

**SEXUAL EXPLOITATION AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: Jennifer M. Seelig

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Criminal Code relating to sexual exploitation of minors and vulnerable adults.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ enacts the Sexual Exploitation Act;
- ▶ consolidates criminal provisions relating to sexual exploitation of a vulnerable adult and sexual exploitation of a minor;
- ▶ makes legislative findings;
- ▶ modifies and clarifies criminal provisions relating to sexual exploitation of a minor and sexual exploitation of a vulnerable adult;
- ▶ modifies the conduct that constitutes sexual exploitation of a vulnerable adult;
- ▶ makes sexual exploitation of a vulnerable adult a third degree felony;
- ▶ provides that it is a separate offense of sexual exploitation of a vulnerable adult for each vulnerable adult depicted, and each time the vulnerable adult is depicted, in vulnerable adult pornography;
- ▶ provides an affirmative defense to the crime of sexual exploitation of a vulnerable adult;
- ▶ provides exceptions from criminal and civil liability for legitimate law enforcement



28 activities;

29       ▶ provides that it is not a defense to a crime described in this bill that the accused did  
30 not know the age of the victim; and

31       ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       This bill provides an effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38       **9-7-215**, as last amended by Laws of Utah 2004, Chapter 193

39       **31A-21-501**, as last amended by Laws of Utah 2009, Chapter 326

40       **53A-6-501**, as last amended by Laws of Utah 2008, Chapters 189 and 190

41       **62A-2-120**, as last amended by Laws of Utah 2010, Chapter 365

42       **62A-3-301**, as last amended by Laws of Utah 2008, Chapter 91

43       **63M-7-502**, as last amended by Laws of Utah 2010, Chapter 254

44       **76-1-302**, as last amended by Laws of Utah 2009, Chapters 84 and 292

45       **76-3-203.1**, as last amended by Laws of Utah 2010, Chapter 193

46       **76-3-203.5**, as last amended by Laws of Utah 2010, Chapter 334

47       **76-3-407**, as repealed and reenacted by Laws of Utah 2007, Chapter 339

48       **76-5-111**, as last amended by Laws of Utah 2007, Chapter 31

49       **76-5-112.5**, as repealed and reenacted by Laws of Utah 2009, Chapter 153

50       **76-9-702.5**, as last amended by Laws of Utah 2009, Chapters 354 and 366

51       **76-10-1602 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapter

52 334

53       **76-10-1602 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 276

54 and 334

55       **77-22-2.5**, as last amended by Laws of Utah 2010, Chapter 371

56       **77-27-21.5**, as last amended by Laws of Utah 2010, Chapters 55, 120, 144, 283, and

57 328

58       **77-36-1**, as last amended by Laws of Utah 2010, Chapters 218 and 384

59           **78A-6-105**, as renumbered and amended by Laws of Utah 2008, Chapter 3

60 ENACTS:

61           **76-5b-101**, Utah Code Annotated 1953

62           **76-5b-202**, Utah Code Annotated 1953

63           **76-5b-302**, Utah Code Annotated 1953

64 RENUMBERS AND AMENDS:

65           **76-5b-102**, (Renumbered from 76-5a-1, as last amended by Laws of Utah 1985,  
66 Chapter 226)

67           **76-5b-103**, (Renumbered from 76-5a-2, as last amended by Laws of Utah 2001,  
68 Chapter 176)

69           **76-5b-201**, (Renumbered from 76-5a-3, as last amended by Laws of Utah 2009,  
70 Chapter 257)

71           **76-5b-301**, (Renumbered from 76-5a-4, as last amended by Laws of Utah 1985,  
72 Chapter 226)



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

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

76           **9-7-215. Internet and online access policy required.**

77           (1) As used in this section:

78           (a) "Child pornography" is as defined in Section [~~76-5a-2~~] 76-5b-103.

79           (b) "Harmful to minors" is as defined in Section 76-10-1201.

80           (c) "Obscene" is as defined in 20 U.S.C. Sec. 9101.

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

83           (2) State funds may not be provided to any public library that offers use of the Internet  
84 or an online service to the public unless the library:

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

87           (A) with respect to any publicly accessible computer with Internet access; and

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

89           (I) child pornography;

- 90 (II) harmful to minors; or
- 91 (III) obscene; and
- 92 (ii) is enforcing the operation of the technology protection measure described in
- 93 Subsection (2)(a)(i) during any use of a computer by a minor; and
- 94 (b) (i) has in place a policy of Internet safety including the operation of a technology
- 95 protection measure:
  - 96 (A) with respect to any publicly accessible computer with Internet access; and
  - 97 (B) that protects against access to visual depictions that are:
    - 98 (I) child pornography; or
    - 99 (II) obscene; and
  - 100 (ii) is enforcing the operation of the technology protection measure described in
  - 101 Subsection (2)(b)(i) during any use of a computer.

102 (3) This section does not prohibit a public library from limiting Internet access or

103 otherwise protecting against materials other than the materials specified in this section.

104 (4) An administrator, supervisor, or other representative of a public library may disable

105 a technology protection measure described in Subsection (2):

- 106 (a) at the request of a library patron who is not a minor; and
- 107 (b) to enable access for research or other lawful purposes.

108 Section 2. Section **31A-21-501** is amended to read:

109 **31A-21-501. Definitions.**

110 For purposes of this part:

- 111 (1) "Applicant" means:
  - 112 (a) in the case of an individual life or accident and health policy, the person who seeks
  - 113 to contract for insurance benefits; or
  - 114 (b) in the case of a group life or accident and health policy, the proposed certificate
  - 115 holder.
- 116 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
- 117 individual who is 16 years of age or older who:
  - 118 (a) is or was a spouse of the other party;
  - 119 (b) is or was living as if a spouse of the other party;
  - 120 (c) is related by blood or marriage to the other party;

- 121 (d) has one or more children in common with the other party; or
- 122 (e) resides or has resided in the same residence as the other party.
- 123 (3) "Child abuse" means the commission or attempt to commit against a child a
- 124 criminal offense described in:
  - 125 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
  - 126 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
  - 127 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or
  - 128 (d) Section 76-9-702.5, Lewdness Involving a Child.
- 129 (4) "Domestic violence" means any criminal offense involving violence or physical
- 130 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
- 131 commit a criminal offense involving violence or physical harm, when committed by one
- 132 cohabitant against another and includes commission or attempt to commit, any of the following
- 133 offenses by one cohabitant against another:
  - 134 (a) aggravated assault, as described in Section 76-5-103;
  - 135 (b) assault, as described in Section 76-5-102;
  - 136 (c) criminal homicide, as described in Section 76-5-201;
  - 137 (d) harassment, as described in Section 76-5-106;
  - 138 (e) electronic communication harassment, as described in Section 76-9-201;
  - 139 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
  - 140 76-5-301, 76-5-301.1, and 76-5-302;
  - 141 (g) mayhem, as described in Section 76-5-105;
  - 142 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and [~~Title 76, Chapter~~
  - 143 5a] Section 76-5b-201;
  - 144 (i) stalking, as described in Section 76-5-106.5;
  - 145 (j) unlawful detention, as described in Section 76-5-304;
  - 146 (k) violation of a protective order or ex parte protective order, as described in Section
  - 147 76-5-108;
  - 148 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
  - 149 (m) possession of a deadly weapon with intent to assault, as described in Section
  - 150 76-10-507; or
  - 151 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any

152 person, building, or vehicle, as described in Section 76-10-508.

153 (5) "Subject of domestic abuse" means an individual who is, has been, may currently  
154 be, or may have been subject to domestic violence or child abuse.

155 Section 3. Section **53A-6-501** is amended to read:

156 **53A-6-501. Disciplinary action against educator.**

157 (1) (a) The board shall take appropriate action against a person who is, or at the time of  
158 an alleged offense was, the holder of a license, and:

159 (i) who, after having had a reasonable opportunity to contest the allegation, has been  
160 found pursuant to a criminal, civil, or administrative action to have exhibited behavior  
161 evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or  
162 other violation of standards of ethical conduct, performance, or professional competence; or

163 (ii) who has been alleged to have exhibited such behavior or committed such a  
164 violation.

165 (b) Prior to taking action based upon an allegation or the decision of an administrative  
166 body other than UPPAC, the board shall direct UPPAC to review the allegations and any  
167 related administrative action and provide findings and recommendations to the board.

168 (c) No adverse recommendation may be made without giving the accused person an  
169 opportunity for a hearing.

170 (d) The board's action may include:

171 (i) revocation or suspension of a license;

172 (ii) restriction or prohibition of recertification;

173 (iii) a warning or reprimand;

174 (iv) required participation in and satisfactory completion of a rehabilitation or  
175 remediation program; or

176 (v) other action which the board finds to be appropriate after a review of the UPPAC  
177 findings and recommendations.

178 (e) The license holder is responsible for the costs of rehabilitation or remediation  
179 required under this section.

180 (2) (a) Upon receipt of findings or recommendations from UPPAC, the board shall  
181 permanently revoke the license of a person who:

182 (i) is convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses,

183 against a minor child;

184 (ii) engages in sexually explicit conduct, as defined in Section ~~[76-5a-2]~~ 76-5b-103,  
185 with a student who is a minor; or

186 (iii) engages in sexually explicit conduct, as defined in Section ~~[76-5a-2]~~ 76-5b-103,  
187 with a student who is:

188 (A) not a minor; and

189 (B) enrolled in a school where the person is employed.

190 (b) Upon receipt of findings or recommendation from UPPAC, the board may  
191 permanently revoke the license of a person who has exhibited other behavior which the board  
192 finds to be irremediable.

193 Section 4. Section **62A-2-120** is amended to read:

194 **62A-2-120. Criminal background checks -- Direct access to children or**  
195 **vulnerable adults.**

196 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a  
197 license renewal under this chapter shall submit to the office the names and other identifying  
198 information, which may include fingerprints, of all persons associated with the licensee, as  
199 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

200 (b) The Criminal Investigations and Technical Services Division of the Department of  
201 Public Safety, or the office as authorized under Section 53-10-108, shall process the  
202 information described in Subsection (1)(a) to determine whether the individual has been  
203 convicted of any crime.

204 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived  
205 in Utah for the five years immediately preceding the day on which the information referred to  
206 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI  
207 national criminal history record check. The fingerprints shall be submitted to the FBI through  
208 the Criminal Investigations and Technical Services Division.

209 (d) An individual is not required to comply with Subsection (1)(c) if:

210 (i) the individual continuously lived in Utah for the five years immediately preceding  
211 the day on which the information described in Subsection (1)(a) is submitted to the office,  
212 except for time spent outside of the United States and its territories; and

213 (ii) the background check of the individual is being conducted for a purpose other than

214 a purpose described in Subsection (1)(f).

215 (e) If an applicant described in Subsection (1)(a) spent time outside of the United  
216 States and its territories during the five years immediately preceding the day on which the  
217 information described in Subsection (1)(a) is submitted to the office, the office shall require the  
218 applicant to submit documentation establishing whether the applicant was convicted of a crime  
219 during the time that the applicant spent outside of the United States and its territories.

220 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in  
221 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an  
222 FBI national criminal history records check, through the Criminal Investigations and Technical  
223 Services Division, if the background check of the applicant is being conducted for the purpose  
224 of:

225 (i) licensing a prospective foster home; or

226 (ii) approving a prospective adoptive placement of a child in state custody.

227 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of  
228 this section, if the background check of an applicant described in Subsection (1)(a) is being  
229 conducted for the purpose of licensing a prospective foster home or approving a prospective  
230 adoptive placement of a child in state custody, the office shall:

231 (i) check the child abuse and neglect registry in each state where each prospective  
232 foster parent or prospective adoptive parent resided in the five years immediately preceding the  
233 day on which the prospective foster parent or prospective adoptive parent applied to be a foster  
234 parent or adoptive parent, to determine whether the prospective foster parent or prospective  
235 adoptive parent is listed in the registry as having a substantiated or supported finding of child  
236 abuse or neglect; and

237 (ii) check the child abuse and neglect registry in each state where each adult living in  
238 the home of the prospective foster parent or prospective adoptive parent described in  
239 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the  
240 prospective foster parent or prospective adoptive parent applied to be a foster parent or  
241 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated  
242 or supported finding of child abuse or neglect.

243 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

244 (i) federal law or rule permits otherwise; or



245 (ii) the requirements would prohibit the Division of Child and Family Services or a  
246 court from placing a child with:

247 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

248 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
249 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)  
250 and (g).

251 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah  
252 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to  
253 background checks.

254 (2) The office shall approve a person for whom identifying information is submitted  
255 under Subsection (1) to have direct access to children or vulnerable adults in the licensee  
256 program if:

257 (a) (i) the person is found to have no criminal history record; or

258 (ii) (A) the only convictions in the person's criminal history record are misdemeanors  
259 or infractions not involving any of the offenses described in Subsection (3); and

260 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years  
261 before the date of the search;

262 (b) the person is not listed in the statewide database of the Division of Aging and Adult  
263 Services created by Section 62A-3-311.1;

264 (c) juvenile court records do not show that a court made a substantiated finding, under  
265 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

266 (d) the person is not listed in the Licensing Information System of the Division of  
267 Child and Family Services created by Section 62A-4a-1006;

268 (e) the person has not pled guilty or no contest to a pending charge for any:

269 (i) felony;

270 (ii) misdemeanor listed in Subsection (3); or

271 (iii) infraction listed in Subsection (3); and

272 (f) for a person described in Subsection (1)(g), the registry check described in  
273 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry  
274 of another state as having a substantiated or supported finding of a severe type of child abuse or  
275 neglect as defined in Section 62A-4a-1002.

276 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the  
277 date of conviction, the office may not approve a person to have direct access to children or  
278 vulnerable adults in the licensee's human services program if that person has been convicted of  
279 an offense, whether a felony, misdemeanor, or infraction, that is:

280 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

281 (b) a violation of any pornography law, including sexual exploitation of a minor;

282 (c) prostitution;

283 (d) included in:

284 (i) Title 76, Chapter 5, Offenses Against the Person;

285 (ii) [~~Title 76, Chapter 5a~~] Section 76-5b-201, Sexual Exploitation of [~~Children~~] a

286 Minor; or

287 (iii) Title 76, Chapter 7, Offenses Against the Family;

288 (e) a violation of Section 76-6-103, aggravated arson;

289 (f) a violation of Section 76-6-203, aggravated burglary;

290 (g) a violation of Section 76-6-302, aggravated robbery; or

291 (h) a conviction for an offense committed outside of the state that, if committed in the  
292 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

293 (4) (a) Except as provided in Subsection (8), if a person for whom identifying  
294 information is submitted under Subsection (1) is not approved by the office under Subsection  
295 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the  
296 office shall conduct a comprehensive review of criminal and court records and related  
297 circumstances if the reason the approval is not granted is due solely to one or more of the  
298 following:

299 (i) a conviction for:

300 (A) any felony not listed in Subsection (3);

301 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the  
302 date of the search;

303 (C) a protective order or ex parte protective order violation under Section 76-5-108 or  
304 a similar statute in another state; or

305 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years  
306 have passed since the date of conviction;

- 307 (ii) a plea of guilty or no contest to a pending:
- 308 (A) felony;
- 309 (B) misdemeanor listed in Subsection (3); or
- 310 (C) infraction listed in Subsection (3);
- 311 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 312 Services created by Section 62A-3-311.1;
- 313 (iv) juvenile court records show that a court made a substantiated finding, under
- 314 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
- 315 (v) the person is listed in the Licensing Information System of the Division of Child
- 316 and Family Services created by Section 62A-4a-1006; or
- 317 (vi) the person is listed in a child abuse or neglect registry of another state as having a
- 318 substantiated or supported finding of a severe type of child abuse or neglect as defined in
- 319 Section 62A-4a-1002.
- 320 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
- 321 (i) the date of the offense or incident;
- 322 (ii) the nature and seriousness of the offense or incident;
- 323 (iii) the circumstances under which the offense or incident occurred;
- 324 (iv) the age of the perpetrator when the offense or incident occurred;
- 325 (v) whether the offense or incident was an isolated or repeated incident;
- 326 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 327 adult, including:
- 328 (A) actual or threatened, nonaccidental physical or mental harm;
- 329 (B) sexual abuse;
- 330 (C) sexual exploitation; and
- 331 (D) negligent treatment;
- 332 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
- 333 treatment received, or additional academic or vocational schooling completed, by the person;
- 334 and
- 335 (viii) any other pertinent information.
- 336 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
- 337 shall approve the person who is the subject of the review to have direct access to children or

338 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or  
339 vulnerable adult.

340 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
341 office may make rules, consistent with this chapter, defining procedures for the comprehensive  
342 review described in this Subsection (4).

343 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person  
344 being supervised is under the uninterrupted visual and auditory surveillance of the person doing  
345 the supervising.

346 (b) A licensee may not permit any person to have direct access to a child or a  
347 vulnerable adult unless, subject to Subsection (5)(c), that person is:

348 (i) associated with the licensee and:

349 (A) approved by the office to have direct access to children or vulnerable adults under  
350 this section; or

351 (B) (I) the office has not determined whether to approve that person to have direct  
352 access to children or vulnerable adults;

353 (II) the information described in Subsection (1)(a), relating to that person, is submitted  
354 to the department; and

355 (III) that person is directly supervised by a person associated with the licensee who is  
356 approved by the office to have direct access to children or vulnerable adults under this section;

357 (ii) (A) not associated with the licensee; and

358 (B) directly supervised by a person associated with the licensee who is approved by the  
359 office to have direct access to children or vulnerable adults under this section;

360 (iii) the parent or guardian of the child or vulnerable adult; or

361 (iv) a person approved by the parent or guardian of the child or vulnerable adult to  
362 have direct access to the child or vulnerable adult.

363 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child  
364 or a vulnerable adult if that person is prohibited by court order from having that access.

365 (6) (a) Within 30 days after receiving the identifying information for a person under  
366 Subsection (1), the office shall give written notice to the person and to the licensee or applicant  
367 with whom the person is associated of:

368 (i) the office's decision regarding its background screening clearance and findings; and

369 (ii) a list of any convictions found in the search.

370 (b) With the notice described in Subsection (6)(a), the office shall also give to the  
371 person the details of any comprehensive review conducted under Subsection (4).

372 (c) If the notice under Subsection (6)(a) states that the person is not approved to have  
373 direct access to children or vulnerable adults, the notice shall further advise the persons to  
374 whom the notice is given that either the person or the licensee or applicant with whom the  
375 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the  
376 department's Office of Administrative Hearings, to challenge the office's decision.

377 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
378 office shall make rules, consistent with this chapter:

379 (i) defining procedures for the challenge of its background screening decision  
380 described in this Subsection (6); and

381 (ii) expediting the process for renewal of a license under the requirements of this  
382 section and other applicable sections.

383 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for  
384 an initial license, or license renewal, to operate a substance abuse program that provides  
385 services to adults only.

386 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or  
387 license a person as a prospective foster parent or a prospective adoptive parent if the person has  
388 been convicted of:

389 (i) a felony involving conduct that constitutes any of the following:

390 (A) child abuse, as described in Section 76-5-109;

391 (B) commission of domestic violence in the presence of a child, as described in Section  
392 76-5-109.1;

393 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;

394 (D) endangerment of a child, as described in Section 76-5-112.5;

395 (E) aggravated murder, as described in Section 76-5-202;

396 (F) murder, as described in Section 76-5-203;

397 (G) manslaughter, as described in Section 76-5-205;

398 (H) child abuse homicide, as described in Section 76-5-208;

399 (I) homicide by assault, as described in Section 76-5-209;

- 400 (J) kidnapping, as described in Section 76-5-301;
- 401 (K) child kidnapping, as described in Section 76-5-301.1;
- 402 (L) aggravated kidnapping, as described in Section 76-5-302;
- 403 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 404 (N) an offense described in [~~Title 76, Chapter 5a~~] Section 76-5b-201, Sexual
- 405 Exploitation of [~~Children~~] a Minor;
- 406 (O) aggravated arson, as described in Section 76-6-103;
- 407 (P) aggravated burglary, as described in Section 76-6-203;
- 408 (Q) aggravated robbery, as described in Section 76-6-302; or
- 409 (R) domestic violence, as described in Section 77-36-1; or
- 410 (ii) an offense committed outside the state that, if committed in the state, would
- 411 constitute a violation of an offense described in Subsection (8)(a)(i).
- 412 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
- 413 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
- 414 immediately preceding the day on which the person would otherwise be approved or licensed,
- 415 the person has been convicted of a felony involving conduct that constitutes any of the
- 416 following:
- 417 (i) aggravated assault, as described in Section 76-5-103;
- 418 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 419 (iii) mayhem, as described in Section 76-5-105;
- 420 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 421 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 422 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 423 Act;
- 424 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 425 Precursor Act; or
- 426 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 427 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
- 428 the conflicting provision of Section 62A-2-120.5 shall govern.
- 429 Section 5. Section **62A-3-301** is amended to read:
- 430 **62A-3-301. Definitions.**

431 As used in this part:

432 (1) "Abandonment" means any knowing or intentional action or failure to act,  
433 including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves  
434 the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or  
435 medical or other health care.

436 (2) "Abuse" means:

437 (a) knowingly or intentionally:

438 (i) attempting to cause harm;

439 (ii) causing harm; or

440 (iii) placing another in fear of harm;

441 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that  
442 causes or is likely to cause harm to a vulnerable adult;

443 (c) emotional or psychological abuse;

444 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;

445 or

446 (e) deprivation of life sustaining treatment, or medical or mental health treatment,

447 except:

448 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

449 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

450 (3) "Adult" means a person who is 18 years of age or older.

451 (4) "Adult protection case file" means a record, stored in any format, contained in a  
452 case file maintained by Adult Protective Services.

453 (5) "Adult Protective Services" means the unit within the division responsible to  
454 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate  
455 protective services.

456 (6) "Capacity to consent" means the ability of a person to understand and communicate  
457 regarding the nature and consequences of decisions relating to the person, and relating to the  
458 person's property and lifestyle, including a decision to accept or refuse services.

459 (7) "Caretaker" means each person, entity, corporation, or public institution that  
460 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,  
461 supervision, medical or other health care, resource management, or other necessities.

462 (8) "Counsel" means an attorney licensed to practice law in this state.

463 (9) "Database" means the statewide database maintained by the division under Section  
464 62A-3-311.1.

465 (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

466 (11) "Elder adult" means a person 65 years of age or older.

467 (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate  
468 risk of death, serious physical injury, or serious physical, emotional, or financial harm.

469 (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or  
470 nonverbal conduct directed at a vulnerable adult that results or could result in the vulnerable  
471 adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or  
472 confusion.

473 (b) "Emotional or psychological abuse" includes ridiculing, intimidating, yelling,  
474 swearing, threatening, isolating, coercing, or harassing.

475 (14) "Exploitation" means ~~the~~ an offense described in Subsection 76-5-111(4) or  
476 Section 76-5b-202.

477 (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or  
478 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted  
479 knowingly or intentionally.

480 (16) "Inconclusive" means a finding by the division that there is not a reasonable basis  
481 to conclude that abuse, neglect, or exploitation occurred.

482 (17) "Intimidation" means communication through verbal or nonverbal conduct which  
483 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,  
484 supervision, health care, or companionship, or which threatens isolation or abuse.

485 (18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult  
486 from having contact with another person by:

487 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,  
488 contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor  
489 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,  
490 knowing that communication to be false;

491 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult  
492 from meeting with a visitor; or



493 (iii) making false or misleading statements to the vulnerable adult in order to induce  
494 the vulnerable adult to refuse to receive communication from visitors or other family members.

495 (b) The term "isolation" does not include an act intended to protect the physical or  
496 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or  
497 instructions of a physician or other professional advisor of the vulnerable adult.

498 (19) "Lacks capacity to consent" [~~has the meaning as provided~~] is as defined in Section  
499 76-5-111.

500 (20) (a) "Neglect" means:

501 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,  
502 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable  
503 adult, unless the vulnerable adult is able to provide or obtain the necessary care without  
504 assistance; or

505 (B) failure of a caretaker to provide protection from health and safety hazards or  
506 maltreatment;

507 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and  
508 with the degree of care that a reasonable person in a like position would exercise;

509 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed  
510 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,  
511 heating, or other services necessary to maintain the vulnerable adult's well being;

512 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment  
513 plan that causes or is likely to cause harm to the vulnerable adult;

514 (v) self-neglect by the vulnerable adult; or

515 (vi) abandonment by a caretaker.

516 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or  
517 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

518 (21) "Physical injury" includes the damage and conditions described in Section  
519 76-5-111.

520 (22) "Protected person" means a vulnerable adult for whom the court has ordered  
521 protective services.

522 (23) "Protective services" means services to protect a vulnerable adult from abuse,  
523 neglect, or exploitation.

524 (24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,  
525 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to  
526 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or  
527 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be  
528 evidence of self-neglect.

529 (25) "Serious physical injury" is as defined in Section 76-5-111.

530 (26) "Supported" means a finding by the division that there is a reasonable basis to  
531 conclude that abuse, neglect, or exploitation occurred.

532 (27) "Undue influence" occurs when a person uses the person's role, relationship, or  
533 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear  
534 of a vulnerable adult, or uses the person's role, relationship, or power to gain control  
535 deceptively over the decision making of the vulnerable adult.

536 (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical  
537 impairment which substantially affects that person's ability to:

- 538 (a) provide personal protection;
- 539 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 540 (c) obtain services necessary for health, safety, or welfare;
- 541 (d) carry out the activities of daily living;
- 542 (e) manage the adult's own financial resources; or
- 543 (f) comprehend the nature and consequences of remaining in a situation of abuse,  
544 neglect, or exploitation.

545 (29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

546 Section 6. Section **63M-7-502** is amended to read:

547 **63M-7-502. Definitions.**

548 As used in this chapter:

549 (1) "Accomplice" means a person who has engaged in criminal conduct as defined in  
550 Section 76-2-202.

551 (2) "Board" means the Crime Victim Reparations Board created under Section  
552 63M-7-504.

553 (3) "Bodily injury" means physical pain, illness, or any impairment of physical  
554 condition.

- 555 (4) "Claim" means:
- 556 (a) the victim's application or request for a reparations award; and
- 557 (b) the formal action taken by a victim to apply for reparations pursuant to Sections
- 558 63M-7-501 through 63M-7-525.
- 559 (5) "Claimant" means any of the following claiming reparations under this chapter:
- 560 (a) a victim;
- 561 (b) a dependent of a deceased victim;
- 562 (c) a representative other than a collateral source; or
- 563 (d) the person or representative who files a claim on behalf of a victim.
- 564 (6) "Child" means an unemancipated person who is under 18 years of age.
- 565 (7) "Collateral source" means the definition as provided in Section 63M-7-513.
- 566 (8) "Contested case" means a case which the claimant contests, claiming the award was
- 567 either inadequate or denied, or which a county attorney, a district attorney, a law enforcement
- 568 officer, or other individual related to the criminal investigation proffers reasonable evidence of
- 569 the claimant's lack of cooperation in the prosecution of a case after an award has already been
- 570 given.
- 571 (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared
- 572 means conduct that:
- 573 (i) is or would be subject to prosecution in this state under Section 76-1-201;
- 574 (ii) occurs or is attempted;
- 575 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 576 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct
- 577 possessed the capacity to commit the conduct; and
- 578 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
- 579 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
- 580 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
- 581 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.
- 582 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
- 583 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
- 584 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.
- 585 (10) "Dependent" means a natural person to whom the victim is wholly or partially

586 legally responsible for care or support and includes a child of the victim born after the victim's  
587 death.

588 (11) "Dependent's economic loss" means loss after the victim's death of contributions  
589 of things of economic value to the victim's dependent, not including services the dependent  
590 would have received from the victim if the victim had not suffered the fatal injury, less  
591 expenses of the dependent avoided by reason of victim's death.

592 (12) "Dependent's replacement services loss" means loss reasonably and necessarily  
593 incurred by the dependent after the victim's death in obtaining services in lieu of those the  
594 decedent would have performed for the victim's benefit if the victim had not suffered the fatal  
595 injury, less expenses of the dependent avoided by reason of the victim's death and not  
596 subtracted in calculating the dependent's economic loss.

597 (13) "Director" means the director of the Office of Crime Victim Reparations.

598 (14) "Disposition" means the sentencing or determination of penalty or punishment to  
599 be imposed upon a person:

600 (a) convicted of a crime;

601 (b) found delinquent; or

602 (c) against whom a finding of sufficient facts for conviction or finding of delinquency  
603 is made.

604 (15) "Economic loss" means economic detriment consisting only of allowable expense,  
605 work loss, replacement services loss, and if injury causes death, dependent's economic loss and  
606 dependent's replacement service loss. Noneconomic detriment is not loss, but economic  
607 detriment is loss although caused by pain and suffering or physical impairment.

608 (16) "Elderly victim" means a person 60 years of age or older who is a victim.

609 (17) "Fraudulent claim" means a filed claim based on material misrepresentation of  
610 fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds  
611 for which the claimant is not eligible as provided in Section 63M-7-510.

612 (18) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

613 (19) "Law enforcement officer" means a law enforcement officer as defined in Section  
614 53-13-103.

615 (20) "Medical examination" means a physical examination necessary to document  
616 criminally injurious conduct but does not include mental health evaluations for the prosecution

617 and investigation of a crime.

618 (21) "Mental health counseling" means outpatient and inpatient counseling necessitated  
619 as a result of criminally injurious conduct. The definition of mental health counseling is  
620 subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah  
621 Administrative Rulemaking Act.

622 (22) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the  
623 victim which was attributable to the injury or death of the victim as provided by rules  
624 promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking  
625 Act.

626 (23) "Noneconomic detriment" means pain, suffering, inconvenience, physical  
627 impairment, and other nonpecuniary damage, except as provided in this chapter.

628 (24) "Pecuniary loss" does not include loss attributable to pain and suffering except as  
629 otherwise provided in this chapter.

630 (25) "Offender" means a person who has violated the criminal code through criminally  
631 injurious conduct regardless of whether the person is arrested, prosecuted, or convicted.

632 (26) "Offense" means a violation of the criminal code.

633 (27) "Office of Crime Victim Reparations" or "office" means the office of the  
634 reparations staff for the purpose of carrying out the provisions of this chapter.

635 (28) "Perpetrator" means the person who actually participated in the criminally  
636 injurious conduct.

637 (29) "Reparations officer" means a person employed by the office to investigate claims  
638 of victims and award reparations under this chapter, and includes the director when the director  
639 is acting as a reparations officer.

640 (30) "Reparations staff" means the director, the reparations officers, and any other staff  
641 employed to administer the Crime Victim Reparations Act.

642 (31) "Replacement service loss" means expenses reasonably and necessarily incurred in  
643 obtaining ordinary and necessary services in lieu of those the injured person would have  
644 performed, not for income but the benefit of the injured person or the injured person's  
645 dependents if the injured person had not been injured.

646 (32) "Representative" means the victim, immediate family member, legal guardian,  
647 attorney, conservator, executor, or an heir of a person but does not include service providers.

648 (33) "Restitution" means money or services an appropriate authority orders an offender  
649 to pay or render to a victim of the offender's conduct.

650 (34) "Secondary victim" means a person who is traumatically affected by the criminally  
651 injurious conduct subject to rules promulgated by the board pursuant to Title 63G, Chapter 3,  
652 Utah Administrative Rulemaking Act.

653 (35) "Service provider" means a person or agency who provides a service to crime  
654 victims for a monetary fee except attorneys as provided in Section 63M-7-524.

655 (36) (a) "Victim" means a person who suffers bodily or psychological injury or death as  
656 a direct result of criminally injurious conduct or of the production of pornography in violation  
657 of [~~Sections 76-5a-1 through 76-5a-4~~] Section 76-5b-201 if the person is a minor.

658 (b) "Victim" does not include a person who participated in or observed the judicial  
659 proceedings against an offender unless otherwise provided by statute or rule.

660 (c) "Victim" includes a resident of this state who is injured or killed by an act of  
661 terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

662 (37) "Work loss" means loss of income from work the injured victim would have  
663 performed if the injured victim had not been injured and expenses reasonably incurred by the  
664 injured victim in obtaining services in lieu of those the injured victim would have performed  
665 for income, reduced by any income from substitute work the injured victim was capable of  
666 performing but unreasonably failed to undertake.

667 Section 7. Section **76-1-302** is amended to read:

668 **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**  
669 **evidence would identify the defendant -- Commencement of prosecution.**

670 (1) Except as otherwise provided, a prosecution for:

671 (a) a felony or negligent homicide shall be commenced within four years after it is  
672 committed, except that prosecution for:

673 (i) forcible sexual abuse shall be commenced within eight years after the offense is  
674 committed, if within four years after its commission the offense is reported to a law  
675 enforcement agency; and

676 (ii) incest shall be commenced within eight years after the offense is committed, if  
677 within four years after its commission the offense is reported to a law enforcement agency;

678 (b) a misdemeanor other than negligent homicide shall be commenced within two years

679 after it is committed; and

680 (c) any infraction shall be commenced within one year after it is committed.

681 (2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in  
682 Subsections 76-3-203.5(1)(c)(i)(A) through [~~(AA)~~] (BB) may be commenced at any time if the  
683 identity of the person who committed the crime is unknown but DNA evidence is collected that  
684 would identify the person at a later date.

685 (b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of  
686 May 5, 2003, and no charges have been filed.

687 (3) If the statute of limitations would have run but for the provisions of Subsection (2)  
688 and identification of a perpetrator is made through DNA, a prosecution shall be commenced  
689 within one year of the discovery of the identity of the perpetrator.

690 (4) A prosecution is commenced upon:

- 691 (a) the finding and filing of an indictment by a grand jury;
- 692 (b) the filing of a complaint or information; or
- 693 (c) the issuance of a citation.

694 Section 8. Section **76-3-203.1** is amended to read:

695 **76-3-203.1. Offenses committed in concert with two or more persons or in**  
696 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

697 (1) As used in this section:

698 (a) "Criminal street gang" has the same definition as in Section 76-9-802.

699 (b) "In concert with two or more persons" means:

700 (i) the defendant was aided or encouraged by at least two other persons in committing  
701 the offense and was aware of this aid or encouragement; and

702 (ii) each of the other persons:

703 (A) was physically present; or

704 (B) participated as a party to any offense listed in Subsection (5).

705 (c) "In concert with two or more persons" means, regarding intent:

706 (i) other persons participating as parties need not have the intent to engage in the same  
707 offense or degree of offense as the defendant; and

708 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the  
709 minor were an adult.

710 (2) A person who commits any offense listed in Subsection (5) is subject to an  
711 enhanced penalty for the offense as provided in Subsection (4) if the trier of fact finds beyond a  
712 reasonable doubt that the person acted:

- 713 (a) in concert with two or more persons;
- 714 (b) for the benefit of, at the direction of, or in association with any criminal street gang  
715 as defined in Section 76-9-802; or
- 716 (c) to gain recognition, acceptance, membership, or increased status with a criminal  
717 street gang as defined in Section 76-9-802.

718 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to  
719 be subscribed upon the information or indictment notice that the defendant is subject to the  
720 enhanced penalties provided under this section.

- 721 (4) The enhanced penalty for a:
  - 722 (a) class B misdemeanor is a class A misdemeanor;
  - 723 (b) class A misdemeanor is a third degree felony;
  - 724 (c) third degree felony is a second degree felony;
  - 725 (d) second degree felony is a first degree felony; and
  - 726 (e) first degree felony is an indeterminate prison term of not less than five years in  
727 addition to the statutory minimum prison term for the offense, and which may be for life.

- 728 (5) Offenses referred to in Subsection (2) are:
  - 729 (a) any criminal violation of the following chapters of Title 58:
    - 730 (i) Chapter 37, Utah Controlled Substances Act;
    - 731 (ii) Chapter 37a, Utah Drug Paraphernalia Act;
    - 732 (iii) Chapter 37b, Imitation Controlled Substances Act; or
    - 733 (iv) Chapter 37c, Utah Controlled Substance Precursor Act;
  - 734 (b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related  
735 Offenses;
  - 736 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal  
737 Homicide;
  - 738 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,  
739 Trafficking, and Smuggling;
  - 740 (e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;



- 741 (f) sexual exploitation of a minor as defined in Section [~~76-5a-3~~] 76-5b-201;
- 742 (g) any property destruction offense under Title 76, Chapter 6, Part 1, Property  
743 Destruction;
- 744 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,  
745 Burglary and Criminal Trespass;
- 746 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;
- 747 (j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail  
748 Theft;
- 749 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504,  
750 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514,  
751 76-6-516, 76-6-517, 76-6-518, and 76-6-520;
- 752 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,  
753 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- 754 (m) tampering with a witness or other violation of Section 76-8-508;
- 755 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
- 756 (o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;
- 757 (p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;
- 758 (q) pornographic and harmful materials and performances offenses under Title 76,  
759 Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;
- 760 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;
- 761 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- 762 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 763 (u) communications fraud as defined in Section 76-10-1801;
- 764 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency  
765 Transaction Reporting Act; and
- 766 (w) burglary of a research facility as defined in Section 76-10-2002.
- 767 (6) It is not a bar to imposing the enhanced penalties under this section that the persons  
768 with whom the actor is alleged to have acted in concert are not identified, apprehended,  
769 charged, or convicted, or that any of those persons are charged with or convicted of a different  
770 or lesser offense.
- 771 Section 9. Section **76-3-203.5** is amended to read:

772 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

773 (1) As used in this section:

774 (a) "Felony" means any violation of a criminal statute of the state, any other state, the  
775 United States, or any district, possession, or territory of the United States for which the  
776 maximum punishment the offender may be subjected to exceeds one year in prison.

777 (b) "Habitual violent offender" means a person convicted within the state of any violent  
778 felony and who on at least two previous occasions has been convicted of a violent felony and  
779 committed to either prison in Utah or an equivalent correctional institution of another state or  
780 of the United States either at initial sentencing or after revocation of probation.

781 (c) "Violent felony" means:

782 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit  
783 any of the following offenses punishable as a felony:

784 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,  
785 Title 76, Chapter 6, Part 1, Property Destruction;

786 (B) assault by prisoner, Section 76-5-102.5;

787 (C) disarming a police officer, Section 76-5-102.8;

788 (D) aggravated assault, Section 76-5-103;

789 (E) aggravated assault by prisoner, Section 76-5-103.5;

790 (F) mayhem, Section 76-5-105;

791 (G) stalking, Subsection 76-5-106.5(2) or (3);

792 (H) threat of terrorism, Section 76-5-107.3;

793 (I) child abuse, Subsection 76-5-109(2)(a) or (b);

794 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

795 (K) abuse or neglect of disabled child, Section 76-5-110;

796 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

797 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

798 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

799 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter  
800 5, Part 3, Kidnapping, Trafficking, and Smuggling;

801 (P) rape, Section 76-5-402;

802 (Q) rape of a child, Section 76-5-402.1;

803 (R) object rape, Section 76-5-402.2;

804 (S) object rape of a child, Section 76-5-402.3;

805 (T) forcible sodomy, Section 76-5-403;

806 (U) sodomy on a child, Section 76-5-403.1;

807 (V) forcible sexual abuse, Section 76-5-404;

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

809 (X) aggravated sexual assault, Section 76-5-405;

810 (Y) sexual exploitation of a minor, Section ~~[76-5a-3]~~ 76-5b-201;

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

812 ~~[(Z)]~~ (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6,

813 Part 2, Burglary and Criminal Trespass;

814 ~~[(AA)]~~ (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3,

815 Robbery;

816 ~~[(BB)]~~ (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);

817 ~~[(CC)]~~ (DD) tampering with a witness under Subsection 76-8-508(1);

818 ~~[(DD)]~~ (EE) retaliation against a witness, victim, or informant under Section

819 76-8-508.3;

820 ~~[(EE)]~~ (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);

821 ~~[(FF)]~~ (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by

822 any threat or by use of force theft by extortion has been committed pursuant to Subsections

823 76-6-406(2)(a), (b), and (i);

824 ~~[(GG)]~~ (HH) possession, use, or removal of explosive, chemical, or incendiary devices

825 under Subsections 76-10-306(3) through (6);

826 ~~[(HH)]~~ (II) unlawful delivery of explosive, chemical, or incendiary devices under

827 Section 76-10-307;

828 ~~[(II)]~~ (JJ) purchase or possession of a dangerous weapon or handgun by a restricted

829 person under Section 76-10-503;

830 ~~[(JJ)]~~ (KK) unlawful discharge of a firearm under Section 76-10-508;

831 ~~[(KK)]~~ (LL) aggravated exploitation of prostitution under Subsection

832 76-10-1306(1)(a);

833 ~~[(LL)]~~ (MM) bus hijacking under Section 76-10-1504; and

834            [~~MM~~] NN discharging firearms and hurling missiles under Section 76-10-1505; or  
835            (ii) any felony violation of a criminal statute of any other state, the United States, or  
836 any district, possession, or territory of the United States which would constitute a violent  
837 felony as defined in this Subsection (1) if committed in this state.

838            (2) If a person is convicted in this state of a violent felony by plea or by verdict and the  
839 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender  
840 under this section, the penalty for a:

- 841            (a) third degree felony is as if the conviction were for a first degree felony;
- 842            (b) second degree felony is as if the conviction were for a first degree felony; or
- 843            (c) first degree felony remains the penalty for a first degree penalty except:
  - 844            (i) the convicted person is not eligible for probation; and
  - 845            (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
846 habitual violent offender as an aggravating factor in determining the length of incarceration.

847            (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
848 provide notice in the information or indictment that the defendant is subject to punishment as a  
849 habitual violent offender under this section. Notice shall include the case number, court, and  
850 date of conviction or commitment of any case relied upon by the prosecution.

851            (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
852 intends to deny that:

- 853            (A) the defendant is the person who was convicted or committed;
- 854            (B) the defendant was represented by counsel or had waived counsel; or
- 855            (C) the defendant's plea was understandingly or voluntarily entered.

856            (ii) The notice of denial shall be served not later than five days prior to trial and shall  
857 state in detail the defendant's contention regarding the previous conviction and commitment.

858            (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
859 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,  
860 of the:

- 861            (i) defendant's previous convictions for violent felonies, except as otherwise provided  
862 in the Utah Rules of Evidence; or
  - 863            (ii) allegation against the defendant of being a habitual violent offender.
- 864            (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of

865 being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
866 the jury, in which case the allegation shall be tried immediately to the court.

867 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section  
868 applies.

869 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
870 and the defendant shall be afforded an opportunity to present any necessary additional  
871 evidence.

872 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this  
873 section is applicable beyond a reasonable doubt.

874 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
875 contest, there is a rebuttable presumption that the conviction and commitment were regular and  
876 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the  
877 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution  
878 to establish by a preponderance of the evidence that the defendant was then represented by  
879 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea  
880 was understandingly and voluntarily entered.

881 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
882 finding on the record and shall indicate in the order of judgment and commitment that the  
883 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
884 under this section.

885 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
886 provisions of this section.

887 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
888 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part  
889 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

890 (6) The sentencing enhancement described in this section does not apply if:

891 (a) the offense for which the person is being sentenced is:

892 (i) a grievous sexual offense;

893 (ii) child kidnapping, Section 76-5-301.1;

894 (iii) aggravated kidnapping, Section 76-5-302; or

895 (iv) forcible sexual abuse, Section 76-5-404; and

896 (b) applying the sentencing enhancement provided for in this section would result in a  
897 lower maximum penalty than the penalty provided for under the section that describes the  
898 offense for which the person is being sentenced.

899 Section 10. Section ~~76-3-407~~ is amended to read:

900 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**  
901 **felony convictions.**

902 (1) As used in this section:

903 (a) "Prior sexual offense" means:

904 (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

905 (ii) sexual exploitation of a minor, Section ~~[76-5a-3]~~ 76-5b-201;

906 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

907 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through

908 (iii); or

909 (v) an offense in another state, territory, or district of the United States that, if  
910 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).

911 (b) "Sexual offense" means:

912 (i) an offense that is a felony of the second or third degree, or an attempted offense,  
913 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4,  
914 Sexual Offenses;

915 (ii) sexual exploitation of a minor, Section ~~[76-5a-3]~~ 76-5b-201;

916 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;

917 (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or

918 (v) an offense in another state, territory, or district of the United States that, if  
919 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).

920 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual  
921 offense is increased by five years for each conviction of the defendant for a prior sexual offense  
922 that arose from a separate criminal episode, if the trier of fact finds that:

923 (a) the defendant was convicted of a prior sexual offense; and

924 (b) the defendant was convicted of the prior sexual offense described in Subsection  
925 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is  
926 being sentenced.

927 (3) The increased maximum term described in Subsection (2) shall be in addition to,  
928 and consecutive to, any other prison term served by the defendant.

929 Section 11. Section **76-5-111** is amended to read:

930 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

931 (1) As used in this section:

932 (a) "Abandonment" means a knowing or intentional action or inaction, including  
933 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the  
934 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or  
935 medical or other health care.

936 (b) "Abuse" means:

937 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally  
938 or knowingly placing another in fear of imminent harm;

939 (ii) causing physical injury by knowing or intentional acts or omissions;

940 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation  
941 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's  
942 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the  
943 health and safety of the adult; or

944 (iv) deprivation of life-sustaining treatment, except:

945 (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

946 (B) when informed consent, as defined in this section, has been obtained.

947 (c) "Business relationship" means a relationship between two or more individuals or  
948 entities where there exists an oral or written agreement for the exchange of goods or services.

949 (d) (i) "Caretaker" means any person, entity, corporation, or public institution that  
950 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,  
951 supervision, medical or other health care, or other necessities.

952 (ii) "Caretaker" includes a relative by blood or marriage, a household member, a person  
953 who is employed or who provides volunteer work, or a person who contracts or is under court  
954 order to provide care.

955 (e) "Deception" means:

956 (i) a misrepresentation or concealment:

957 (A) of a material fact relating to services rendered, disposition of property, or use of

958 property intended to benefit a vulnerable adult;

959 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

960 (C) relating to the existing or preexisting condition of any property involved in a  
961 contract or agreement entered into with a vulnerable adult; or

962 (ii) the use or employment of any misrepresentation, false pretense, or false promise in  
963 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

964 (f) "Elder adult" means a person 65 years of age or older.

965 (g) "Endeavor" means to attempt or try.

966 (h) "Exploitation" means ~~[the]~~ an offense described in Subsection (4) or Section  
967 76-5b-202.

968 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or  
969 psychological damage, physical injury, suffering, or distress inflicted knowingly or  
970 intentionally.

971 (j) "Informed consent" means:

972 (i) a written expression by the person or authorized by the person, stating that the  
973 person fully understands the potential risks and benefits of the withdrawal of food, water,  
974 medication, medical services, shelter, cooling, heating, or other services necessary to maintain  
975 minimum physical or mental health, and that the person desires that the services be withdrawn.  
976 A written expression is valid only if the person is of sound mind when the consent is given, and  
977 the consent is witnessed by at least two individuals who do not benefit from the withdrawal of  
978 services; or

979 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,  
980 heating, or other services necessary to maintain minimum physical or mental health, as  
981 permitted by court order.

982 (k) "Intimidation" means communication conveyed through verbal or nonverbal  
983 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social  
984 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

985 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from  
986 having contact with another person by:

987 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,  
988 contrary to the express wishes of the vulnerable adult, including communicating to a visitor



989 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,  
990 knowing that communication to be false;

991 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult  
992 from meeting with a visitor; or

993 (C) making false or misleading statements to the vulnerable adult in order to induce the  
994 vulnerable adult to refuse to receive communication from visitors or other family members.

995 (ii) The term "isolation" does not include an act intended to protect the physical or  
996 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or  
997 instructions of a physician or other professional advisor of the vulnerable adult.

998 (m) "Lacks capacity to consent" means an impairment by reason of mental illness,  
999 developmental disability, organic brain disorder, physical illness or disability, chronic use of  
1000 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a  
1001 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions  
1002 concerning the adult's person or property.

1003 (n) "Neglect" means:

1004 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal  
1005 care, or dental or other health care, or failure to provide protection from health and safety  
1006 hazards or maltreatment;

1007 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and  
1008 with the degree of care that a reasonable person in a like position would exercise;

1009 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed  
1010 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,  
1011 heating, or other services necessary to maintain the vulnerable adult's well being;

1012 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that  
1013 results or could result in physical injury or physical harm; or

1014 (v) abandonment by a caretaker.

1015 (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic  
1016 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a  
1017 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot  
1018 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a  
1019 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,

1020 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,  
1021 injury to any internal organ, or any other physical condition that imperils the health or welfare  
1022 of the vulnerable adult and is not a serious physical injury as defined in this section.

1023 (p) "Position of trust and confidence" means the position of a person who:  
1024 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable  
1025 adult;

1026 (ii) is a joint tenant or tenant in common with a vulnerable adult;

1027 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a

1028 court-appointed or voluntary guardian, trustee, attorney, or conservator; or

1029 (iv) is a caretaker of a vulnerable adult.

1030 (q) "Serious physical injury" means any physical injury or set of physical injuries that:

1031 (i) seriously impairs a vulnerable adult's health;

1032 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

1033 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

1034 (iv) creates a reasonable risk of death.

1035 [~~(r) "Sexual exploitation" means the production, distribution, possession, or possession~~  
1036 ~~with the intent to distribute material or a live performance depicting a nude or partially nude~~  
1037 ~~vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any~~  
1038 ~~person.]~~

1039 [~~(s)~~ (r)] "Undue influence" occurs when a person uses the person's role, relationship, or  
1040 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear  
1041 of a vulnerable adult, or uses the person's role, relationship, or power to gain control  
1042 deceptively over the decision making of the vulnerable adult.

1043 [~~(t)~~ (s)] "Vulnerable adult" means an elder adult, or an adult 18 years of age or older  
1044 who has a mental or physical impairment which substantially affects that person's ability to:

1045 (i) provide personal protection;

1046 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

1047 (iii) obtain services necessary for health, safety, or welfare;

1048 (iv) carry out the activities of daily living;

1049 (v) manage the adult's own resources; or

1050 (vi) comprehend the nature and consequences of remaining in a situation of abuse,

1051 neglect, or exploitation.

1052 (2) Under any circumstances likely to produce death or serious physical injury, any  
1053 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,  
1054 having the care or custody of a vulnerable adult, causes or permits that adult's person or health  
1055 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the  
1056 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a  
1057 vulnerable adult as follows:

1058 (a) if done intentionally or knowingly, the offense is a second degree felony;

1059 (b) if done recklessly, the offense is third degree felony; and

1060 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1061 (3) Under circumstances other than those likely to produce death or serious physical  
1062 injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse,  
1063 or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's  
1064 person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to  
1065 be placed in a situation where the adult's person or health is endangered, is guilty of the offense  
1066 of abuse of a vulnerable adult as follows:

1067 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

1068 (b) if done recklessly, the offense is a class B misdemeanor; and

1069 (c) if done with criminal negligence, the offense is a class C misdemeanor.

1070 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the  
1071 person:

1072 (i) is in a position of trust and confidence, or has a business relationship, with the  
1073 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception  
1074 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,  
1075 credit, assets, or other property with the intent to temporarily or permanently deprive the  
1076 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of  
1077 someone other than the vulnerable adult;

1078 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and  
1079 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or  
1080 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to  
1081 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his

- 1082 property for the benefit of someone other than the vulnerable adult;
- 1083 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
- 1084 profit or advantage of someone other than the vulnerable adult;
- 1085 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
- 1086 for the profit or advantage of someone other than the vulnerable adult; or
- 1087 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
- 1088 furtherance of any criminal activity[~~; or~~].
- 1089 [~~(vi) commits sexual exploitation of a vulnerable adult.~~]
- 1090 (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:
- 1091 (i) if done intentionally or knowingly and the aggregate value of the resources used or
- 1092 the profit made is or exceeds \$5,000, the offense is a second degree felony;
- 1093 (ii) if done intentionally or knowingly and the aggregate value of the resources used or
- 1094 the profit made is less than \$5,000 or cannot be determined, the offense is a third degree
- 1095 felony;
- 1096 (iii) if done recklessly, the offense is a class A misdemeanor; or
- 1097 (iv) if done with criminal negligence, the offense is a class B misdemeanor.
- 1098 (5) It does not constitute a defense to a prosecution for any violation of this section that
- 1099 the accused did not know the age of the victim.
- 1100 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason
- 1101 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
- 1102 medical care.

1103 Section 12. Section **76-5-112.5** is amended to read:

1104 **76-5-112.5. Endangerment of a child or vulnerable adult.**

1105 (1) As used in this section:

1106 (a) (i) "Chemical substance" means:

1107 (A) a substance intended to be used as a precursor in the manufacture of a controlled

1108 substance;

1109 (B) a substance intended to be used in the manufacture of a controlled substance; or

1110 (C) any fumes or by-product resulting from the manufacture of a controlled substance.

1111 (ii) Intent under this Subsection (1)(a) may be demonstrated by:

1112 (A) the use, quantity, or manner of storage of the substance; or

- 1113 (B) the proximity of the substance to other precursors or to manufacturing equipment.
- 1114 (b) "Child" means a human being who is under 18 years of age.
- 1115 (c) "Controlled substance" is as defined in Section 58-37-2.
- 1116 (d) "Drug paraphernalia" is as defined in Section 58-37a-3.
- 1117 (e) "Exposed to" means that the child or vulnerable adult:
- 1118 (i) is able to access or view an unlawfully possessed:
- 1119 (A) controlled substance; or
- 1120 (B) chemical substance;
- 1121 (ii) has the reasonable capacity to access drug paraphernalia; or
- 1122 (iii) is able to smell an odor produced during, or as a result of, the manufacture or
- 1123 production of a controlled substance.
- 1124 (f) "Prescription" is as defined in Section 58-37-2.
- 1125 (g) "Vulnerable adult" is as defined in Subsection 76-5-111(1)[(†)].
- 1126 (2) Unless a greater penalty is otherwise provided by law:
- 1127 (a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the
- 1128 third degree if the person knowingly or intentionally causes or permits a child or a vulnerable
- 1129 adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical
- 1130 substance, or drug paraphernalia;
- 1131 (b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second
- 1132 degree, if:
- 1133 (i) the person engages in the conduct described in Subsection (2)(a); and
- 1134 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable
- 1135 adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or
- 1136 (c) a person is guilty of a felony of the first degree, if:
- 1137 (i) the person engages in the conduct described in Subsection (2)(a); and
- 1138 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable
- 1139 adult dies.
- 1140 (3) It is an affirmative defense to a violation of this section that the controlled
- 1141 substance:
- 1142 (a) was obtained by lawful prescription; and
- 1143 (b) is used or possessed by the person to whom it was lawfully prescribed.

1144 (4) The penalties described in this section are separate from, and in addition to, the  
1145 penalties and enhancements described in Title 58, Occupations and Professions.

1146 Section 13. Section **76-5b-101** is enacted to read:

1147 **CHAPTER 5b. SEXUAL EXPLOITATION ACT**

1148 **Part 1. General Provisions**

1149 **76-5b-101. Title.**

1150 This chapter is known as the "Sexual Exploitation Act."

1151 Section 14. Section **76-5b-102**, which is renumbered from Section 76-5a-1 is  
1152 renumbered and amended to read:

1153 ~~[76-5a-1].~~ **76-5b-102. Legislative determinations -- Purpose of chapter.**

1154 (1) The Legislature of Utah determines that:

1155 (a) the sexual exploitation of ~~[minors]~~ a minor is excessively harmful to ~~[their]~~ the  
1156 minor's physiological, emotional, social, and mental development; ~~[that minors]~~

1157 (b) the sexual exploitation of a vulnerable adult who lacks the capacity to consent to  
1158 sexual exploitation can result in excessive harm to the vulnerable adult's physiological,  
1159 emotional, and social well-being;

1160 (c) a minor cannot intelligently and knowingly consent to sexual exploitation; ~~[that]~~

1161 (d) regardless of whether it is classified as legally obscene, material that sexually  
1162 exploits ~~[minors]~~ a minor, or a vulnerable adult who does not have the capacity to consent to  
1163 sexual exploitation, is not protected by the First Amendment of the United States Constitution  
1164 or by the First or Fifteenth sections of Article I of the Utah Constitution and may be prohibited;  
1165 and ~~[that]~~

1166 (e) prohibition of and punishment for the distribution, possession, possession with  
1167 intent to distribute, and production of materials that sexually exploit ~~[minors]~~ a minor, or a  
1168 vulnerable adult who lacks the capacity to consent to sexual exploitation, is necessary and  
1169 justified to eliminate the market for those materials and to reduce the harm to the minor or  
1170 vulnerable adult inherent in the perpetuation of the record of ~~[his]~~ the minor's or vulnerable  
1171 adult's sexually exploitive activities.

1172 (2) It is the purpose of this chapter to prohibit the production, possession, possession  
1173 with intent to distribute, and distribution of materials ~~[which]~~ that sexually exploit ~~[minors]~~ a  
1174 minor, or a vulnerable adult who lacks capacity to consent to sexual exploitation, regardless of

1175 whether the materials are classified as legally obscene.

1176 Section 15. Section **76-5b-103**, which is renumbered from Section 76-5a-2 is  
1177 renumbered and amended to read:

1178 ~~[76-5a-2].~~ **76-5b-103. Definitions.**

1179 As used in this chapter:

1180 (1) "Child pornography" means any visual depiction, including any live performance,  
1181 photograph, film, video, picture, or computer or computer-generated image or picture, whether  
1182 made or produced by electronic, mechanical, or other means, of sexually explicit conduct,  
1183 where:

1184 (a) the production of the visual depiction involves the use of a minor engaging in  
1185 sexually explicit conduct;

1186 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

1187 (c) the visual depiction has been created, adapted, or modified to appear that an  
1188 identifiable minor is engaging in sexually explicit conduct.

1189 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,  
1190 providing, giving, granting admission to, or otherwise transferring or presenting child  
1191 pornography or vulnerable adult pornography with or without consideration.

1192 (3) "Identifiable minor"~~[(A)]~~ means a person:

1193 ~~[(i)]~~ ~~(A)~~ (a) (i) who was a minor at the time the visual depiction was created, adapted,  
1194 or modified; or

1195 ~~[(B)]~~ (ii) whose image as a minor was used in creating, adapting, or modifying the  
1196 visual depiction; and

1197 ~~[(ii)]~~ (b) who is recognizable as an actual person by the person's face, likeness, or other  
1198 distinguishing characteristic, such as a birthmark, or other recognizable feature~~[- and]~~.

1199 ~~[(b) does not require proof of the actual identity of the identifiable minor.]~~

1200 (4) "Identifiable vulnerable adult" means a person:

1201 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,  
1202 or modified; or

1203 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the  
1204 visual depiction; and

1205 (b) who is recognizable as an actual person by the person's face, likeness, or other

- 1206 distinguishing characteristic, such as a birthmark, or other recognizable feature.
- 1207 (5) "Lacks capacity to consent" is as defined in Subsection 76-5-111(1).
- 1208 ~~[(4)]~~ (6) "Live performance" means any act, play, dance, pantomime, song, or other
- 1209 activity performed by live actors in person.
- 1210 ~~[(5)]~~ (7) "Minor" means a person younger than 18 years of age.
- 1211 ~~[(6)]~~ (8) "Nudity or partial nudity" means any state of dress or undress in which the
- 1212 human genitals, pubic region, buttocks, or the female breast, at a point below the top of the
- 1213 areola, is less than completely and opaquely covered.
- 1214 ~~[(7)]~~ (9) "Produce" means:
- 1215 (a) the photographing, filming, taping, directing, producing, creating, designing, or
- 1216 composing of child pornography or vulnerable adult pornography; or
- 1217 (b) the securing or hiring of persons to engage in the ~~[production of child pornography]~~
- 1218 photographing, filming, taping, directing, producing, creating, designing, or composing of child
- 1219 pornography or vulnerable adult pornography.
- 1220 ~~[(8)]~~ (10) "Sexually explicit conduct" means actual or simulated:
- 1221 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
- 1222 whether between persons of the same or opposite sex;
- 1223 (b) masturbation;
- 1224 (c) bestiality;
- 1225 (d) sadistic or masochistic activities;
- 1226 (e) lascivious exhibition of the genitals or pubic area of any person;
- 1227 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
- 1228 arousal of any person;
- 1229 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 1230 (h) the explicit representation of the defecation or urination functions.
- 1231 ~~[(9)]~~ (11) "Simulated sexually explicit conduct" means a feigned or pretended act of
- 1232 sexually explicit conduct which duplicates, within the perception of an average person, the
- 1233 appearance of an actual act of sexually explicit conduct.
- 1234 (12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).
- 1235 (13) "Vulnerable adult pornography" means any visual depiction, including any live
- 1236 performance, photograph, film, video, picture, or computer or computer-generated image or



1237 picture, whether made or produced by electronic, mechanical, or other means, of sexually  
 1238 explicit conduct, where:

1239 (a) the production of the visual depiction involves the use of a vulnerable adult  
 1240 engaging in sexually explicit conduct:

1241 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;  
 1242 or

1243 (c) the visual depiction has been created, adapted, or modified to appear that an  
 1244 identifiable vulnerable adult is engaging in sexually explicit conduct.

1245 Section 16. Section **76-5b-201**, which is renumbered from Section 76-5a-3 is  
 1246 renumbered and amended to read:

### 1247 **Part 2. Sexual Exploitation**

1248 ~~[76-5a-3].~~ **76-5b-201. Sexual exploitation of a minor -- Offenses.**

1249 (1) A person is guilty of sexual exploitation of a minor:

1250 (a) when the person:

1251 (i) knowingly produces, possesses, or possesses with intent to distribute child  
 1252 pornography; or

1253 (ii) intentionally distributes or views child pornography; or

1254 (b) if the person is a minor's parent or legal guardian and knowingly consents to or  
 1255 permits ~~[that]~~ the minor to be sexually exploited ~~[under]~~ as described in Subsection (1)(a).

1256 (2) Sexual exploitation of a minor is a ~~[felony of the]~~ second degree felony.

1257 (3) It is a separate offense under this section:

1258 (a) for each minor depicted~~[-, and if more than one minor is depicted in the child~~  
 1259 ~~pornography in violation of this section, the depiction of each individual minor]~~ in the child  
 1260 pornography ~~[is a separate offense]~~; and

1261 (b) for each time the same minor is depicted in different child pornography.

1262 (4) It is an affirmative defense to a charge of violating this section that no person under  
 1263 18 years of age was actually depicted in the visual depiction or used in producing or advertising  
 1264 the visual depiction.

1265 (5) In proving a violation of this section in relation to an identifiable minor, proof of  
 1266 the actual identity of the identifiable minor is not required.

1267 ~~[(5)]~~ (6) This section may not be construed to impose criminal or civil liability on:

1268 (a) any entity or an employee, director, officer, or agent of an entity when acting within  
1269 the scope of employment, for the good faith performance of:

1270 (i) reporting or data preservation duties required under any federal or state law; or

1271 (ii) implementing a policy of attempting to prevent the presence of child pornography  
1272 on any tangible or intangible property, or of detecting and reporting the presence of child  
1273 pornography on the property; or

1274 (b) any law enforcement officer acting within the scope of a criminal investigation.

1275 Section 17. Section **76-5b-202** is enacted to read:

1276 **76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.**

1277 (1) A person is guilty of sexual exploitation of a vulnerable adult if the person:

1278 (a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute  
1279 vulnerable adult pornography; or

1280 (B) intentionally distributes or views vulnerable adult pornography; and

1281 (ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult  
1282 pornography lacks capacity to consent to the conduct described in Subsection (1)(a); or

1283 (b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the  
1284 vulnerable adult to be, sexually exploited as described in Subsection (1)(a).

1285 (2) Sexual exploitation of a vulnerable adult is a third degree felony.

1286 (3) It is a separate offense under this section:

1287 (a) for each vulnerable adult depicted in the vulnerable adult pornography; and

1288 (b) for each time the same vulnerable adult is depicted in different vulnerable adult  
1289 pornography.

1290 (4) It is an affirmative defense to a charge of violating this section that no vulnerable  
1291 adult was actually depicted in the visual depiction or used in producing or advertising the  
1292 visual depiction.

1293 (5) In proving a violation of this section in relation to an identifiable vulnerable adult,  
1294 proof of the actual identity of the identifiable vulnerable adult is not required.

1295 (6) This section may not be construed to impose criminal or civil liability on:

1296 (a) any entity or an employee, director, officer, or agent of an entity, when acting  
1297 within the scope of employment, for the good faith performance of:

1298 (i) reporting or data preservation duties required under any federal or state law; or

1299 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult  
 1300 pornography on any tangible or intangible property, or of detecting and reporting the presence  
 1301 of vulnerable adult pornography on the property; or

1302 (b) any law enforcement officer acting within the scope of a criminal investigation.

1303 Section 18. Section **76-5b-301**, which is renumbered from Section 76-5a-4 is  
 1304 renumbered and amended to read:

1305 **Part 3. Miscellaneous**

1306 ~~[76-5a-4].~~ **76-5b-301. Determination whether material violates chapter.**

1307 (1) In determining whether material is in violation of this chapter, the material need not  
 1308 be considered as a whole, but may be examined by the trier of fact in part only.

1309 (2) It is not an element of the offense of sexual exploitation of a minor that the material  
 1310 appeal to the prurient interest in sex of the average person nor that prohibited conduct need be  
 1311 portrayed in a patently offensive manner.

1312 (3) It is not an element of the offense of sexual exploitation of a vulnerable adult that  
 1313 the material appeal to the prurient interest in sex of the average person nor that prohibited  
 1314 conduct need be portrayed in a patently offensive manner.

1315 Section 19. Section **76-5b-302** is enacted to read:

1316 **76-5b-302. Lack of knowledge of age not a defense.**

1317 It is not a defense to an offense described in this chapter that the accused did not know  
 1318 the age of the victim.

1319 Section 20. Section **76-9-702.5** is amended to read:

1320 **76-9-702.5. Lewdness involving a child.**

1321 (1) A person is guilty of lewdness involving a child if the person under circumstances  
 1322 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a  
 1323 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,  
 1324 intentionally or knowingly does any of the following to, or in the presence of a child who is  
 1325 under 14 years of age:

1326 (a) performs an act of sexual intercourse or sodomy;

1327 (b) exposes his or her genitals, the female breast below the top of the areola, the  
 1328 buttocks, the anus, or the pubic area:

1329 (i) in a public place; or

- 1330 (ii) in a private place:
- 1331 (A) under circumstances the person should know will likely cause affront or alarm; or
- 1332 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;
- 1333 (c) masturbates;
- 1334 (d) under circumstances not amounting to sexual exploitation of a child under Section
- 1335 ~~[76-5a-3]~~ 76-5b-201, causes a child under the age of 14 years to expose his or her genitals,
- 1336 anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of
- 1337 the actor or the child; or

1338 (e) performs any other act of lewdness.

1339 (2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection

1340 (2)(b).

1341 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

1342 (i) the person is a sex offender as defined in Section 77-27-21.7; or

1343 (ii) the person has previously been convicted of a violation of this section.

1344 Section 21. Section **76-10-1602 (Superseded 07/01/11)** is amended to read:

1345 **76-10-1602 (Superseded 07/01/11). Definitions.**

1346 As used in this part:

1347 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,

1348 business trust, association, or other legal entity, and any union or group of individuals

1349 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1350 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the

1351 commission of at least three episodes of unlawful activity, which episodes are not isolated, but

1352 have the same or similar purposes, results, participants, victims, or methods of commission, or

1353 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall

1354 demonstrate continuing unlawful conduct and be related either to each other or to the

1355 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have

1356 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful

1357 activity as defined by this part shall have occurred within five years of the commission of the

1358 next preceding act alleged as part of the pattern.

1359 (3) "Person" includes any individual or entity capable of holding a legal or beneficial

1360 interest in property, including state, county, and local governmental entities.

1361 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
1362 command, encourage, or intentionally aid another person to engage in conduct which would  
1363 constitute any offense described by the following crimes or categories of crimes, or to attempt  
1364 or conspire to engage in an act which would constitute any of those offenses, regardless of  
1365 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
1366 or a felony:

1367 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
1368 Recording Practices Act;

1369 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
1370 Code, Sections 19-1-101 through 19-7-109;

1371 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
1372 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
1373 Code of Utah, or Section 23-20-4;

1374 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
1375 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

1376 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal  
1377 Offenses;

1378 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
1379 Land Sales Practices Act;

1380 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
1381 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
1382 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
1383 Clandestine Drug Lab Act;

1384 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
1385 Securities Act;

1386 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah  
1387 Procurement Code;

1388 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

1389 (k) a threat of terrorism, Section 76-5-107.3;

1390 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

1391 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

- 1392 (n) sexual exploitation of a minor, Section [~~76-5a-3~~] 76-5b-201;
- 1393 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 1394 (p) causing a catastrophe, Section 76-6-105;
- 1395 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1396 (r) burglary of a vehicle, Section 76-6-204;
- 1397 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1398 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1399 (u) theft, Section 76-6-404;
- 1400 (v) theft by deception, Section 76-6-405;
- 1401 (w) theft by extortion, Section 76-6-406;
- 1402 (x) receiving stolen property, Section 76-6-408;
- 1403 (y) theft of services, Section 76-6-409;
- 1404 (z) forgery, Section 76-6-501;
- 1405 (aa) fraudulent use of a credit card, Sections [~~76-6-506.1, 76-6-506.2, and 76-6-506.4~~]
- 1406 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- 1407 (bb) deceptive business practices, Section 76-6-507;
- 1408 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 1409 criticism of goods, Section 76-6-508;
- 1410 (dd) bribery of a labor official, Section 76-6-509;
- 1411 (ee) defrauding creditors, Section 76-6-511;
- 1412 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1413 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1414 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1415 (ii) making a false credit report, Section 76-6-517;
- 1416 (jj) criminal simulation, Section 76-6-518;
- 1417 (kk) criminal usury, Section 76-6-520;
- 1418 (ll) fraudulent insurance act, Section 76-6-521;
- 1419 (mm) retail theft, Section 76-6-602;
- 1420 (nn) computer crimes, Section 76-6-703;
- 1421 (oo) identity fraud, Section 76-6-1102;
- 1422 (pp) mortgage fraud, Section 76-6-1203;

- 1423 (qq) sale of a child, Section 76-7-203;
- 1424 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1425 (ss) threats to influence official or political action, Section 76-8-104;
- 1426 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 1427 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
- 1428 76-8-106;
- 1429 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 1430 (ww) obstruction of justice, Section 76-8-306;
- 1431 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1432 (yy) false or inconsistent material statements, Section 76-8-502;
- 1433 (zz) false or inconsistent statements, Section 76-8-503;
- 1434 (aaa) written false statements, Section 76-8-504;
- 1435 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1436 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1437 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1438 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 1439 76-8-1205;
- 1440 (fff) unemployment insurance fraud, Section 76-8-1301;
- 1441 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 1442 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 1443 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 1444 parts, Section 76-10-306;
- 1445 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 1446 device, Section 76-10-307;
- 1447 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 1448 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 1449 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 1450 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 1451 76-10-1002;
- 1452 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 1453 Section 76-10-1003;

1454 (ooo) sales in containers bearing registered trademark of substituted articles, Section  
1455 76-10-1004;  
1456 (ppp) selling or dealing with article bearing registered trademark or service mark with  
1457 intent to defraud, Section 76-10-1006;  
1458 (qqq) gambling, Section 76-10-1102;  
1459 (rrr) gambling fraud, Section 76-10-1103;  
1460 (sss) gambling promotion, Section 76-10-1104;  
1461 (ttt) possessing a gambling device or record, Section 76-10-1105;  
1462 (uuu) confidence game, Section 76-10-1109;  
1463 (vvv) distributing pornographic material, Section 76-10-1204;  
1464 (www) inducing acceptance of pornographic material, Section 76-10-1205;  
1465 (xxx) dealing in harmful material to a minor, Section 76-10-1206;  
1466 (yyy) distribution of pornographic films, Section 76-10-1222;  
1467 (zzz) indecent public displays, Section 76-10-1228;  
1468 (aaaa) prostitution, Section 76-10-1302;  
1469 (bbbb) aiding prostitution, Section 76-10-1304;  
1470 (cccc) exploiting prostitution, Section 76-10-1305;  
1471 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;  
1472 (eeee) communications fraud, Section 76-10-1801;  
1473 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money  
1474 Laundering and Currency Transaction Reporting Act;  
1475 (gggg) vehicle compartment for contraband, Section 76-10-2801;  
1476 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in  
1477 this state; and  
1478 (iiii) any act illegal under the laws of the United States and enumerated in Title 18,  
1479 Section 1961 (1)(B), (C), and (D) of the United States Code.  
1480 Section 22. Section **76-10-1602 (Effective 07/01/11)** is amended to read:  
1481 **76-10-1602 (Effective 07/01/11). Definitions.**  
1482 As used in this part:  
1483 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
1484 business trust, association, or other legal entity, and any union or group of individuals



1485 associated in fact although not a legal entity, and includes illicit as well as licit entities.

1486 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
1487 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
1488 have the same or similar purposes, results, participants, victims, or methods of commission, or  
1489 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
1490 demonstrate continuing unlawful conduct and be related either to each other or to the  
1491 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
1492 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
1493 activity as defined by this part shall have occurred within five years of the commission of the  
1494 next preceding act alleged as part of the pattern.

1495 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
1496 interest in property, including state, county, and local governmental entities.

1497 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
1498 command, encourage, or intentionally aid another person to engage in conduct which would  
1499 constitute any offense described by the following crimes or categories of crimes, or to attempt  
1500 or conspire to engage in an act which would constitute any of those offenses, regardless of  
1501 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
1502 or a felony:

1503 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
1504 Recording Practices Act;

1505 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
1506 Code, Sections 19-1-101 through 19-7-109;

1507 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
1508 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
1509 Code of Utah, or Section 23-20-4;

1510 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
1511 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

1512 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal  
1513 Offenses and Procedure Act;

1514 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
1515 Land Sales Practices Act;

- 1516 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 1517 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
- 1518 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 1519 Clandestine Drug Lab Act;
- 1520 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 1521 Securities Act;
- 1522 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6 Utah
- 1523 Procurement Code;
- 1524 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 1525 (k) a threat of terrorism, Section 76-5-107.3;
- 1526 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 1527 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 1528 (n) sexual exploitation of a minor, Section ~~[76-5a-3]~~ 76-5b-201;
- 1529 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 1530 (p) causing a catastrophe, Section 76-6-105;
- 1531 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 1532 (r) burglary of a vehicle, Section 76-6-204;
- 1533 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 1534 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 1535 (u) theft, Section 76-6-404;
- 1536 (v) theft by deception, Section 76-6-405;
- 1537 (w) theft by extortion, Section 76-6-406;
- 1538 (x) receiving stolen property, Section 76-6-408;
- 1539 (y) theft of services, Section 76-6-409;
- 1540 (z) forgery, Section 76-6-501;
- 1541 (aa) fraudulent use of a credit card, Sections ~~[76-6-506.1, 76-6-506.2, and 76-6-506.4]~~
- 1542 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- 1543 (bb) deceptive business practices, Section 76-6-507;
- 1544 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 1545 criticism of goods, Section 76-6-508;
- 1546 (dd) bribery of a labor official, Section 76-6-509;

- 1547 (ee) defrauding creditors, Section 76-6-511;
- 1548 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1549 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1550 (hh) bribery or threat to influence contest, Section 76-6-514;
- 1551 (ii) making a false credit report, Section 76-6-517;
- 1552 (jj) criminal simulation, Section 76-6-518;
- 1553 (kk) criminal usury, Section 76-6-520;
- 1554 (ll) fraudulent insurance act, Section 76-6-521;
- 1555 (mm) retail theft, Section 76-6-602;
- 1556 (nn) computer crimes, Section 76-6-703;
- 1557 (oo) identity fraud, Section 76-6-1102;
- 1558 (pp) mortgage fraud, Section 76-6-1203;
- 1559 (qq) sale of a child, Section 76-7-203;
- 1560 (rr) bribery to influence official or political actions, Section 76-8-103;
- 1561 (ss) threats to influence official or political action, Section 76-8-104;
- 1562 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 1563 (uu) receiving bribe or bribery for endorsement of person as public servant, Section  
1564 76-8-106;
- 1565 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 1566 (ww) obstruction of justice, Section 76-8-306;
- 1567 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 1568 (yy) false or inconsistent material statements, Section 76-8-502;
- 1569 (zz) false or inconsistent statements, Section 76-8-503;
- 1570 (aaa) written false statements, Section 76-8-504;
- 1571 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1572 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1573 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1574 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or  
1575 76-8-1205;
- 1576 (fff) unemployment insurance fraud, Section 76-8-1301;
- 1577 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection

1578 76-9-301(2)(d) or (e), or Section 76-9-301.1;  
1579 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or  
1580 parts, Section 76-10-306;  
1581 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary  
1582 device, Section 76-10-307;  
1583 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;  
1584 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;  
1585 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;  
1586 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section  
1587 76-10-1002;  
1588 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,  
1589 Section 76-10-1003;  
1590 (ooo) sales in containers bearing registered trademark of substituted articles, Section  
1591 76-10-1004;  
1592 (ppp) selling or dealing with article bearing registered trademark or service mark with  
1593 intent to defraud, Section 76-10-1006;  
1594 (qqq) gambling, Section 76-10-1102;  
1595 (rrr) gambling fraud, Section 76-10-1103;  
1596 (sss) gambling promotion, Section 76-10-1104;  
1597 (ttt) possessing a gambling device or record, Section 76-10-1105;  
1598 (uuu) confidence game, Section 76-10-1109;  
1599 (vvv) distributing pornographic material, Section 76-10-1204;  
1600 (www) inducing acceptance of pornographic material, Section 76-10-1205;  
1601 (xxx) dealing in harmful material to a minor, Section 76-10-1206;  
1602 (yyy) distribution of pornographic films, Section 76-10-1222;  
1603 (zzz) indecent public displays, Section 76-10-1228;  
1604 (aaaa) prostitution, Section 76-10-1302;  
1605 (bbbb) aiding prostitution, Section 76-10-1304;  
1606 (cccc) exploiting prostitution, Section 76-10-1305;  
1607 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;  
1608 (eeee) communications fraud, Section 76-10-1801;

1609 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money  
1610 Laundering and Currency Transaction Reporting Act;  
1611 (gggg) vehicle compartment for contraband, Section 76-10-2801;  
1612 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in  
1613 this state; and  
1614 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.  
1615 Sec. 1961 (1)(B), (C), and (D).

1616 Section 23. Section **77-22-2.5** is amended to read:

1617 **77-22-2.5. Administrative subpoenas for criminal investigations for records**  
1618 **concerning an electronic communications system or service or remote computing service**  
1619 **-- Content -- Fee for providing information.**

1620 (1) As used in this section:

1621 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,  
1622 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,  
1623 radio, electromagnetic, photoelectronic, or photooptical system.

1624 (ii) "Electronic communication" does not include:

1625 (A) any wire or oral communication;

1626 (B) any communication made through a tone-only paging device;

1627 (C) any communication from a tracking device; or

1628 (D) electronic funds transfer information stored by a financial institution in a  
1629 communications system used for the electronic storage and transfer of funds.

1630 (b) "Electronic communications service" means any service which provides for users  
1631 the ability to send or receive wire or electronic communications.

1632 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
1633 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
1634 communications, and any computer facilities or related electronic equipment for the electronic  
1635 storage of the communication.

1636 (d) "Internet service provider" has the same definition as in Section 76-10-1230.

1637 (e) "Prosecutor" has the same definition as in Section 77-22-2.

1638 (f) "Sexual offense against a minor" means:

1639 (i) sexual exploitation of a minor as defined in Section ~~[76-5a-3]~~ 76-5b-201 or

1640 attempted sexual exploitation of a minor;

1641 (ii) a sexual offense or attempted sexual offense committed against a minor in violation  
1642 of Title 76, Chapter 5, Part 4, Sexual Offenses; or

1643 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
1644 Section 76-10-1206.

1645 (g) "Remote computing service" means the provision to the public of computer storage  
1646 or processing services by means of an electronic communications system.

1647 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
1648 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under  
1649 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or  
1650 service or remote computing service has been used in the commission of a criminal offense, the  
1651 prosecutor may issue an administrative subpoena, consistent with 18 U.S.C. 2703 and 18  
1652 U.S.C. 2702, to the electronic communications system or service or remote computing service  
1653 provider that owns or controls the Internet protocol address, websites, email address, or service  
1654 to a specific telephone number, requiring the production of the following information, if  
1655 available, upon providing in the subpoena the Internet protocol address, email address,  
1656 telephone number, or other identifier, and the dates and times the address, telephone number,  
1657 or other identifier was suspected of being used in the commission of the offense:

1658 (a) names;

1659 (b) addresses;

1660 (c) local and long distance telephone connections;

1661 (d) records of session times and durations;

1662 (e) length of service, including the start date and types of service utilized;

1663 (f) telephone or other instrument subscriber numbers or other subscriber identifiers,  
1664 including any temporarily assigned network address; and

1665 (g) means and sources of payment for the service, including any credit card or bank  
1666 account numbers.

1667 (3) A subpoena issued under this section shall state that the electronic communications  
1668 system or service or remote computing service provider shall produce any records under  
1669 Subsections (2)(a) through (g) that are reasonably relevant to the investigation of the suspected  
1670 criminal activity or offense as described in the subpoena.

1671 (4) (a) An electronic communications system or service or remote computing service  
1672 provider that provides information in response to a subpoena issued under this section may  
1673 charge a fee, not to exceed the actual cost, for providing the information.

1674 (b) The law enforcement agency conducting the investigation shall pay the fee.

1675 (5) The electronic communications system or service or remote computing service  
1676 provider served with or responding to the subpoena may not disclose the subpoena to the  
1677 account holder identified pursuant to the subpoena.

1678 (6) If the electronic communications system or service or remote computing service  
1679 provider served with the subpoena does not own or control the Internet protocol address,  
1680 websites, or email address, or provide service for the telephone number that is the subject of  
1681 the subpoena, the provider shall:

1682 (a) notify the investigating law enforcement agency that it does not have the  
1683 information; and

1684 (b) provide to the investigating law enforcement agency any information the provider  
1685 knows, through reasonable effort, that it has regarding how to locate the Internet service  
1686 provider that does own or control the Internet protocol address, websites, or email address, or  
1687 provide service for the telephone number.

1688 (7) There is no cause of action against any provider or wire or electronic  
1689 communication service, or its officers, employees, agents, or other specified persons, for  
1690 providing information, facilities, or assistance in accordance with the terms of the  
1691 administrative subpoena issued under this section or statutory authorization.

1692 (8) (a) An administrative subpoena issued under this section is subject to the provisions  
1693 of Title 77, Chapter 23b, Access to Electronic Communications.

1694 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,  
1695 Access to Electronic Communications, apply to providers and subscribers subject to an  
1696 administrative subpoena issued under this section.

1697 (9) Every prosecutorial agency shall annually on or before June 30 report to the  
1698 Commission on Criminal and Juvenile Justice the number of administrative subpoenas issued  
1699 by the agency during the previous calendar year.

1700 (10) State and local prosecutorial and law enforcement agencies shall annually on or  
1701 before June 30 report to the Commission on Criminal and Juvenile Justice the number of

1702 administrative subpoenas the agency requested that any federal law enforcement agency issue  
1703 during the prior calendar year.

1704 Section 24. Section **77-27-21.5** is amended to read:

1705 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**  
1706 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

1707 (1) As used in this section:

1708 (a) "Business day" means a day on which state offices are open for regular business.

1709 (b) "Department" means the Department of Corrections.

1710 (c) "Division" means the Division of Juvenile Justice Services.

1711 (d) "Employed" or "carries on a vocation" includes employment that is full time or part  
1712 time, whether financially compensated, volunteered, or for the purpose of government or  
1713 educational benefit.

1714 (e) "Indian Country" means:

1715 (i) all land within the limits of any Indian reservation under the jurisdiction of the  
1716 United States government, regardless of the issuance of any patent, and includes rights-of-way  
1717 running through the reservation;

1718 (ii) all dependent Indian communities within the borders of the United States whether  
1719 within the original or subsequently acquired territory, and whether or not within the limits of a  
1720 state; and

1721 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to  
1722 have not been extinguished, including rights-of-way running through the allotments.

1723 (f) "Jurisdiction" means any state, Indian Country, United States Territory, or any  
1724 property under the jurisdiction of the United States military.

1725 (g) "Kidnap offender" means any person other than a natural parent of the victim who:

1726 (i) has been convicted in this state of a violation of:

1727 (A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;

1728 (B) Section 76-5-301.1, child kidnapping;

1729 (C) Section 76-5-302, aggravated kidnapping; or

1730 (D) attempting, soliciting, or conspiring to commit any felony offense listed in  
1731 Subsections (1)(g)(i)(A) through (C);

1732 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to



1733 commit a crime in another jurisdiction, including any state, federal, or military court that is  
1734 substantially equivalent to the offenses listed in Subsection (1)(g)(i) and who is:

- 1735 (A) a Utah resident; or
- 1736 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of  
1737 10 or more days, regardless of whether or not the offender intends to permanently reside in this  
1738 state;
- 1739 (iii) (A) is required to register as an offender in any other jurisdiction, or who is  
1740 required to register as an offender by any state, federal, or military court; and  
1741 (B) in any 12 month period, is in this state for a total of 10 or more days, regardless of  
1742 whether or not the offender intends to permanently reside in this state;
- 1743 (iv) is a nonresident regularly employed or working in this state, or who is a student in  
1744 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any  
1745 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is  
1746 required to register in the person's state of residence;
- 1747 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of  
1748 one or more offenses listed in Subsection (1)(g); or
- 1749 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection  
1750 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the  
1751 division's custody 30 days prior to the person's 21st birthday.
- 1752 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the  
1753 minor's noncustodial parent.
- 1754 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex  
1755 offender as defined in Subsection (1)(n).
- 1756 (j) "Online identifier" or "Internet identifier":
  - 1757 (i) means any electronic mail, chat, instant messenger, social networking, or similar  
1758 name used for Internet communication; and
  - 1759 (ii) does not include date of birth, Social Security number, PIN number, or Internet  
1760 passwords.
- 1761 (k) "Primary residence" means the location where the offender regularly resides, even  
1762 if the offender intends to move to another location or return to another location at any future  
1763 date.

1764 (l) "Register" means to comply with the requirements of this section and administrative  
1765 rules of the department made under this section.

1766 (m) "Secondary residence" means any real property that the offender owns or has a  
1767 financial interest in, or any location where, in any 12 month period, the offender stays  
1768 overnight a total of 10 or more nights when not staying at the offender's primary residence.

1769 (n) "Sex offender" means any person:

1770 (i) convicted in this state of:

1771 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

1772 (B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

1773 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

1774 (D) Section 76-5-401.1, sexual abuse of a minor;

1775 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

1776 (F) Section 76-5-402, rape;

1777 (G) Section 76-5-402.1, rape of a child;

1778 (H) Section 76-5-402.2, object rape;

1779 (I) Section 76-5-402.3, object rape of a child;

1780 (J) a felony violation of Section 76-5-403, forcible sodomy;

1781 (K) Section 76-5-403.1, sodomy on a child;

1782 (L) Section 76-5-404, forcible sexual abuse;

1783 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

1784 (N) Section 76-5-405, aggravated sexual assault;

1785 (O) Section [~~76-5a-3~~] 76-5b-201, sexual exploitation of a minor;

1786 (P) Section 76-7-102, incest;

1787 (Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense  
1788 four or more times;

1789 (R) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the  
1790 offense four or more times;

1791 (S) any combination of convictions of Subsection 76-9-702(1), lewdness, and of  
1792 Subsection 76-9-702(3), sexual battery, that total four or more convictions;

1793 (T) Section 76-9-702.5, lewdness involving a child;

1794 (U) Section 76-10-1306, aggravated exploitation of prostitution; or

- 1795 (V) attempting, soliciting, or conspiring to commit any felony offense listed in  
1796 Subsection (1)(n)(i);
- 1797 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to  
1798 commit a crime in another jurisdiction, including any state, federal, or military court that is  
1799 substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:
- 1800 (A) a Utah resident; or
- 1801 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of  
1802 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 1803 (iii) (A) who is required to register as an offender in any other jurisdiction, or who is  
1804 required to register as an offender by any state, federal, or military court; and
- 1805 (B) who, in any 12 month period, is in the state for a total of 10 or more days,  
1806 regardless of whether or not the offender intends to permanently reside in this state;
- 1807 (iv) who is a nonresident regularly employed or working in this state or who is a  
1808 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or  
1809 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is  
1810 required to register in the person's jurisdiction of residence;
- 1811 (v) who is found not guilty by reason of insanity in this state, or in any other  
1812 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or
- 1813 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection  
1814 (1)(n)(i) and who has been committed to the division for secure confinement and remains in the  
1815 division's custody 30 days prior to the person's 21st birthday.
- 1816 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in  
1817 any jurisdiction.
- 1818 (2) The department, to assist in investigating kidnapping and sex-related crimes, and in  
1819 apprehending offenders, shall:
- 1820 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
1821 information on offenders and sex and kidnap offenses;
- 1822 (b) make information listed in Subsection (27) available to the public; and
- 1823 (c) share information provided by an offender under this section that may not be made  
1824 available to the public under Subsection (27), but only:
- 1825 (i) for the purposes under this Subsection (2); or

- 1826 (ii) in accordance with Section 63G-2-206.
- 1827 (3) Any law enforcement agency shall, in the manner prescribed by the department,  
1828 inform the department of:
- 1829 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),  
1830 within three business days; and
- 1831 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or  
1832 (n), within five business days.
- 1833 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),  
1834 the convicting court shall within three business days forward a copy of the judgment and  
1835 sentence to the department.
- 1836 (5) An offender in the custody of the department shall be registered by agents of the  
1837 department upon:
- 1838 (a) placement on probation;
- 1839 (b) commitment to a secure correctional facility operated by or under contract to the  
1840 department;
- 1841 (c) release from confinement to parole status, termination or expiration of sentence, or  
1842 escape;
- 1843 (d) entrance to and release from any community-based residential program operated by  
1844 or under contract to the department; or
- 1845 (e) termination of probation or parole.
- 1846 (6) An offender who is not in the custody of the department and who is confined in a  
1847 correctional facility not operated by or under contract to the department shall be registered with  
1848 the department by the sheriff of the county in which the offender is confined, upon:
- 1849 (a) commitment to the correctional facility; and
- 1850 (b) release from confinement.
- 1851 (7) An offender in the custody of the division shall be registered with the department  
1852 by the division prior to release from custody.
- 1853 (8) An offender committed to a state mental hospital shall be registered with the  
1854 department by the hospital upon admission and upon discharge.
- 1855 (9) (a) (i) A municipal or county law enforcement agency shall register an offender  
1856 who resides within the agency's jurisdiction and is not under the supervision of the Division of

1857 Adult Probation and Parole within the department.

1858 (ii) In order to conduct offender registration under this section, the agency shall ensure  
1859 the agency staff responsible for registration:

1860 (A) has received initial training by the department and has been certified by the  
1861 department as qualified and authorized to conduct registrations and enter offender registration  
1862 information into the registry database; and

1863 (B) certify annually with the department.

1864 (b) (i) When the department receives offender registration information regarding a  
1865 change of an offender's primary residence location, the department shall within five days  
1866 electronically notify the law enforcement agencies that have jurisdiction over the area where:

1867 (A) the residence that the offender is leaving is located; and

1868 (B) the residence to which the offender is moving is located.

1869 (ii) The department shall provide notification under this Subsection (9)(b) if the  
1870 offender's change of address is between law enforcement agency jurisdictions, or is within one  
1871 jurisdiction.

1872 (c) The department shall make available to offenders required to register under this  
1873 section the name of the agency, whether it is a local law enforcement agency or the department,  
1874 that the offender should contact to register, the location for registering, and the requirements of  
1875 registration.

1876 (10) An offender convicted by any other jurisdiction is required to register under  
1877 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10  
1878 days of entering the state, regardless of the offender's length of stay.

1879 (11) (a) An offender required to register under Subsection (1)(g) or (n) who is under  
1880 supervision by the department shall register with Division of Adult Probation and Parole.

1881 (b) An offender required to register under Subsection (1)(g) or (n) who is no longer  
1882 under supervision by the department shall register with the police department or sheriff's office  
1883 that has jurisdiction over the area where the offender resides.

1884 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for  
1885 the duration of the sentence and for 10 years after termination of sentence or custody of the  
1886 division, register every year during the month of the offender's birth, during the month that is  
1887 the sixth month after the offender's birth month, and also within three business days of every

1888 change of the offender's primary residence, any secondary residences, place of employment,  
1889 vehicle information, or educational information required to be submitted under Subsection  
1890 (14).

1891 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in  
1892 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar  
1893 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

1894 (i) register for the time period, and in the frequency, required by the jurisdiction where  
1895 the offender was convicted if that jurisdiction's registration period or registration frequency  
1896 requirement for the offense that the offender was convicted of is greater than the 10 years from  
1897 completion of the sentence registration period that is required under Subsection (12)(a), or is  
1898 more frequent than every six months; or

1899 (ii) register in accordance with the requirements of Subsection (12)(a), if the  
1900 jurisdiction's registration period or frequency requirement for the offense that the offender was  
1901 convicted of is less than the registration period required under Subsection (12)(a), or is less  
1902 frequent than every six months.

1903 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection  
1904 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the  
1905 offender's birth, during the month that is the sixth month after the offender's birth month, and  
1906 also within three business days of every change of the offender's primary residence, any  
1907 secondary residences, place of employment, vehicle information, or educational information  
1908 required to be submitted under Subsection (14).

1909 (B) This registration requirement is not subject to exemptions and may not be  
1910 terminated or altered during the offender's lifetime.

1911 (ii) Offenses referred to in Subsection (12)(c)(i) are:

1912 (A) any offense listed in Subsection (1)(g) or (n) if, at the time of the conviction, the  
1913 offender has previously been convicted of an offense listed in Subsection (1)(g) or (n) or has  
1914 previously been required to register as a sex offender for an offense committed as a juvenile;

1915 (B) a conviction for any of the following offenses, including attempting, soliciting, or  
1916 conspiring to commit any felony of:

1917 (I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of  
1918 the victim;

- 1919 (II) Section 76-5-402, rape;
- 1920 (III) Section 76-5-402.1, rape of a child;
- 1921 (IV) Section 76-5-402.2, object rape;
- 1922 (V) Section 76-5-402.3, object rape of a child;
- 1923 (VI) Section 76-5-403.1, sodomy on a child;
- 1924 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
- 1925 (VIII) Section 76-5-405, aggravated sexual assault;
- 1926 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- 1927 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 1928 of the victim;
- 1929 (E) Section 76-5-403, forcible sodomy;
- 1930 (F) Section 76-5-404.1, sexual abuse of a child; or
- 1931 (G) Section [~~76-5a-3~~] 76-5b-201, sexual exploitation of a minor.
- 1932 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a
- 1933 secure facility or in a state mental hospital is not required to register during the period of
- 1934 confinement.
- 1935 (e) An offender who is required to register under this Subsection (12) shall surrender
- 1936 the offender's license, certificate, or identification card as required under Subsection
- 1937 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
- 1938 provided under Section 53-3-205 or 53-3-804.
- 1939 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
- 1940 section shall register for an additional five years subsequent to the registration period otherwise
- 1941 required under this section.
- 1942 (13) An agency in the state that registers an offender on probation, an offender who has
- 1943 been released from confinement to parole status or termination, or an offender whose sentence
- 1944 has expired shall inform the offender of the duty to comply with:
- 1945 (a) the continuing registration requirements of this section during the period of
- 1946 registration required in Subsection (12), including:
- 1947 (i) notification to the state agencies in the states where the registrant presently resides
- 1948 and plans to reside when moving across state lines;
- 1949 (ii) verification of address at least every 60 days pursuant to a parole agreement for

1950 lifetime parolees; and  
1951 (iii) notification to the out-of-state agency where the offender is living, whether or not  
1952 the offender is a resident of that state; and  
1953 (b) the driver license certificate or identification card surrender requirement under  
1954 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or  
1955 53-3-804.  
1956 (14) An offender shall provide the department or the registering entity with the  
1957 following information:  
1958 (a) all names and aliases by which the offender is or has been known;  
1959 (b) the addresses of the offender's primary and secondary residences;  
1960 (c) a physical description, including the offender's date of birth, height, weight, eye and  
1961 hair color;  
1962 (d) the make, model, color, year, plate number, and vehicle identification number of  
1963 any vehicle or vehicles the offender owns or regularly drives;  
1964 (e) a current photograph of the offender;  
1965 (f) a set of fingerprints, if one has not already been provided;  
1966 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not  
1967 already been provided;  
1968 (h) telephone numbers and any other designations used by the offender for routing or  
1969 self-identification in telephonic communications from fixed locations or cellular telephones;  
1970 (i) Internet identifiers and the addresses the offender uses for routing or  
1971 self-identification in Internet communications or postings;  
1972 (j) the name and Internet address of all websites on which the offender is registered  
1973 using an online identifier, including all online identifiers used to access those websites;  
1974 (k) a copy of the offender's passport, if a passport has been issued to the offender;  
1975 (l) if the offender is an alien, all documents establishing the offender's immigration  
1976 status;  
1977 (m) all professional licenses that authorize the offender to engage in an occupation or  
1978 carry out a trade or business, including any identifiers, such as numbers;  
1979 (n) each educational institution in Utah at which the offender is employed, carries on a  
1980 vocation, or is a student, and any change of enrollment or employment status of the offender at



1981 any educational institution;

1982 (o) the name and the address of any place where the offender is employed or will be  
1983 employed;

1984 (p) the name and the address of any place where the offender works as a volunteer or  
1985 will work as a volunteer; and

1986 (q) the offender's Social Security number.

1987 (15) The department shall:

1988 (a) provide the following additional information when available:

1989 (i) the crimes the offender has been convicted of or adjudicated delinquent for;

1990 (ii) a description of the offender's primary and secondary targets; and

1991 (iii) any other relevant identifying information as determined by the department;

1992 (b) maintain the Sex Offender and Kidnap Offender Notification and Registration  
1993 website; and

1994 (c) ensure that the registration information collected regarding an offender's enrollment  
1995 or employment at an educational institution is:

1996 (i) (A) promptly made available to any law enforcement agency that has jurisdiction  
1997 where the institution is located if the educational institution is an institution of higher  
1998 education; or

1999 (B) promptly made available to the district superintendent of the school district where  
2000 the offender is enrolled if the educational institution is an institution of primary education; and

2001 (ii) entered into the appropriate state records or data system.

2002 (16) (a) An offender who knowingly fails to register under this section or provides  
2003 false or incomplete information is guilty of:

2004 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not  
2005 less than 90 days and also at least one year of probation if:

2006 (A) the offender is required to register for a felony conviction or adjudicated delinquent  
2007 for what would be a felony if the juvenile were an adult of an offense listed in Subsection  
2008 (1)(g)(i) or (n)(i); or

2009 (B) the offender is required to register for the offender's lifetime under Subsection  
2010 (12)(c); or

2011 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for

2012 not fewer than 90 days and also at least one year of probation if the offender is required to  
2013 register for a misdemeanor conviction or is adjudicated delinquent for what would be a  
2014 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

2015 (b) Neither the court nor the Board of Pardons and Parole may release a person who  
2016 violates this section from serving the term required under Subsection (16)(a). This Subsection  
2017 (16)(b) supersedes any other provision of the law contrary to this section.

2018 (c) The offender shall register for an additional year for every year in which the  
2019 offender does not comply with the registration requirements of this section.

2020 (17) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
2021 Management Act, information under Subsection (15) that is collected and released under  
2022 Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

2023 (18) (a) If an offender is to be temporarily sent outside a secure facility in which the  
2024 offender is confined on any assignment, including, without limitation, firefighting or disaster  
2025 control, the official who has custody of the offender shall, within a reasonable time prior to  
2026 removal from the secure facility, notify the local law enforcement agencies where the  
2027 assignment is to be filled.

2028 (b) This Subsection (18) does not apply to any person temporarily released under guard  
2029 from the institution in which the person is confined.

2030 (19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted  
2031 of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to  
2032 register as required under this section.

2033 (20) Notwithstanding Section 42-1-1, an offender:

2034 (a) may not change the offender's name:

2035 (i) while under the jurisdiction of the department; and

2036 (ii) until the registration requirements of this statute have expired; and

2037 (b) may not change the offender's name at any time, if registration is for life under  
2038 Subsection (12)(c).

2039 (21) The department may make administrative rules necessary to implement this  
2040 section, including:

2041 (a) the method for dissemination of the information; and

2042 (b) instructions to the public regarding the use of the information.

2043 (22) Any information regarding the identity or location of a victim shall be redacted by  
2044 the department from information provided under Subsections (14) and (15).

2045 (23) This section does not create or impose any duty on any person to request or obtain  
2046 information regarding any offender from the department.

2047 (24) The department shall maintain a Sex Offender and Kidnap Offender Notification  
2048 and Registration website on the Internet, which shall contain a disclaimer informing the public:

2049 (a) the information contained on the site is obtained from offenders and the department  
2050 does not guarantee its accuracy or completeness;

2051 (b) members of the public are not allowed to use the information to harass or threaten  
2052 offenders or members of their families; and

2053 (c) harassment, stalking, or threats against offenders or their families are prohibited and  
2054 doing so may violate Utah criminal laws.

2055 (25) The Sex Offender and Kidnap Offender Notification and Registration website  
2056 shall be indexed by both the surname of the offender and by postal codes.

2057 (26) The department shall construct the Sex Offender Notification and Registration  
2058 website so that users, before accessing registry information, must indicate that they have read  
2059 the disclaimer, understand it, and agree to comply with its terms.

2060 (27) The Sex Offender and Kidnap Offender Notification and Registration website  
2061 shall include the following registry information:

2062 (a) all names and aliases by which the offender is or has been known, but not including  
2063 any online or Internet identifiers;

2064 (b) the addresses of the offender's primary, secondary, and temporary residences;

2065 (c) a physical description, including the offender's date of birth, height, weight, and eye  
2066 and hair color;

2067 (d) the make, model, color, year, and plate number of any vehicle or vehicles the  
2068 offender owns or regularly drives;

2069 (e) a current photograph of the offender;

2070 (f) a list of all professional licenses that authorize the offender to engage in an  
2071 occupation or carry out a trade or business;

2072 (g) each educational institution in Utah at which the offender is employed, carries on a  
2073 vocation, or is a student;

2074 (h) a list of places where the offender works as a volunteer; and  
2075 (i) the crimes listed in Subsections (1)(g) and(n) that the offender has been convicted of  
2076 or for which the offender has been adjudicated delinquent in juvenile court.

2077 (28) The department, its personnel, and any individual or entity acting at the request or  
2078 upon the direction of the department are immune from civil liability for damages for good faith  
2079 compliance with this section and will be presumed to have acted in good faith by reporting  
2080 information.

2081 (29) The department shall redact information that, if disclosed, could reasonably  
2082 identify a victim.

2083 (30) (a) Each offender required to register under Subsection (12) shall, in the month of  
2084 the offender's birth:

2085 (i) pay to the department an annual fee of \$100 each year the offender is subject to the  
2086 registration requirements of this section; and

2087 (ii) pay to the registering agency, if it is an agency other than the Department of  
2088 Corrections, an annual fee of not more than \$25, which may be assessed by that agency for  
2089 providing registration.

2090 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility  
2091 or in a state mental hospital is not required to pay the annual fee.

2092 (c) The department shall deposit fees under this Subsection (30) in the General Fund as  
2093 a dedicated credit, to be used by the department for maintaining the offender registry under this  
2094 section and monitoring offender registration compliance, including the costs of:

2095 (i) data entry;

2096 (ii) processing registration packets;

2097 (iii) updating registry information;

2098 (iv) ensuring offender compliance with registration requirements under this section;

2099 and

2100 (v) apprehending offenders who are in violation of the offender registration  
2101 requirements under this section.

2102 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), an offender is not required  
2103 to provide the department with:

2104 (a) the offender's online identifier and password used exclusively for the offender's

2105 employment on equipment provided by an employer and used to access the employer's private  
2106 network; or

2107 (b) online identifiers for the offender's financial accounts, including any bank,  
2108 retirement, or investment accounts.

2109 Section 25. Section **77-36-1** is amended to read:

2110 **77-36-1. Definitions.**

2111 As used in this chapter:

2112 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.

2113 (2) "Department" means the Department of Public Safety.

2114 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
2115 3, Divorce.

2116 (4) "Domestic violence" means any criminal offense involving violence or physical  
2117 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to  
2118 commit a criminal offense involving violence or physical harm, when committed by one  
2119 cohabitant against another. "Domestic violence" also means commission or attempt to commit,  
2120 any of the following offenses by one cohabitant against another:

2121 (a) aggravated assault, as described in Section 76-5-103;

2122 (b) assault, as described in Section 76-5-102;

2123 (c) criminal homicide, as described in Section 76-5-201;

2124 (d) harassment, as described in Section 76-5-106;

2125 (e) electronic communication harassment, as described in Section 76-9-201;

2126 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
2127 76-5-301, 76-5-301.1, and 76-5-302;

2128 (g) mayhem, as described in Section 76-5-105;

2129 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
2130 ~~[Title 76, Chapter 5a]~~ Section 76-5b-201, Sexual Exploitation of ~~[Children]~~ a Minor;

2131 (i) stalking, as described in Section 76-5-106.5;

2132 (j) unlawful detention, as described in Section 76-5-304;

2133 (k) violation of a protective order or ex parte protective order, as described in Section  
2134 76-5-108;

2135 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property

2136 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;  
2137 (m) possession of a deadly weapon with intent to assault, as described in Section  
2138 76-10-507;  
2139 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
2140 person, building, or vehicle, as described in Section 76-10-508;  
2141 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
2142 conduct is the result of a plea agreement in which the defendant was originally charged with  
2143 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction  
2144 of disorderly conduct as a domestic violence offense, in the manner described in this  
2145 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18  
2146 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.  
2147 Section 921 et seq.; or  
2148 (p) child abuse as described in Section 76-5-109.1.  
2149 (5) "Jail release agreement" means a written agreement:  
2150 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
2151 may have with an alleged victim or other specified individuals; and  
2152 (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5  
2153 (1).  
2154 (6) "Jail release court order" means a written court order:  
2155 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
2156 may have with an alleged victim or other specified individuals; and  
2157 (b) specifying other conditions of release from jail as required in Subsection  
2158 77-36-2.5(1).  
2159 (7) "Marital status" means married and living together, divorced, separated, or not  
2160 married.  
2161 (8) "Married and living together" means a man and a woman whose marriage was  
2162 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.  
2163 (9) "Not married" means any living arrangement other than married and living together,  
2164 divorced, or separated.  
2165 (10) "Pretrial protective order" means a written order:  
2166 (a) specifying and limiting the contact a person who has been charged with a domestic

2167 violence offense may have with an alleged victim or other specified individuals; and

2168 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(2)(c),

2169 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

2170 (11) "Sentencing protective order" means a written order of the court as part of  
2171 sentencing in a domestic violence case that limits the contact a person who has been convicted  
2172 of a domestic violence offense may have with a victim or other specified individuals pursuant  
2173 to Sections 77-36-5 and 77-36-5.1.

2174 (12) "Separated" means a man and a woman who have had their marriage solemnized  
2175 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

2176 (13) "Victim" means a cohabitant who has been subjected to domestic violence.

2177 Section 26. Section **78A-6-105** is amended to read:

2178 **78A-6-105. Definitions.**

2179 As used in this chapter:

2180 (1) (a) "Abuse" means:

2181 (i) nonaccidental harm of a child;

2182 (ii) threatened harm of a child;

2183 (iii) sexual exploitation; or

2184 (iv) sexual abuse.

2185 (b) "Abuse" does not include:

2186 (i) reasonable discipline or management of a child, including withholding privileges;

2187 (ii) conduct described in Section 76-2-401; or

2188 (iii) the use of reasonable and necessary physical restraint or force on a child:

2189 (A) in self-defense;

2190 (B) in defense of others;

2191 (C) to protect the child; or

2192 (D) to remove a weapon in the possession of a child for any of the reasons described in

2193 Subsections (1)(b)(iii)(A) through (C).

2194 (2) "Abused child" means a child who has been subjected to abuse.

2195 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
2196 alleged in the petition have been proved.

2197 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or

2198 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall  
2199 be referred to as a minor.

2200 (5) "Board" means the Board of Juvenile Court Judges.

2201 (6) "Child" means a person under 18 years of age.

2202 (7) "Child placement agency" means:

2203 (a) a private agency licensed to receive a child for placement or adoption under this  
2204 code; or

2205 (b) a private agency that receives a child for placement or adoption in another state,  
2206 which agency is licensed or approved where such license or approval is required by law.

2207 (8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

2208 (9) "Commit" means, unless specified otherwise:

2209 (a) with respect to a child, to transfer legal custody; and

2210 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

2211 (10) "Court" means the juvenile court.

2212 (11) "Dependent child" includes a child who is homeless or without proper care  
2213 through no fault of the child's parent, guardian, or custodian.

2214 (12) "Deprivation of custody" means transfer of legal custody by the court from a  
2215 parent or the parents or a previous legal custodian to another person, agency, or institution.

2216 (13) "Detention" means home detention and secure detention as defined in Section  
2217 62A-7-101 for the temporary care of a minor who requires secure custody in a physically  
2218 restricting facility:

2219 (a) pending court disposition or transfer to another jurisdiction; or

2220 (b) while under the continuing jurisdiction of the court.

2221 (14) "Division" means the Division of Child and Family Services.

2222 (15) "Formal referral" means a written report from a peace officer or other person  
2223 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
2224 petition may be filed.

2225 (16) "Group rehabilitation therapy" means psychological and social counseling of one  
2226 or more persons in the group, depending upon the recommendation of the therapist.

2227 (17) "Guardianship of the person" includes the authority to consent to:

2228 (a) marriage;



- 2229 (b) enlistment in the armed forces;
- 2230 (c) major medical, surgical, or psychiatric treatment; or
- 2231 (d) legal custody, if legal custody is not vested in another person, agency, or institution.
- 2232 (18) "Habitual truant" is as defined in Section 53A-11-101.
- 2233 (19) "Harm" means:
- 2234 (a) physical, emotional, or developmental injury or damage;
- 2235 (b) sexual abuse; or
- 2236 (c) sexual exploitation.
- 2237 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
- 2238 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
- 2239 nephew, niece, or first cousin.
- 2240 (b) The relationships described in Subsection (20)(a) include:
- 2241 (i) blood relationships of the whole or half blood, without regard to legitimacy;
- 2242 (ii) relationships of parent and child by adoption; and
- 2243 (iii) relationships of stepparent and stepchild while the marriage creating the
- 2244 relationship of a stepparent and stepchild exists.
- 2245 (21) "Legal custody" means a relationship embodying the following rights and duties:
- 2246 (a) the right to physical custody of the minor;
- 2247 (b) the right and duty to protect, train, and discipline the minor;
- 2248 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
- 2249 medical care;
- 2250 (d) the right to determine where and with whom the minor shall live; and
- 2251 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2252 (22) "Minor" means:
- 2253 (a) a child; or
- 2254 (b) a person who is:
- 2255 (i) at least 18 years of age and younger than 21 years of age; and
- 2256 (ii) under the jurisdiction of the juvenile court.
- 2257 (23) "Molestation" means that a person, with the intent to arouse or gratify the sexual
- 2258 desire of any person:
- 2259 (a) touches the anus or any part of the genitals of a child;

2260 (b) takes indecent liberties with a child; or  
2261 (c) causes a child to take indecent liberties with the perpetrator or another.  
2262 (24) "Natural parent" means a minor's biological or adoptive parent, and includes the  
2263 minor's noncustodial parent.  
2264 (25) (a) "Neglect" means:  
2265 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
2266 Relinquishment of a Newborn Child;  
2267 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,  
2268 guardian, or custodian;  
2269 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary  
2270 subsistence, education, or medical care, or any other care necessary for the child's health,  
2271 safety, morals, or well-being; or  
2272 (iv) a child at risk of being neglected or abused because another child in the same home  
2273 is neglected or abused.  
2274 (b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii),  
2275 means that, after receiving a notice of compulsory education violation under Section  
2276 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school  
2277 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent  
2278 or guardian fails to make a good faith effort to ensure that the child receives an appropriate  
2279 education.  
2280 (c) A parent or guardian legitimately practicing religious beliefs and who, for that  
2281 reason, does not provide specified medical treatment for a child, is not guilty of neglect.  
2282 (d) (i) Notwithstanding Subsection (25)(a), a health care decision made for a child by  
2283 the child's parent or guardian does not constitute neglect unless the state or other party to the  
2284 proceeding shows, by clear and convincing evidence, that the health care decision is not  
2285 reasonable and informed.  
2286 (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising  
2287 the right to obtain a second health care opinion.  
2288 (26) "Neglected child" means a child who has been subjected to neglect.  
2289 (27) "Nonjudicial adjustment" means closure of the case by the assigned probation  
2290 officer without judicial determination upon the consent in writing of:

- 2291 (a) the assigned probation officer; and
- 2292 (b) (i) the minor; or
- 2293 (ii) the minor and the minor's parent, legal guardian, or custodian.
- 2294 (28) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2295 (29) "Probation" means a legal status created by court order following an adjudication
- 2296 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
- 2297 permitted to remain in the minor's home under prescribed conditions and under supervision by
- 2298 the probation department or other agency designated by the court, subject to return to the court
- 2299 for violation of any of the conditions prescribed.
- 2300 (30) "Protective supervision" means a legal status created by court order following an
- 2301 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
- 2302 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
- 2303 dependency is provided by the probation department or other agency designated by the court.
- 2304 (31) (a) "Residual parental rights and duties" means those rights and duties remaining
- 2305 with the parent after legal custody or guardianship, or both, have been vested in another person
- 2306 or agency, including:
  - 2307 (i) the responsibility for support;
  - 2308 (ii) the right to consent to adoption;
  - 2309 (iii) the right to determine the child's religious affiliation; and
  - 2310 (iv) the right to reasonable parent-time unless restricted by the court.
- 2311 (b) If no guardian has been appointed, "residual parental rights and duties" also include
- 2312 the right to consent to:
  - 2313 (i) marriage;
  - 2314 (ii) enlistment; and
  - 2315 (iii) major medical, surgical, or psychiatric treatment.
- 2316 (32) "Secure facility" means any facility operated by or under contract with the
- 2317 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
- 2318 youth offenders committed to the division for custody and rehabilitation.
- 2319 (33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
- 2320 child.
- 2321 (34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a

2322 child.

2323 (35) "Sexual abuse" means:

2324 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation  
2325 directed towards a child; or

2326 (b) engaging in any conduct with a child that would constitute an offense under any of  
2327 the following, regardless of whether the person who engages in the conduct is actually charged  
2328 with, or convicted of, the offense:

2329 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

2330 (ii) child bigamy, Section 76-7-101.5;

2331 (iii) incest, Section 76-7-102;

2332 (iv) lewdness or sexual battery, Section 76-9-702;

2333 (v) lewdness involving a child, Section 76-9-702.5; or

2334 (vi) voyeurism, Section 76-9-702.7.

2335 (36) "Sexual exploitation" means knowingly:

2336 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

2337 (i) pose in the nude for the purpose of sexual arousal of any person; or

2338 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,  
2339 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

2340 (b) displaying, distributing, possessing for the purpose of distribution, or selling  
2341 material depicting a child:

2342 (i) in the nude, for the purpose of sexual arousal of any person; or

2343 (ii) engaging in sexual or simulated sexual conduct; or

2344 (c) engaging in any conduct that would constitute an offense under [~~Title 76, Chapter~~  
2345 ~~5a~~] Section 76-5b-201, Sexual Exploitation of [~~Children~~] a Minor, regardless of whether the  
2346 person who engages in the conduct is actually charged with, or convicted of, the offense.

2347 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility  
2348 pending court disposition or transfer to another jurisdiction.

2349 (38) "State supervision" means a disposition that provides a more intensive level of  
2350 intervention than standard probation but is less intensive or restrictive than a community  
2351 placement with the Division of Juvenile Justice Services.

2352 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or

2353 substances.

2354 (40) "Substantiated" is as defined in Section 62A-4a-101.

2355 (41) "Supported" is as defined in Section 62A-4a-101.

2356 (42) "Termination of parental rights" means the permanent elimination of all parental  
2357 rights and duties, including residual parental rights and duties, by court order.

2358 (43) "Therapist" means:

2359 (a) a person employed by a state division or agency for the purpose of conducting  
2360 psychological treatment and counseling of a minor in its custody; or

2361 (b) any other person licensed or approved by the state for the purpose of conducting  
2362 psychological treatment and counseling.

2363 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.

2364 (45) "Without merit" is as defined in Section 62A-4a-101.

2365 Section 27. **Effective date.**

2366 This bill takes effect on May 10, 2011, except that the amendments to Section  
2367 76-10-1602 (Effective 07/01/11) take effect on July 1, 2011.

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**Legislative Review Note**  
as of 1-12-11 9:17 AM

**Office of Legislative Research and General Counsel**