risk of reoffending and a minor's criminogenic needs.

715 (59) "Without merit" means the same as that term is defined in Section 62A-4a-101.

716 Section 10. Section 78B-2-308 is amended to read:

717 **78B-2-308. Legislative findings -- Civil actions for sexual abuse of a child --**

718 **Window for revival of time barred claims.**

719 (1) The Legislature finds that:

720 (a) child sexual abuse is a crime that hurts the most vulnerable in our society and  
721 destroys lives;

722 (b) research over the last 30 years has shown that it takes decades for children and  
723 adults to pull their lives back together and find the strength to face what happened to them;

724 (c) often the abuse is compounded by the fact that the perpetrator is a member of the  
725 victim's family and when such abuse comes out, the victim is further stymied by the family's  
726 wish to avoid public embarrassment;

727 (d) even when the abuse is not committed by a family member, the perpetrator is rarely  
728 a stranger and, if in a position of authority, often brings pressure to bear on the victim to ensure  
729 silence;

730 (e) in 1992, when the Legislature enacted the statute of limitations requiring victims to  
731 sue within four years of majority, society did not understand the long-lasting effects of abuse  
732 on the victim and that it takes decades for the healing necessary for a victim to seek redress;

733 (f) the Legislature, as the policy-maker for the state, may take into consideration  
734 advances in medical science and understanding in revisiting policies and laws shown to be  
735 harmful to the citizens of this state rather than beneficial; and

736 (g) the Legislature has the authority to change old laws in the face of new information,  
737 and set new policies within the limits of due process, fairness, and justice.

738 (2) As used in this section:



- 739 (a) "Child" means ~~[a person]~~ an individual under 18 years of age.
- 740 (b) "Discovery" means when ~~[a person]~~ a victim knows or reasonably should know that  
741 the injury or illness was caused by the intentional or negligent sexual abuse.
- 742 (c) "Injury or illness" means either a physical injury or illness or a psychological injury  
743 or illness. A psychological injury or illness need not be accompanied by physical injury or  
744 illness.
- 745 (d) "Molestation" means that ~~[a person]~~ an individual, with the intent to arouse or  
746 gratify the sexual desire of any ~~[person:(i)]~~ individual, touches the anus, buttocks, pubic area,  
747 or genitalia of any child, or the breast of a female child~~[(ii)]~~, or takes indecent liberties with a  
748 child~~[-or]~~ as defined in Section 76-5-416.  
749 ~~[(iii) causes a child to take indecent liberties with the perpetrator or another person.]~~
- 750 (e) "Negligently" means a failure to act to prevent the child sexual abuse from further  
751 occurring or to report the child sexual abuse to law enforcement when the adult who could act  
752 knows or reasonably should know of the child sexual abuse and is the victim's parent,  
753 stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister,  
754 uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any ~~[person]~~  
755 individual cohabiting in the child's home.
- 756 (f) "Perpetrator" means an individual who has committed an act of sexual abuse.
- 757 (g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or  
758 molestation by an adult directed towards a child.
- 759 (h) "Victim" means an individual who was intentionally or negligently sexually abused.  
760 It does not include individuals whose claims are derived through another individual who was  
761 sexually abused.
- 762 (3) (a) A victim may file a civil action against a perpetrator for intentional or negligent  
763 sexual abuse suffered as a child at any time.
- 764 (b) A victim may file a civil action against a non-perpetrator for intentional or  
765 negligent sexual abuse suffered as a child:
- 766 (i) within four years after the ~~[person]~~ individual attains the age of 18 years; or  
767 (ii) if a victim discovers sexual abuse only after attaining the age of 18 years, that  
768 ~~[person]~~ individual may bring a civil action for such sexual abuse within four years after  
769 discovery of the sexual abuse, whichever period expires later.

770 (4) The victim need not establish which act in a series of continuing sexual abuse  
771 incidents caused the injury complained of, but may compute the date of discovery from the date  
772 of discovery of the last act by the same perpetrator which is part of a common scheme or plan  
773 of sexual abuse.

774 (5) The knowledge of a custodial parent or guardian may not be imputed to [~~a person~~]  
775 an individual under the age of 18 years.

776 (6) A civil action may be brought only against a living [~~person~~] individual who:

777 (a) intentionally perpetrated the sexual abuse;

778 (b) would be criminally responsible for the sexual abuse in accordance with Section  
779 76-2-202; or

780 (c) negligently permitted the sexual abuse to occur.

781 (7) A civil action against [~~a person listed~~] an individual described in Subsection (6)(a)  
782 or (b) for sexual abuse that was time barred as of July 1, 2016, may be brought within 35 years  
783 of the victim's 18th birthday, or within three years of the effective date of this Subsection (7),  
784 whichever is longer.

785 (8) A civil action may not be brought as provided in Subsection (7) for:

786 (a) any claim that has been litigated to finality on the merits in a court of competent  
787 jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the  
788 expiration of the statute of limitations does not constitute a claim that has been litigated to  
789 finality on the merits; and

790 (b) any claim where a written settlement agreement was entered into between a victim  
791 and a defendant or perpetrator, unless the settlement agreement was the result of fraud, duress,  
792 or unconscionability. There is a rebuttable presumption that a settlement agreement signed by  
793 the victim when the victim was not represented by an attorney admitted to practice law in this  
794 state at the time of the settlement was the result of fraud, duress, or unconscionability.