

SEXUAL EXPLOITATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill concerns the sexual exploitation of a minor.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ modifies the offense of sexual exploitation of a minor;
- ▶ creates the offense of aggravated sexual exploitation of a minor;
- ▶ requires the Sentencing Commission to study and update sentencing and release guidelines concerning the offense of sexual exploitation of a minor;
- ▶ adds the offense of aggravated sexual exploitation of a minor to statutes that reference sexual exploitation of a minor, including statutes related to:
 - custody and visitation for an individual other than a parent;
 - enhancements for offenses committed in concert with three or more persons or in relation to a criminal street gang;
 - unlawful distribution of a counterfeit intimate image;
 - lewdness involving a child;
 - prostitution;
 - penalties for repeat and habitual sex offenders;
 - the Sex and Kidnap Offender Registry; and
 - adoption; and
- ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a coordination clause.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **30-5a-103**, as last amended by Laws of Utah 2021, Chapter 262

36 **31A-21-501**, as last amended by Laws of Utah 2012, Chapters 39 and 303

37 **62A-2-120**, as last amended by Laws of Utah 2021, Chapters 117, 262, and 400

38 **63M-7-404**, as last amended by Laws of Utah 2021, Chapter 173

39 **63M-7-502**, as last amended by Laws of Utah 2021, Chapter 260

40 **76-1-302**, as last amended by Laws of Utah 2019, Chapter 216

41 **76-3-203.1**, as last amended by Laws of Utah 2021, First Special Session, Chapter 11

42 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278

43 **76-3-407**, as last amended by Laws of Utah 2011, Chapter 320

44 **76-5b-201**, as last amended by Laws of Utah 2021, Chapter 262

45 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134

46 **76-9-702.5**, as last amended by Laws of Utah 2019, Chapter 394

47 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
48 amended by Coordination Clause, Laws of Utah 2020, Chapter 214

49 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363

50 **77-22-2.5**, as last amended by Laws of Utah 2019, Chapters 382 and 420

51 **77-36-1**, as last amended by Laws of Utah 2021, Chapters 134 and 159

52 **77-41-102**, as last amended by Laws of Utah 2021, Chapter 2 and further amended by
53 Revisor Instructions, Laws of Utah 2021, First Special Session, Chapter 2

54 **77-41-106**, as last amended by Laws of Utah 2020, Chapter 108

55 **78B-6-117**, as last amended by Laws of Utah 2021, Chapter 262

56 [80-1-102](#), as last amended by Laws of Utah 2021, First Special Session, Chapter 2

57 ENACTS:

58 [76-5b-201.1](#), Utah Code Annotated 1953

59 **Utah Code Sections Affected by Coordination Clause:**

60 [76-5b-201.1](#), Utah Code Annotated 1953

61

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

63 Section 1. Section **30-5a-103** is amended to read:

64 **30-5a-103. Custody and visitation for individuals other than a parent.**

65 (1) (a) In accordance with Section [62A-4a-201](#), it is the public policy of this state that a
66 parent retain the fundamental right and duty to exercise primary control over the care,
67 supervision, upbringing, and education of the parent's children.

68 (b) There is a rebuttable presumption that a parent's decisions are in the child's best
69 interests.

70 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
71 visitation rights to an individual other than a parent who, by clear and convincing evidence,
72 establishes that:

73 (a) the individual has intentionally assumed the role and obligations of a parent;

74 (b) the individual and the child have formed a substantial emotional bond and created a
75 parent-child type relationship;

76 (c) the individual substantially contributed emotionally or financially to the child's well
77 being;

78 (d) the assumption of the parental role is not the result of a financially compensated
79 surrogate care arrangement;

80 (e) the continuation of the relationship between the individual and the child is in the
81 child's best interest;

82 (f) the loss or cessation of the relationship between the individual and the child would

83 substantially harm the child; and

84 (g) the parent:

85 (i) is absent; or

86 (ii) is found by a court to have abused or neglected the child.

87 (3) A proceeding under this chapter may be commenced by filing a verified petition, or
88 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district
89 court in the county where the child:

90 (a) currently resides; or

91 (b) lived with a parent or an individual other than a parent who acted as a parent within
92 six months before the commencement of the action.

93 (4) A proceeding under this chapter may be filed in a pending divorce, parentage
94 action, or other proceeding, including a proceeding in the juvenile court involving custody of or
95 visitation with a child.

96 (5) The petition shall include detailed facts supporting the petitioner's right to file the
97 petition including the criteria set forth in Subsection (2) and residency information as set forth
98 in Section [78B-13-209](#).

99 (6) A proceeding under this chapter may not be filed against a parent who is actively
100 serving outside the state in any branch of the military.

101 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with
102 the rules of civil procedure on all of the following:

103 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

104 (b) any individual who has court-ordered custody or visitation rights;

105 (c) the child's guardian;

106 (d) the guardian ad litem, if one has been appointed;

107 (e) an individual or agency that has physical custody of the child or that claims to have
108 custody or visitation rights; and

109 (f) any other individual or agency that has previously appeared in any action regarding

110 custody of or visitation with the child.

111 (8) The court may order a custody evaluation to be conducted in any action brought
112 under this chapter.

113 (9) The court may enter temporary orders in an action brought under this chapter
114 pending the entry of final orders.

115 (10) Except as provided in Subsection (11), a court may not grant custody of a child
116 under this section to an individual who is not the parent of the child and who, before a custody
117 order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony
118 involving conduct that constitutes any of the following:

119 (a) child abuse, as described in Section 76-5-109;

120 (b) child abuse homicide, as described in Section 76-5-208;

121 (c) child kidnapping, as described in Section 76-5-301.1;

122 (d) human trafficking of a child, as described in Section 76-5-308.5;

123 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

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

125 (g) object rape of a child, as described in Section 76-5-402.3;

126 (h) sodomy on a child, as described in Section 76-5-403.1;

127 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
128 Section 76-5-404.1;

129 (j) sexual exploitation of a minor, as described in Section 76-5b-201; ~~or~~

130 (k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or

131 ~~(k)~~ (l) an offense in another state that, if committed in this state, would constitute an
132 offense described in this Subsection (10).

133 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
134 listed in Subsection (10) that prevents a court from granting custody except as provided in this
135 Subsection (11).

136 (b) An individual described in Subsection (10) may only be considered for custody of a

137 child if the following criteria are met by clear and convincing evidence:

138 (i) the individual is a relative, as defined in Section 80-3-102, of the child;

139 (ii) at least 10 years have elapsed from the day on which the individual is successfully
140 released from prison, jail, parole, or probation related to a disqualifying offense;

141 (iii) during the 10 years before the day on which the individual files a petition with the
142 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
143 an offense greater than an infraction or traffic violation that would likely impact the health,
144 safety, or well-being of the child;

145 (iv) the individual can provide evidence of successful treatment or rehabilitation
146 directly related to the disqualifying offense;

147 (v) the court determines that the risk related to the disqualifying offense is unlikely to
148 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
149 time in the future when considering all of the following:

150 (A) the child's age;

151 (B) the child's gender;

152 (C) the child's development;

153 (D) the nature and seriousness of the disqualifying offense;

154 (E) the preferences of a child 12 years old or older;

155 (F) any available assessments, including custody evaluations, parenting assessments,
156 psychological or mental health assessments, and bonding assessments; and

157 (G) any other relevant information;

158 (vi) the individual can provide evidence of the following:

159 (A) the relationship with the child is of long duration;

160 (B) that an emotional bond exists with the child; and

161 (C) that custody by the individual who has committed the disqualifying offense ensures
162 the best interests of the child are met;

163 (vii) (A) there is no other responsible relative known to the court who has or likely

164 could develop an emotional bond with the child and does not have a disqualifying offense; or

165 (B) if there is a responsible relative known to the court that does not have a
166 disqualifying offense, Subsection (11)(d) applies; and

167 (viii) that the continuation of the relationship between the individual with the
168 disqualifying offense and the child could not be sufficiently maintained through any type of
169 visitation if custody were given to the relative with no disqualifying offense described in
170 Subsection (11)(d).

171 (c) The individual with the disqualifying offense bears the burden of proof regarding
172 why placement with that individual is in the best interest of the child over another responsible
173 relative or equally situated individual who does not have a disqualifying offense.

174 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known
175 to the court who does not have a disqualifying offense:

176 (i) preference for custody is given to a relative who does not have a disqualifying
177 offense; and

178 (ii) before the court may place custody with the individual who has the disqualifying
179 offense over another responsible, willing, and able relative:

180 (A) an impartial custody evaluation shall be completed; and

181 (B) a guardian ad litem shall be assigned.

182 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a
183 final decision on custody has not been made and to a case filed on or after March 25, 2017.

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

185 **31A-21-501. Definitions.**

186 For purposes of this part:

187 (1) "Applicant" means:

188 (a) in the case of an individual life or accident and health policy, the person who seeks
189 to contract for insurance benefits; or

190 (b) in the case of a group life or accident and health policy, the proposed certificate

191 holder.

192 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
193 individual who is 16 years [~~of age~~] old or older who:

- 194 (a) is or was a spouse of the other party;
- 195 (b) is or was living as if a spouse of the other party;
- 196 (c) is related by blood or marriage to the other party;
- 197 (d) has one or more children in common with the other party; or
- 198 (e) resides or has resided in the same residence as the other party.

199 (3) "Child abuse" means the commission or attempt to commit against a child a
200 criminal offense described in:

- 201 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- 202 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 203 (c) Section 76-9-702, Lewdness;
- 204 (d) Section 76-9-702.1, Sexual battery; or
- 205 (e) Section 76-9-702.5, Lewdness involving a child.

206 (4) "Domestic violence" means any criminal offense involving violence or physical
207 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
208 commit a criminal offense involving violence or physical harm, when committed by one
209 cohabitant against another and includes commission or attempt to commit, any of the following
210 offenses by one cohabitant against another:

- 211 (a) aggravated assault, as described in Section 76-5-103;
- 212 (b) assault, as described in Section 76-5-102;
- 213 (c) criminal homicide, as described in Section 76-5-201;
- 214 (d) harassment, as described in Section 76-5-106;
- 215 (e) electronic communication harassment, as described in Section 76-9-201;
- 216 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
217 76-5-301, 76-5-301.1, and 76-5-302;

- 218 (g) mayhem, as described in Section 76-5-105;
- 219 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 220 ~~[Section 76-5b-201]~~ Sections 76-5b-201 and 76-5b-201.1;
- 221 (i) stalking, as described in Section 76-5-106.5;
- 222 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 223 76-5-304;
- 224 (k) violation of a protective order or ex parte protective order, as described in Section
- 225 76-5-108;
- 226 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 227 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- 228 (m) possession of a deadly weapon with intent to assault, as described in Section
- 229 76-10-507; or
- 230 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 231 person, building, or vehicle, as described in Section 76-10-508.
- 232 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
- 233 be, or may have been subject to domestic violence or child abuse.
- 234 Section 3. Section 62A-2-120 is amended to read:
- 235 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**
- 236 (1) As used in this section:
- 237 (a) (i) "Applicant" means:
- 238 (A) the same as that term is defined in Section 62A-2-101;
- 239 (B) an individual who is associated with a licensee and has or will likely have direct
- 240 access to a child or a vulnerable adult;
- 241 (C) an individual who provides respite care to a foster parent or an adoptive parent on
- 242 more than one occasion;
- 243 (D) a department contractor;
- 244 (E) a guardian submitting an application on behalf of an individual, other than the child

245 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
246 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
247 who is receiving services; or

248 (F) a guardian submitting an application on behalf of an individual, other than the child
249 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is
250 a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

251 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
252 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

253 (b) "Application" means a background screening application to the office.

254 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
255 Public Safety, created in Section [53-10-201](#).

256 (d) "Incidental care" means occasional care, not in excess of five hours per week and
257 never overnight, for a foster child.

258 (e) "Personal identifying information" means:

259 (i) current name, former names, nicknames, and aliases;

260 (ii) date of birth;

261 (iii) physical address and email address;

262 (iv) telephone number;

263 (v) driver license or other government-issued identification;

264 (vi) social security number;

265 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
266 by the office; and

267 (viii) other information specified by the office by rule made in accordance with Title
268 63G, Chapter 3, Utah Administrative Rulemaking Act.

269 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
270 submit the following to the office:

271 (i) personal identifying information;

- 272 (ii) a fee established by the office under Section 63J-1-504; and
- 273 (iii) a disclosure form, specified by the office, for consent for:
 - 274 (A) an initial background check upon submission of the information described under
 - 275 this Subsection (2)(a);
 - 276 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
 - 277 licensee for 90 days;
 - 278 (C) a background check when the office determines that reasonable cause exists; and
 - 279 (D) retention of personal identifying information, including fingerprints, for
 - 280 monitoring and notification as described in Subsections (3)(d) and (4).
- 281 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
- 282 resided outside of the United States and its territories during the five years immediately
- 283 preceding the day on which the information described in Subsection (2)(a) is submitted to the
- 284 office, the office may require the applicant to submit documentation establishing whether the
- 285 applicant was convicted of a crime during the time that the applicant resided outside of the
- 286 United States or its territories.
- 287 (3) The office:
 - 288 (a) shall perform the following duties as part of a background check of an applicant:
 - 289 (i) check state and regional criminal background databases for the applicant's criminal
 - 290 history by:
 - 291 (A) submitting personal identifying information to the bureau for a search; or
 - 292 (B) using the applicant's personal identifying information to search state and regional
 - 293 criminal background databases as authorized under Section 53-10-108;
 - 294 (ii) submit the applicant's personal identifying information and fingerprints to the
 - 295 bureau for a criminal history search of applicable national criminal background databases;
 - 296 (iii) search the Department of Human Services, Division of Child and Family Services'
 - 297 Licensing Information System described in Section 62A-4a-1006;
 - 298 (iv) search the Department of Human Services, Division of Aging and Adult Services'

299 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
300 (v) search the juvenile court records for substantiated findings of severe child abuse or
301 neglect described in Section 80-3-404; and
302 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
303 under Section 78A-6-209;
304 (b) shall conduct a background check of an applicant for an initial background check
305 upon submission of the information described under Subsection (2)(a);
306 (c) may conduct all or portions of a background check of an applicant, as provided by
307 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
308 Rulemaking Act:
309 (i) for an annual renewal; or
310 (ii) when the office determines that reasonable cause exists;
311 (d) may submit an applicant's personal identifying information, including fingerprints,
312 to the bureau for checking, retaining, and monitoring of state and national criminal background
313 databases and for notifying the office of new criminal activity associated with the applicant;
314 (e) shall track the status of an approved applicant under this section to ensure that an
315 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
316 the applicant applies for:
317 (i) more than one license;
318 (ii) direct access to a child or a vulnerable adult in more than one human services
319 program; or
320 (iii) direct access to a child or a vulnerable adult under a contract with the department;
321 (f) shall track the status of each license and each individual with direct access to a child
322 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
323 expires or the individual's direct access to a child or a vulnerable adult ceases;
324 (g) shall adopt measures to strictly limit access to personal identifying information
325 solely to the individuals responsible for processing and entering the applications for

326 background checks and to protect the security of the personal identifying information the office
327 reviews under this Subsection (3);

328 (h) as necessary to comply with the federal requirement to check a state's child abuse
329 and neglect registry regarding any individual working in a congregate care program, shall:

330 (i) search the Department of Human Services, Division of Child and Family Services'
331 Licensing Information System described in Section [62A-4a-1006](#); and

332 (ii) require the child abuse and neglect registry be checked in each state where an
333 applicant resided at any time during the five years immediately preceding the day on which the
334 applicant submits the information described in Subsection (2)(a) to the office; and

335 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
336 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
337 checks.

338 (4) (a) With the personal identifying information the office submits to the bureau under
339 Subsection (3), the bureau shall check against state and regional criminal background databases
340 for the applicant's criminal history.

341 (b) With the personal identifying information and fingerprints the office submits to the
342 bureau under Subsection (3), the bureau shall check against national criminal background
343 databases for the applicant's criminal history.

344 (c) Upon direction from the office, and with the personal identifying information and
345 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

346 (i) maintain a separate file of the fingerprints for search by future submissions to the
347 local and regional criminal records databases, including latent prints; and

348 (ii) monitor state and regional criminal background databases and identify criminal
349 activity associated with the applicant.

350 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
351 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
352 Investigation Next Generation Identification System for the purpose of:

353 (i) being searched by future submissions to the national criminal records databases,
354 including the Federal Bureau of Investigation Next Generation Identification System and latent
355 prints; and

356 (ii) monitoring national criminal background databases and identifying criminal
357 activity associated with the applicant.

358 (e) The Bureau shall notify and release to the office all information of criminal activity
359 associated with the applicant.

360 (f) Upon notice from the office that a license has expired or an individual's direct
361 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

362 (i) discard and destroy any retained fingerprints; and

363 (ii) notify the Federal Bureau of Investigation when the license has expired or an
364 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
365 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
366 Investigation Next Generation Identification System.

367 (5) (a) After conducting the background check described in Subsections (3) and (4), the
368 office shall deny an application to an applicant who, within three years before the day on which
369 the applicant submits information to the office under Subsection (2) for a background check,
370 has been convicted of any of the following, regardless of whether the offense is a felony, a
371 misdemeanor, or an infraction:

372 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
373 animals, or bestiality;

374 (ii) a violation of any pornography law, including sexual exploitation of a minor or
375 aggravated sexual exploitation of a minor;

376 (iii) prostitution;

377 (iv) an offense included in:

378 (A) Title 76, Chapter 5, Offenses Against the Person;

379 (B) Section 76-5b-201, Sexual Exploitation of a Minor; [~~or~~]

380 (C) Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or
381 [~~(D)~~] (D) Title 76, Chapter 7, Offenses Against the Family;
382 (v) aggravated arson, as described in Section 76-6-103;
383 (vi) aggravated burglary, as described in Section 76-6-203;
384 (vii) aggravated robbery, as described in Section 76-6-302;
385 (viii) identity fraud crime, as described in Section 76-6-1102; or
386 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
387 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
388 through (viii).

389 (b) If the office denies an application to an applicant based on a conviction described in
390 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
391 Subsection (6).

392 (c) If the applicant will be working in a program serving only adults whose only
393 impairment is a mental health diagnosis, including that of a serious mental health disorder,
394 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
395 do not apply, and the office shall conduct a comprehensive review as described in Subsection
396 (6).

397 (6) (a) The office shall conduct a comprehensive review of an applicant's background
398 check if the applicant:

399 (i) has an open court case or a conviction for any felony offense, not described in
400 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on
401 which the applicant submits the application;

402 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
403 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
404 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
405 on which the applicant submits information to the office under Subsection (2) for a background
406 check;

407 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
408 than three years before the day on which the applicant submitted information under Subsection
409 (2)(a);

410 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
411 described in Subsection (5)(a);

412 (v) has a listing in the Department of Human Services, Division of Child and Family
413 Services' Licensing Information System described in Section [62A-4a-1006](#);

414 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
415 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
416 [62A-3-311.1](#);

417 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
418 or neglect described in Section [80-3-404](#);

419 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
420 an adult, would be a felony or misdemeanor, if the applicant is:

421 (A) under 28 years old; or

422 (B) 28 years old or older and has been convicted of, has pleaded no contest to, or is
423 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
424 offense described in Subsection (5)(a);

425 (ix) has a pending charge for an offense described in Subsection (5)(a); or

426 (x) is an applicant described in Subsection (5)(c).

427 (b) The comprehensive review described in Subsection (6)(a) shall include an
428 examination of:

429 (i) the date of the offense or incident;

430 (ii) the nature and seriousness of the offense or incident;

431 (iii) the circumstances under which the offense or incident occurred;

432 (iv) the age of the perpetrator when the offense or incident occurred;

433 (v) whether the offense or incident was an isolated or repeated incident;

434 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
435 adult, including:

436 (A) actual or threatened, nonaccidental physical, mental, or financial harm;

437 (B) sexual abuse;

438 (C) sexual exploitation; or

439 (D) negligent treatment;

440 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
441 treatment received, or additional academic or vocational schooling completed;

442 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
443 which the applicant is applying; and

444 (ix) any other pertinent information presented to or publicly available to the committee
445 members.

446 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
447 office shall deny an application to an applicant if the office finds that approval would likely
448 create a risk of harm to a child or a vulnerable adult.

449 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
450 office may not deny an application to an applicant solely because the applicant was convicted
451 of an offense that occurred 10 or more years before the day on which the applicant submitted
452 the information required under Subsection (2)(a) if:

453 (i) the applicant has not committed another misdemeanor or felony offense after the
454 day on which the conviction occurred; and

455 (ii) the applicant has never been convicted of an offense described in Subsection
456 (14)(c).

457 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
458 office may make rules, consistent with this chapter, to establish procedures for the
459 comprehensive review described in this Subsection (6).

460 (7) Subject to Subsection (10), the office shall approve an application to an applicant

461 who is not denied under Subsection (5), (6), or (14).

462 (8) (a) The office may conditionally approve an application of an applicant, for a
463 maximum of 60 days after the day on which the office sends written notice to the applicant
464 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

465 (i) is awaiting the results of the criminal history search of national criminal background
466 databases; and

467 (ii) would otherwise approve an application of the applicant under Subsection (7).

468 (b) The office may conditionally approve an application of an applicant, for a
469 maximum of one year after the day on which the office sends written notice to the applicant
470 under Subsection (12), without requiring that the applicant be directly supervised if the office:

471 (i) is awaiting the results of an out-of-state registry for providers other than foster and
472 adoptive parents; and

473 (ii) would otherwise approve an application of the applicant under Subsection (7).

474 (c) Upon receiving the results of the criminal history search of a national criminal
475 background database, the office shall approve or deny the application of the applicant in
476 accordance with Subsections (5) through (7).

477 (9) A licensee or department contractor may not permit an individual to have direct
478 access to a child or a vulnerable adult unless, subject to Subsection (10):

479 (a) the individual is associated with the licensee or department contractor and:

480 (i) the individual's application is approved by the office under this section;

481 (ii) the individual's application is conditionally approved by the office under

482 Subsection (8); or

483 (iii) (A) the individual has submitted the background check information described in
484 Subsection (2) to the office;

485 (B) the office has not determined whether to approve the applicant's application; and

486 (C) the individual is directly supervised by an individual who has a current background
487 screening approval issued by the office under this section and is associated with the licensee or

488 department contractor;

489 (b) (i) the individual is associated with the licensee or department contractor;

490 (ii) the individual has a current background screening approval issued by the office

491 under this section;

492 (iii) one of the following circumstances, that the office has not yet reviewed under

493 Subsection (6), applies to the individual:

494 (A) the individual was charged with an offense described in Subsection (5)(a);

495 (B) the individual is listed in the Licensing Information System, described in Section

496 [62A-4a-1006](#);

497 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation

498 database, described in Section [62A-3-311.1](#);

499 (D) the individual has a record in the juvenile court of a substantiated finding of severe

500 child abuse or neglect, described in Section [80-3-404](#); or

501 (E) the individual has a record of an adjudication in juvenile court for an act that, if

502 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)

503 or (6); and

504 (iv) the individual is directly supervised by an individual who:

505 (A) has a current background screening approval issued by the office under this

506 section; and

507 (B) is associated with the licensee or department contractor;

508 (c) the individual:

509 (i) is not associated with the licensee or department contractor; and

510 (ii) is directly supervised by an individual who:

511 (A) has a current background screening approval issued by the office under this

512 section; and

513 (B) is associated with the licensee or department contractor;

514 (d) the individual is the parent or guardian of the child, or the guardian of the

515 vulnerable adult;

516 (e) the individual is approved by the parent or guardian of the child, or the guardian of
517 the vulnerable adult, to have direct access to the child or the vulnerable adult;

518 (f) the individual is only permitted to have direct access to a vulnerable adult who
519 voluntarily invites the individual to visit; or

520 (g) the individual only provides incidental care for a foster child on behalf of a foster
521 parent who has used reasonable and prudent judgment to select the individual to provide the
522 incidental care for the foster child.

523 (10) An individual may not have direct access to a child or a vulnerable adult if the
524 individual is prohibited by court order from having that access.

525 (11) Notwithstanding any other provision of this section, an individual for whom the
526 office denies an application may not have direct access to a child or vulnerable adult unless the
527 office approves a subsequent application by the individual.

528 (12) (a) Within 30 days after the day on which the office receives the background
529 check information for an applicant, the office shall give notice of the clearance status to:

530 (i) the applicant, and the licensee or department contractor, of the office's decision
531 regarding the background check and findings; and

532 (ii) the applicant of any convictions and potentially disqualifying charges and
533 adjudications found in the search.

534 (b) With the notice described in Subsection (12)(a), the office shall also give the
535 applicant the details of any comprehensive review conducted under Subsection (6).

536 (c) If the notice under Subsection (12)(a) states that the applicant's application is
537 denied, the notice shall further advise the applicant that the applicant may, under Subsection
538 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to
539 challenge the office's decision.

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

542 (i) defining procedures for the challenge of the office's background check decision
543 described in Subsection (12)(c); and

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

546 (13) An individual or a department contractor who provides services in an adults only
547 substance use disorder program, as defined by rule, is exempt from this section. This
548 exemption does not extend to a program director or a member, as defined by Section
549 [62A-2-108](#), of the program.

550 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
551 of this section, if the background check of an applicant is being conducted for the purpose of
552 giving clearance status to an applicant seeking a position in a congregate care program, an
553 applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or
554 an applicant seeking to provide a prospective adoptive home, the office shall:

555 (i) check the child abuse and neglect registry in each state where each applicant resided
556 in the five years immediately preceding the day on which the applicant applied to be a foster
557 parent or adoptive parent, to determine whether the prospective foster parent or prospective
558 adoptive parent is listed in the registry as having a substantiated or supported finding of child
559 abuse or neglect; and

560 (ii) check the child abuse and neglect registry in each state where each adult living in
561 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
562 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
563 parent, to determine whether the adult is listed in the registry as having a substantiated or
564 supported finding of child abuse or neglect.

565 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

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

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

- 569 (A) a noncustodial parent under Section 62A-4a-209, 80-3-302, or 80-3-303; or
570 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 80-3-302,
571 or 80-3-303, pending completion of the background check described in Subsection (5).
572 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
573 applicant seeking a position in a congregate care program, an applicant for a one-time adoption,
574 an applicant to become a prospective foster parent, or an applicant to become a prospective
575 adoptive parent if the applicant has been convicted of:
- 576 (i) a felony involving conduct that constitutes any of the following:
 - 577 (A) child abuse, as described in Section 76-5-109;
 - 578 (B) commission of domestic violence in the presence of a child, as described in Section
579 76-5-109.1;
 - 580 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
 - 581 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
 - 582 (E) aggravated murder, as described in Section 76-5-202;
 - 583 (F) murder, as described in Section 76-5-203;
 - 584 (G) manslaughter, as described in Section 76-5-205;
 - 585 (H) child abuse homicide, as described in Section 76-5-208;
 - 586 (I) homicide by assault, as described in Section 76-5-209;
 - 587 (J) kidnapping, as described in Section 76-5-301;
 - 588 (K) child kidnapping, as described in Section 76-5-301.1;
 - 589 (L) aggravated kidnapping, as described in Section 76-5-302;
 - 590 (M) human trafficking of a child, as described in Section 76-5-308.5;
 - 591 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 - 592 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
 - 593 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
 - 594 [~~P~~] (Q) aggravated arson, as described in Section 76-6-103;
 - 595 [~~Q~~] (R) aggravated burglary, as described in Section 76-6-203;

596 [~~R~~] (S) aggravated robbery, as described in Section 76-6-302; or
597 [~~S~~] (T) domestic violence, as described in Section 77-36-1; or
598 (ii) an offense committed outside the state that, if committed in the state, would
599 constitute a violation of an offense described in Subsection (14)(c)(i).
600 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
601 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
602 five years immediately preceding the day on which the individual's application or license would
603 otherwise be approved, the applicant was convicted of a felony involving conduct that
604 constitutes a violation of any of the following:
605 (i) aggravated assault, as described in Section 76-5-103;
606 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
607 (iii) mayhem, as described in Section 76-5-105;
608 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
609 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
610 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
611 Act;
612 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
613 Precursor Act; or
614 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
615 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
616 conduct the comprehensive review of an applicant's background check pursuant to this section
617 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
618 child abuse and neglect registry of another state as having a substantiated or supported finding
619 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

620 Section 4. Section 63M-7-404 is amended to read:

621 **63M-7-404. Purpose -- Duties.**

622 (1) The purpose of the commission is to develop guidelines and propose

- 623 recommendations to the Legislature, the governor, and the Judicial Council regarding:
- 624 (a) the sentencing and release of juvenile and adult offenders in order to:
- 625 (i) respond to public comment;
- 626 (ii) relate sentencing practices and correctional resources;
- 627 (iii) increase equity in criminal sentencing;
- 628 (iv) better define responsibility in criminal sentencing; and
- 629 (v) enhance the discretion of sentencing judges while preserving the role of the Board
- 630 of Pardons and Parole and the Youth Parole Authority;
- 631 (b) the length of supervision of adult offenders on probation or parole in order to:
- 632 (i) increase equity in criminal supervision lengths;
- 633 (ii) respond to public comment;
- 634 (iii) relate the length of supervision to an offender's progress;
- 635 (iv) take into account an offender's risk of offending again;
- 636 (v) relate the length of supervision to the amount of time an offender has remained
- 637 under supervision in the community; and
- 638 (vi) enhance the discretion of the sentencing judges while preserving the role of the
- 639 Board of Pardons and Parole;
- 640 (c) appropriate, evidence-based probation and parole supervision policies and services
- 641 that assist individuals in successfully completing supervision and reduce incarceration rates
- 642 from community supervision programs while ensuring public safety, including:
- 643 (i) treatment and intervention completion determinations based on individualized case
- 644 action plans;
- 645 (ii) measured and consistent processes for addressing violations of conditions of
- 646 supervision;
- 647 (iii) processes that include using positive reinforcement to recognize an individual's
- 648 progress in supervision;
- 649 (iv) engaging with social services agencies and other stakeholders who provide

650 services that meet offender needs; and

651 (v) identifying community violations that may not warrant revocation of probation or
652 parole.

653 (2) (a) The commission shall modify the sentencing guidelines and supervision length
654 guidelines for adult offenders to implement the recommendations of the Commission on
655 Criminal and Juvenile Justice for reducing recidivism.

656 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting
657 the public and ensuring efficient use of state funds.

658 (3) (a) The commission shall modify the criminal history score in the sentencing
659 guidelines for adult offenders to implement the recommendations of the Commission on
660 Criminal and Juvenile Justice for reducing recidivism.

661 (b) The modifications to the criminal history score under Subsection (3)(a) shall
662 include factors in an offender's criminal history that are relevant to the accurate determination
663 of an individual's risk of offending again.

664 (4) (a) The commission shall establish sentencing guidelines for periods of
665 incarceration for individuals who are on probation and:

666 (i) who have violated one or more conditions of probation; and

667 (ii) whose probation has been revoked by the court.

668 (b) The guidelines shall consider the seriousness of the violation of the conditions of
669 probation, the probationer's conduct while on probation, and the probationer's criminal history.

670 (5) (a) The commission shall establish sentencing guidelines for periods of
671 incarceration for individuals who are on parole and:

672 (i) who have violated a condition of parole; and

673 (ii) whose parole has been revoked by the Board of Pardons and Parole.

674 (b) The guidelines shall consider the seriousness of the violation of the conditions of
675 parole, the individual's conduct while on parole, and the individual's criminal history.

676 (6) The commission shall establish graduated and evidence-based processes to

677 facilitate the prompt and effective response to an individual's progress in or violation of the
678 terms of probation or parole by the adult probation and parole section of the Department of
679 Corrections, or other supervision services provider, in order to implement the
680 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism
681 and incarceration, including:

682 (a) responses to be used when an individual violates a condition of probation or parole;

683 (b) responses to recognize positive behavior and progress related to an individual's case
684 action plan;

685 (c) when a violation of a condition of probation or parole should be reported to the
686 court or the Board of Pardons and Parole; and

687 (d) a range of sanctions that may not exceed a period of incarceration of more than:

688 (i) three consecutive days; and

689 (ii) a total of five days in a period of 30 days.

690 (7) The commission shall establish graduated incentives to facilitate a prompt and
691 effective response by the adult probation and parole section of the Department of Corrections
692 to an offender's:

693 (a) compliance with the terms of probation or parole; and

694 (b) positive conduct that exceeds those terms.

695 (8) (a) The commission shall establish guidelines, including sanctions and incentives,
696 to appropriately respond to negative and positive behavior of juveniles who are:

697 (i) nonjudicially adjusted;

698 (ii) placed on diversion;

699 (iii) placed on probation;

700 (iv) placed on community supervision;

701 (v) placed in an out-of-home placement; or

702 (vi) placed in a secure care facility.

703 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

- 704 (i) the seriousness of the negative and positive behavior;
- 705 (ii) the juvenile's conduct post-adjudication; and
- 706 (iii) the delinquency history of the juvenile.
- 707 (c) The guidelines shall include:
- 708 (i) responses that are swift and certain;
- 709 (ii) a continuum of community-based options for juveniles living at home;
- 710 (iii) responses that target the individual's criminogenic risk and needs; and
- 711 (iv) incentives for compliance, including earned discharge credits.
- 712 (9) The commission shall establish supervision length guidelines in accordance with
- 713 this section before October 1, 2018.

714 (10) (a) Before January 1, 2023, the commission shall study the offenses of sexual
715 exploitation of a minor and aggravated sexual exploitation of a minor under Sections
716 76-5b-201 and 76-5b-201.1.

717 (b) The commission shall update sentencing and release guidelines and juvenile
718 disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection
719 (10)(a), including the application of aggravating and mitigating factors specific to the offense.

720 Section 5. Section **63M-7-502** is amended to read:

721 **63M-7-502. Definitions.**

722 As used in this part:

723 (1) "Accomplice" means an individual who has engaged in criminal conduct as
724 described in Section [76-2-202](#).

725 (2) "Board" means the Crime Victim Reparations and Assistance Board created under
726 Section [63M-7-504](#).

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

729 (4) "Claimant" means any of the following claiming reparations under this part:

730 (a) a victim;

- 731 (b) a dependent of a deceased victim; or
732 (c) an individual or representative who files a reparations claim on behalf of a victim.
733 (5) "Child" means an unemancipated individual who is under 18 years old.
734 (6) "Collateral source" means any source of benefits or advantages for economic loss
735 otherwise reparable under this part that the victim or claimant has received, or that is readily
736 available to the victim from:
737 (a) the offender;
738 (b) the insurance of the offender or the victim;
739 (c) the United States government or any of its agencies, a state or any of its political
740 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory
741 state-funded programs;
742 (d) social security, Medicare, and Medicaid;
743 (e) state-required temporary nonoccupational income replacement insurance or
744 disability income insurance;
745 (f) workers' compensation;
746 (g) wage continuation programs of any employer;
747 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
748 sustained because of the criminally injurious conduct;
749 (i) a contract providing prepaid hospital and other health care services or benefits for
750 disability; or
751 (j) veteran's benefits, including veteran's hospitalization benefits.
752 (7) (a) "Criminally injurious conduct" other than acts of war declared or not declared
753 means conduct that:
754 (i) is or would be subject to prosecution in this state under Section [76-1-201](#);
755 (ii) occurs or is attempted;
756 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
757 (iv) is punishable by fine, imprisonment, or death if the individual engaging in the

758 conduct possessed the capacity to commit the conduct; and

759 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
760 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
761 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
762 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

763 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
764 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"
765 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

766 (c) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and
767 other conduct leading to the psychological injury of an individual resulting from living in a
768 setting that involves a bigamous relationship.

769 (8) (a) "Dependent" means a natural person to whom the victim is wholly or partially
770 legally responsible for care or support.

771 (b) "Dependent" includes a child of the victim born after the victim's death.

772 (9) "Dependent's economic loss" means loss after the victim's death of contributions of
773 things of economic value to the victim's dependent, not including services the dependent would
774 have received from the victim if the victim had not suffered the fatal injury, less expenses of
775 the dependent avoided by reason of victim's death.

776 (10) "Dependent's replacement services loss" means loss reasonably and necessarily
777 incurred by the dependent after the victim's death in obtaining services in lieu of those the
778 decedent would have performed for the victim's benefit if the victim had not suffered the fatal
779 injury, less expenses of the dependent avoided by reason of the victim's death and not
780 subtracted in calculating the dependent's economic loss.

781 (11) "Director" means the director of the office.

782 (12) "Disposition" means the sentencing or determination of penalty or punishment to
783 be imposed upon an individual:

784 (a) convicted of a crime;

785 (b) found delinquent; or
786 (c) against whom a finding of sufficient facts for conviction or finding of delinquency
787 is made.

788 (13) (a) "Economic loss" means economic detriment consisting only of allowable
789 expense, work loss, replacement services loss, and if injury causes death, dependent's economic
790 loss and dependent's replacement service loss.

791 (b) "Economic loss" includes economic detriment even if caused by pain and suffering
792 or physical impairment.

793 (c) "Economic loss" does not include noneconomic detriment.

794 (14) "Elderly victim" means an individual 60 years old or older who is a victim.

795 (15) "Fraudulent claim" means a filed reparations based on material misrepresentation
796 of fact and intended to deceive the reparations staff for the purpose of obtaining reparation
797 funds for which the claimant is not eligible.

798 (16) "Fund" means the Crime Victim Reparations Fund created in Section [63M-7-526](#).

799 (17) "Law enforcement officer" means the same as that term is defined in Section
800 [53-13-103](#).

801 (18) (a) "Medical examination" means a physical examination necessary to document
802 criminally injurious conduct.

803 (b) "Medical examination" does not include mental health evaluations for the
804 prosecution and investigation of a crime.

805 (19) "Mental health counseling" means outpatient and inpatient counseling necessitated
806 as a result of criminally injurious conduct, is subject to rules made by the board in accordance
807 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

808 (20) "Misconduct" means conduct by the victim that was attributable to the injury or
809 death of the victim as provided by rules made by the board in accordance with Title 63G,
810 Chapter 3, Utah Administrative Rulemaking Act.

811 (21) "Noneconomic detriment" means pain, suffering, inconvenience, physical

812 impairment, and other nonpecuniary damage, except as provided in this part.

813 (22) "Pecuniary loss" does not include loss attributable to pain and suffering except as
814 otherwise provided in this part.

815 (23) "Offender" means an individual who has violated Title 76, Utah Criminal Code,
816 through criminally injurious conduct regardless of whether the individual is arrested,
817 prosecuted, or convicted.

818 (24) "Offense" means a violation of Title 76, Utah Criminal Code.

819 (25) "Office" means the director, the reparations and assistance officers, and any other
820 staff employed for the purpose of carrying out the provisions of this part.

821 (26) "Perpetrator" means the individual who actually participated in the criminally
822 injurious conduct.

823 (27) "Reparations award" means money or other benefits provided to a claimant or to
824 another on behalf of a claimant after the day on which a reparations claim is approved by the
825 office.

826 (28) "Reparations claim" means a claimant's request or application made to the office
827 for a reparations award.

828 (29) (a) "Reparations officer" means an individual employed by the office to
829 investigate claims of victims and award reparations under this part.

830 (b) "Reparations officer" includes the director when the director is acting as a
831 reparations officer.

832 (30) "Replacement service loss" means expenses reasonably and necessarily incurred in
833 obtaining ordinary and necessary services in lieu of those the injured individual would have
834 performed, not for income but the benefit of the injured individual or the injured individual's
835 dependents if the injured individual had not been injured.

836 (31) (a) "Representative" means the victim, immediate family member, legal guardian,
837 attorney, conservator, executor, or an heir of an individual.

838 (b) "Representative" does not include a service provider or collateral source.

839 (32) "Restitution" means the same as that term is defined in Section [77-38b-102](#).

840 (33) "Secondary victim" means an individual who is traumatically affected by the
841 criminally injurious conduct subject to rules made by the board in accordance with Title 63G,
842 Chapter 3, Utah Administrative Rulemaking Act.

843 (34) "Service provider" means an individual or agency who provides a service to a
844 victim for a monetary fee, except attorneys as provided in Section [63M-7-524](#).

845 (35) "Serious bodily injury" means the same as that term is defined in Section
846 [76-1-601](#).

847 (36) "Substantial bodily injury" means the same as that term is defined in Section
848 [76-1-601](#).

849 (37) (a) "Victim" means an individual who suffers bodily or psychological injury or
850 death as a direct result of:

851 (i) criminally injurious conduct; or

852 (ii) the production of pornography in violation of Section [76-5b-201](#) or [76-5b-201.1](#) if
853 the individual is a minor.

854 (b) "Victim" does not include an individual who participated in or observed the judicial
855 proceedings against an offender unless otherwise provided by statute or rule made in
856 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

859 (38) "Work loss" means loss of income from work the injured victim would have
860 performed if the injured victim had not been injured and expenses reasonably incurred by the
861 injured victim in obtaining services in lieu of those the injured victim would have performed
862 for income, reduced by any income from substitute work the injured victim was capable of
863 performing but unreasonably failed to undertake.

864 Section 6. Section **76-1-302** is amended to read:

865 **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**

866 **evidence would identify the defendant -- Commencement of prosecution.**

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

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

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

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

875 (b) a misdemeanor other than negligent homicide shall be commenced within two years
876 after it is committed; and

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

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

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

884 (3) If the statute of limitations would have run but for the provisions of Subsection (2)
885 and identification of a perpetrator is made through DNA, a prosecution shall be commenced
886 within four years of confirmation of the identity of the perpetrator.

887 (4) A prosecution is commenced upon:

888 (a) the finding and filing of an indictment by a grand jury;

889 (b) the filing of a complaint or information; or

890 (c) the issuance of a citation.

891 Section 7. Section 76-3-203.1 is amended to read:

892 **76-3-203.1. Offenses committed in concert with three or more persons or in**

893 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

894 (1) As used in this section:

895 (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.

896 (b) "In concert with three or more persons" means:

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

899 (ii) each of the other persons:

900 (A) was physically present; and

901 (B) participated as a party to any offense listed in Subsection (4), (5), or (6).

902 (c) "In concert with three or more persons" means, regarding intent:

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

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

907 (2) A person who commits any offense in accordance with this section is subject to an
908 enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a
909 reasonable doubt that the person acted:

910 (a) in concert with three or more persons;

911 (b) for the benefit of, at the direction of, or in association with any criminal street gang
912 as defined in Section 76-9-802; or

913 (c) to gain recognition, acceptance, membership, or increased status with a criminal
914 street gang as defined in Section 76-9-802.

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

918 (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

919 (i) for a class B misdemeanor, as a class A misdemeanor; and

- 920 (ii) for a class A misdemeanor, as a third degree felony.
- 921 (b) The following offenses are subject to Subsection (4)(a):
- 922 (i) criminal mischief as defined in Section 76-6-106; and
- 923 (ii) graffiti as defined in Section 76-6-107.
- 924 (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:
- 925 (i) for a class B misdemeanor, as a class A misdemeanor;
- 926 (ii) for a class A misdemeanor, as a third degree felony; and
- 927 (iii) for a third degree felony, as a second degree felony.
- 928 (b) The following offenses are subject to Subsection (5)(a):
- 929 (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);
- 930 (ii) any offense of obstructing government operations under [~~Title 76;~~] Chapter 8, Part
- 931 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,
- 932 76-8-308, and 76-8-312;
- 933 (iii) tampering with a witness or other violation of Section 76-8-508;
- 934 (iv) retaliation against a witness, victim, informant, or other violation of Section
- 935 76-8-508.3;
- 936 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section
- 937 76-8-509;
- 938 (vi) any weapons offense under [~~Title 76;~~] Chapter 10, Part 5, Weapons; and
- 939 (vii) any violation of [~~Title 76;~~] Chapter 10, Part 16, Pattern of Unlawful Activity Act.
- 940 (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:
- 941 (i) for a class B misdemeanor, as a class A misdemeanor;
- 942 (ii) for a class A misdemeanor, as a third degree felony;
- 943 (iii) for a third degree felony, as a second degree felony; and
- 944 (iv) for a second degree felony, as a first degree felony.
- 945 (b) The following offenses are subject to Subsection (6)(a):
- 946 (i) assault and related offenses under [~~Title 76;~~] Chapter 5, Part 1, Assault and Related

- 947 Offenses;
- 948 (ii) any criminal homicide offense under [~~Title 76,~~] Chapter 5, Part 2, Criminal
- 949 Homicide;
- 950 (iii) kidnapping and related offenses under [~~Title 76,~~] Chapter 5, Part 3, Kidnapping,
- 951 Trafficking, and Smuggling;
- 952 (iv) any felony sexual offense under [~~Title 76,~~] Chapter 5, Part 4, Sexual Offenses;
- 953 (v) sexual exploitation of a minor as defined in Section [76-5b-201](#);
- 954 (vi) aggravated sexual exploitation of a minor as defined in Section [76-5b-201.1](#);
- 955 [~~(vi)] (vii) robbery and aggravated robbery under [~~Title 76,~~] Chapter 6, Part 3,~~
- 956 Robbery; and
- 957 [~~(vii)] (viii) aggravated exploitation of prostitution under Section [76-10-1306](#).~~

958 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the

959 individual placed on probation for the higher level of offense.

960 (8) It is not a bar to imposing the enhanced penalties under this section that the persons

961 with whom the actor is alleged to have acted in concert are not identified, apprehended,

962 charged, or convicted, or that any of those persons are charged with or convicted of a different

963 or lesser offense.

964 Section 8. Section [76-3-203.5](#) is amended to read:

965 **[76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.](#)**

966 (1) As used in this section:

967 (a) "Felony" means any violation of a criminal statute of the state, any other state, the

968 United States, or any district, possession, or territory of the United States for which the

969 maximum punishment the offender may be subjected to exceeds one year in prison.

970 (b) "Habitual violent offender" means a person convicted within the state of any violent

971 felony and who on at least two previous occasions has been convicted of a violent felony and

972 committed to either prison in Utah or an equivalent correctional institution of another state or

973 of the United States either at initial sentencing or after revocation of probation.

- 974 (c) "Violent felony" means:
- 975 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
- 976 any of the following offenses punishable as a felony:
- 977 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
- 978 [~~Title 76,~~] Chapter 6, Part 1, Property Destruction;
- 979 (B) assault by prisoner, Section 76-5-102.5;
- 980 (C) disarming a police officer, Section 76-5-102.8;
- 981 (D) aggravated assault, Section 76-5-103;
- 982 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 983 (F) mayhem, Section 76-5-105;
- 984 (G) stalking, Subsection 76-5-106.5(2) or (3);
- 985 (H) threat of terrorism, Section 76-5-107.3;
- 986 (I) child abuse, Subsection 76-5-109(2)(a) or (b);
- 987 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 988 (K) abuse or neglect of a child with a disability, Section 76-5-110;
- 989 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 990 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 991 (N) criminal homicide offenses under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
- 992 (O) kidnapping, child kidnapping, and aggravated kidnapping under [~~Title 76,~~] Chapter
- 993 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 994 (P) rape, Section 76-5-402;
- 995 (Q) rape of a child, Section 76-5-402.1;
- 996 (R) object rape, Section 76-5-402.2;
- 997 (S) object rape of a child, Section 76-5-402.3;
- 998 (T) forcible sodomy, Section 76-5-403;
- 999 (U) sodomy on a child, Section 76-5-403.1;
- 1000 (V) forcible sexual abuse, Section 76-5-404;

- 1001 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);
- 1002 (X) aggravated sexual assault, Section [76-5-405](#);
- 1003 (Y) sexual exploitation of a minor, Section [76-5b-201](#);
- 1004 (Z) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
- 1005 [~~(Z)~~] (AA) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 1006 [~~(AA)~~] (BB) aggravated burglary and burglary of a dwelling under [~~Title 76;~~] Chapter
- 1007 6, Part 2, Burglary and Criminal Trespass;
- 1008 [~~(BB)~~] (CC) aggravated robbery and robbery under [~~Title 76;~~] Chapter 6, Part 3,
- 1009 Robbery;
- 1010 [~~(CC)~~] (DD) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b);
- 1011 [~~(DD)~~] (EE) tampering with a witness under Subsection [76-8-508\(1\)](#);
- 1012 [~~(EE)~~] (FF) retaliation against a witness, victim, or informant under Section
- 1013 [76-8-508.3](#);
- 1014 [~~(FF)~~] (GG) tampering with a juror under Subsection [76-8-508.5\(2\)\(c\)](#);
- 1015 [~~(GG)~~] (HH) extortion to dismiss a criminal proceeding under Section [76-8-509](#) if by
- 1016 any threat or by use of force theft by extortion has been committed pursuant to Subsections
- 1017 [76-6-406\(2\)\(a\)](#), (b), and (i);
- 1018 [~~(HH)~~] (II) possession, use, or removal of explosive, chemical, or incendiary devices
- 1019 under Subsections [76-10-306\(3\)](#) through (6);
- 1020 [~~(II)~~] (JJ) unlawful delivery of explosive, chemical, or incendiary devices under
- 1021 Section [76-10-307](#);
- 1022 [~~(JJ)~~] (KK) purchase or possession of a dangerous weapon or handgun by a restricted
- 1023 person under Section [76-10-503](#);
- 1024 [~~(KK)~~] (LL) unlawful discharge of a firearm under Section [76-10-508](#);
- 1025 [~~(LL)~~] (MM) aggravated exploitation of prostitution under Subsection
- 1026 [76-10-1306\(1\)\(a\)](#);
- 1027 [~~(MM)~~] (NN) bus hijacking under Section [76-10-1504](#); and

1028 [~~NN~~] (OO) discharging firearms and hurling missiles under Section 76-10-1505; or
1029 (ii) any felony violation of a criminal statute of any other state, the United States, or
1030 any district, possession, or territory of the United States which would constitute a violent
1031 felony as defined in this Subsection (1) if committed in this state.

1032 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
1033 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
1034 under this section, the penalty for a:

- 1035 (a) third degree felony is as if the conviction were for a first degree felony;
- 1036 (b) second degree felony is as if the conviction were for a first degree felony; or
- 1037 (c) first degree felony remains the penalty for a first degree penalty except:
 - 1038 (i) the convicted person is not eligible for probation; and
 - 1039 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
1040 habitual violent offender as an aggravating factor in determining the length of incarceration.

1041 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
1042 provide notice in the information or indictment that the defendant is subject to punishment as a
1043 habitual violent offender under this section. Notice shall include the case number, court, and
1044 date of conviction or commitment of any case relied upon by the prosecution.

1045 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
1046 intends to deny that:

- 1047 (A) the defendant is the person who was convicted or committed;
- 1048 (B) the defendant was represented by counsel or had waived counsel; or
- 1049 (C) the defendant's plea was understandingly or voluntarily entered.

1050 (ii) The notice of denial shall be served not later than five days prior to trial and shall
1051 state in detail the defendant's contention regarding the previous conviction and commitment.

1052 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
1053 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,
1054 of the:

1055 (i) defendant's previous convictions for violent felonies, except as otherwise provided
1056 in the Utah Rules of Evidence; or

1057 (ii) allegation against the defendant of being a habitual violent offender.

1058 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
1059 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
1060 the jury, in which case the allegation shall be tried immediately to the court.

1061 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
1062 applies.

1063 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
1064 and the defendant shall be afforded an opportunity to present any necessary additional
1065 evidence.

1066 (iii) Before sentencing under this section, the trier of fact shall determine whether this
1067 section is applicable beyond a reasonable doubt.

1068 (d) If any previous conviction and commitment is based upon a plea of guilty or no
1069 contest, there is a rebuttable presumption that the conviction and commitment were regular and
1070 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
1071 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
1072 to establish by a preponderance of the evidence that the defendant was then represented by
1073 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
1074 was understandingly and voluntarily entered.

1075 (e) If the trier of fact finds this section applicable, the court shall enter that specific
1076 finding on the record and shall indicate in the order of judgment and commitment that the
1077 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
1078 under this section.

1079 (5) (a) The sentencing enhancement provisions of Section [76-3-407](#) supersede the
1080 provisions of this section.

1081 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in

1082 Subsection (1)(c) shall include any felony sexual offense violation of [~~Title 76;~~] Chapter 5, Part
1083 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

1084 (6) The sentencing enhancement described in this section does not apply if:

1085 (a) the offense for which the person is being sentenced is:

1086 (i) a grievous sexual offense;

1087 (ii) child kidnapping, Section [76-5-301.1](#);

1088 (iii) aggravated kidnapping, Section [76-5-302](#); or

1089 (iv) forcible sexual abuse, Section [76-5-404](#); and

1090 (b) applying the sentencing enhancement provided for in this section would result in a
1091 lower maximum penalty than the penalty provided for under the section that describes the
1092 offense for which the person is being sentenced.

1093 Section 9. Section **76-3-407** is amended to read:

1094 **76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior**
1095 **felony convictions.**

1096 (1) As used in this section:

1097 (a) "Prior sexual offense" means:

1098 (i) a felony offense described in [~~Title 76;~~] Chapter 5, Part 4, Sexual Offenses;

1099 (ii) sexual exploitation of a minor, Section [76-5b-201](#);

1100 (iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);

1101 [~~(iii)~~] (iv) a felony offense of enticing a minor over the Internet, Section [76-4-401](#);

1102 [~~(iv)~~] (v) a felony attempt to commit an offense described in Subsections (1)(a)(i)

1103 through [~~(iii)~~] (iv); or

1104 [~~(v)~~] (vi) an offense in another state, territory, or district of the United States that, if

1105 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through

1106 [~~(iv)~~] (v).

1107 (b) "Sexual offense" means:

1108 (i) an offense that is a felony of the second or third degree, or an attempted offense,

1109 which attempt is a felony of the second or third degree, described in [~~Title 76,~~] Chapter 5, Part
1110 4, Sexual Offenses;

1111 (ii) sexual exploitation of a minor, Section [76-5b-201](#);

1112 ~~(iii) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);~~

1113 [~~(iii)~~] (iv) a felony offense of enticing a minor over the Internet, Section [76-4-401](#);

1114 [~~(iv)~~] (v) a felony attempt to commit an offense described in [~~Subsection (1)(b)(ii) or~~
1115 ~~(iii)~~] Subsections (1)(b)(ii) through (iv); or

1116 [~~(v)~~] (vi) an offense in another state, territory, or district of the United States that, if
1117 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through
1118 [~~(iv)~~] (v).

1119 (2) Notwithstanding any other provision of law, the maximum penalty for a sexual
1120 offense is increased by five years for each conviction of the defendant for a prior sexual offense
1121 that arose from a separate criminal episode, if the trier of fact finds that:

1122 (a) the defendant was convicted of a prior sexual offense; and

1123 (b) the defendant was convicted of the prior sexual offense described in Subsection
1124 (2)(a) before the defendant was convicted of the sexual offense for which the defendant is
1125 being sentenced.

1126 (3) The increased maximum term described in Subsection (2) shall be in addition to,
1127 and consecutive to, any other prison term served by the defendant.

1128 Section 10. Section **76-5b-201** is amended to read:

1129 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

1130 [~~(1) A person is guilty of sexual exploitation of a minor:]~~

1131 [~~(a) when the person:]~~

1132 [~~(i) knowingly produces, possesses, or possesses with intent to distribute child~~
1133 ~~pornography; or]~~

1134 [~~(ii) intentionally distributes or views child pornography; or]~~

1135 [~~(b) if the person is a minor's parent or legal guardian and knowingly consents to or~~

1136 permits the minor to be sexually exploited as described in Subsection (1)(a).]
1137 ~~[(2)(a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a~~
1138 ~~second degree felony.]~~
1139 ~~[(b) A violation of Subsection (1) for knowingly producing child pornography is a first~~
1140 ~~degree felony if the person produces original child pornography depicting a first degree felony~~
1141 ~~that involves:]~~
1142 ~~[(i) the person or another person engaging in conduct with the minor that is a violation~~
1143 ~~of:]~~
1144 ~~[(A) Section 76-5-402.1, rape of a child;]~~
1145 ~~[(B) Section 76-5-402.3, object rape of a child;]~~
1146 ~~[(C) Section 76-5-403.1, sodomy on a child; or]~~
1147 ~~[(D) Section 76-5-404.1, aggravated sexual abuse of a child; or]~~
1148 ~~[(ii) the minor being physically abused, as defined in Section 80-1-102.]~~
1149 (1) An actor commits sexual exploitation of a minor when the actor knowingly
1150 possesses or intentionally views child pornography.
1151 (2) A violation of Subsection (1) is a second degree felony.
1152 (3) It is a separate offense under this section:
1153 (a) for each minor depicted in the child pornography; and
1154 (b) for each time the same minor is depicted in different child pornography.
1155 (4) (a) It is an affirmative defense to a charge of violating this section that no minor
1156 was actually depicted in the visual depiction or used in producing or advertising the visual
1157 depiction.
1158 (b) For a charge of violating this section [~~for knowingly possessing or intentionally~~
1159 ~~viewing child pornography~~], it is an affirmative defense that:
1160 (i) the defendant:
1161 (A) did not solicit the child pornography from the minor depicted in the child
1162 pornography;

1163 (B) is not more than two years older than the minor depicted in the child pornography;
1164 and

1165 (C) upon request of a law enforcement agent or the minor depicted in the child
1166 pornography, removes from an electronic device or destroys the child pornography and all
1167 copies of the child pornography in the defendant's possession; and

1168 (ii) the child pornography does not depict an offense under [~~Title 76;~~] Chapter 5, Part
1169 4, Sexual Offenses.

1170 (5) In proving a violation of this section in relation to an identifiable minor, proof of
1171 the actual identity of the identifiable minor is not required.

1172 (6) This section may not be construed to impose criminal or civil liability on:

1173 (a) an entity or an employee, director, officer, or agent of an entity when acting within
1174 the scope of employment, for the good faith performance of:

1175 (i) reporting or data preservation duties required under federal or state law; or

1176 (ii) implementing a policy of attempting to prevent the presence of child pornography
1177 on tangible or intangible property, or of detecting and reporting the presence of child
1178 pornography on the property;

1179 (b) a law enforcement officer acting within the scope of a criminal investigation;

1180 (c) an employee of a court who may be required to view child pornography during the
1181 course of and within the scope of the employee's employment;

1182 (d) a juror who may be required to view child pornography during the course of the
1183 individual's service as a juror;

1184 (e) an attorney or employee of an attorney who is required to view child pornography
1185 during the course of a judicial process and while acting within the scope of employment;

1186 (f) an employee of the Department of Human Services who is required to view child
1187 pornography within the scope of the employee's employment; or

1188 (g) an attorney who is required to view child pornography within the scope of the
1189 attorney's responsibility to represent the Department of Human Services, including the

1190 divisions and offices within the Department of Human Services.

1191 Section 11. Section **76-5b-201.1** is enacted to read:

1192 **76-5b-201.1. Aggravated sexual exploitation of a minor.**

1193 (1) As used in this section, "physical abuse" or "physically abused" means the same as
1194 the term "physical abuse" is defined in Section [80-1-102](#).

1195 (2) An actor commits aggravated sexual exploitation of a minor if the actor:

1196 (a) intentionally distributes child pornography;

1197 (b) knowingly produces child pornography; or

1198 (c) is the minor's parent or legal guardian and knowingly consents to or permits the
1199 minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section [76-5b-201](#).

1200 (3) (a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a
1201 first degree felony.

1202 (b) If an actor is under 18 years old at the time of the offense, a violation of Subsection
1203 (2) is a second degree felony.

1204 (c) A violation of Subsection (2)(a) is a second degree felony if the child pornography
1205 depicts an individual who is:

1206 (i) 14 years old or older; or

1207 (ii) pubescent.

1208 (4) It is a separate offense under this section:

1209 (a) for each minor depicted in the child pornography; and

1210 (b) for each time the same minor is depicted in different child pornography.

1211 (5) (a) It is an affirmative defense to a charge of violating this section that no minor
1212 was actually depicted in the visual depiction or used in producing or advertising the visual
1213 depiction.

1214 (b) In proving a violation of this section in relation to an identifiable minor, proof of
1215 the actual identity of the identifiable minor is not required.

1216 (6) This section may not be construed to impose criminal or civil liability on:

1217 (a) an entity or an employee, director, officer, or agent of an entity when acting within
1218 the scope of employment, for the good faith performance of:

1219 (i) reporting or data preservation duties required under federal or state law; or

1220 (ii) implementing a policy of attempting to prevent the presence of child pornography
1221 on tangible or intangible property, or of detecting and reporting the presence of child
1222 pornography on the property;

1223 (b) a law enforcement officer acting within the scope of a criminal investigation;

1224 (c) an employee of a court who may be required to view child pornography during the
1225 course of and within the scope of the employee's employment;

1226 (d) a juror who may be required to view child pornography during the course of the
1227 individual's service as a juror;

1228 (e) an attorney or employee of an attorney who is required to view child pornography
1229 during the course of a judicial process and while acting within the scope of employment;

1230 (f) an employee of the Department of Human Services who is required to view child
1231 pornography within the scope of the employee's employment; or

1232 (g) an attorney who is required to view child pornography within the scope of the
1233 attorney's responsibility to represent the Department of Human Services, including the
1234 divisions and offices within the Department of Human Services.

1235 Section 12. Section **76-5b-205** is amended to read:

1236 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

1237 (1) As used in this section:

1238 (a) "Child" means an individual under the age of 18.

1239 (b) "Counterfeit intimate image" means any visual depiction, photograph, film, video,
1240 recording, picture, or computer or computer-generated image or picture, whether made or
1241 produced by electronic, mechanical, or other means, that has been edited, manipulated, or
1242 altered to depict the likeness of an identifiable individual and purports to, or is made to appear
1243 to, depict that individual's:

- 1244 (i) exposed human male or female genitals or pubic area, with less than an opaque
1245 covering;
- 1246 (ii) a female breast with less than an opaque covering, or any portion of the female
1247 breast below the top of the areola; or
- 1248 (iii) the individual engaged in any sexually explicit conduct or simulated sexually
1249 explicit conduct.
- 1250 (c) "Distribute" means the same as that term is defined in Section [76-5b-203](#).
- 1251 (d) "Sexually explicit conduct" means the same as that term is defined in Section
1252 [76-5b-203](#).
- 1253 (e) "Simulated sexually explicit conduct" means the same as that term is defined in
1254 Section [76-5b-203](#).
- 1255 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate
1256 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
1257 actor knows or should reasonably know would cause a reasonable person to suffer emotional or
1258 physical distress or harm, if:
- 1259 (a) the actor has not received consent from the depicted individual to distribute the
1260 counterfeit intimate image; and
- 1261 (b) the counterfeit intimate image was created or provided by the actor without the
1262 knowledge and consent of the depicted individual.
- 1263 (3) An individual commits aggravated unlawful distribution of a counterfeit intimate
1264 image if, in committing the offense described in Subsection (2), the individual depicted in the
1265 counterfeit intimate image is a child.
- 1266 (4) This section does not apply to:
- 1267 (a) (i) lawful practices of law enforcement agencies;
- 1268 (ii) prosecutorial agency functions;
- 1269 (iii) the reporting of a criminal offense;
- 1270 (iv) court proceedings or any other judicial proceeding; or

1271 (v) lawful and generally accepted medical practices and procedures;
1272 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily
1273 allows public exposure of the image;
1274 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or
1275 (d) a counterfeit intimate image that is related to a matter of public concern or interest
1276 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
1277 and 15 of the Utah Constitution.

1278 (5) (a) This section does not apply to an Internet service provider or interactive
1279 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
1280 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
1281 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
1282 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
1283 in 47 U.S.C. Sec. 522, if:

1284 (i) the distribution of a counterfeit intimate image by the Internet service provider
1285 occurs only incidentally through the provider's function of:

1286 (A) transmitting or routing data from one person to another person; or
1287 (B) providing a connection between one person and another person;

1288 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
1289 intimate image; and

1290 (iii) the provider does not knowingly receive from or through a person who distributes
1291 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
1292 specific condition for permitting the person to distribute the counterfeit intimate image.

1293 (b) This section does not apply to a hosting company, as defined in Section
1294 [76-10-1230](#), if:

1295 (i) the distribution of a counterfeit intimate image by the hosting company occurs only
1296 incidentally through the hosting company's function of providing data storage space or data
1297 caching to a person;

1298 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
1299 of the counterfeit intimate image;

1300 (iii) the hosting company does not knowingly receive from or through a person who
1301 distributes the counterfeit intimate image a fee greater than the fee generally charged by the
1302 provider, as a specific condition for permitting the person to distribute, store, or cache the
1303 counterfeit intimate image; and

1304 (iv) the hosting company immediately removes the counterfeit intimate image upon
1305 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly
1306 depicted in the counterfeit intimate image.

1307 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
1308 section if it complies with Section 76-10-1231.

1309 (6) This section does not apply to an actor who engages in conduct that constitutes a
1310 violation of this section to the extent that the actor is chargeable, for the same conduct, under
1311 Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
1312 exploitation of a minor.

1313 (7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful
1314 distribution of a counterfeit intimate image is a class A misdemeanor.

1315 (b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a
1316 third degree felony on a second or subsequent conviction for an offense under this section that
1317 arises from a separate criminal episode as defined in Section 76-1-401.

1318 (c) Except as provided in Subsection (7)(d), knowing or intentional aggravated
1319 unlawful distribution of a counterfeit intimate image is a third degree felony.

1320 (d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate
1321 image is a second degree felony on a second or subsequent conviction for an offense under this
1322 section that arises from a separate criminal episode as defined in Section 76-1-401.

1323 Section 13. Section 76-9-702.5 is amended to read:

1324 **76-9-702.5. Lewdness involving a child.**

1325 (1) As used in this section, "in the presence of" includes within visual contact through
1326 an electronic device.

1327 (2) A person is guilty of lewdness involving a child if the person under circumstances
1328 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a
1329 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,
1330 intentionally or knowingly:

1331 (a) does any of the following in the presence of a child who is under 14 years of age:

1332 (i) performs an act of sexual intercourse or sodomy;

1333 (ii) exposes his or her genitals, the female breast below the top of the areola, the
1334 buttocks, the anus, or the pubic area:

1335 (A) in a public place; or

1336 (B) in a private place under circumstances the person should know will likely cause
1337 affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the child;

1338 (iii) masturbates; or

1339 (iv) performs any other act of lewdness; or

1340 (b) under circumstances not amounting to sexual exploitation of a child under Section
1341 [76-5b-201](#) or aggravated sexual exploitation of a child under Section [76-5b-201.1](#), causes a
1342 child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the
1343 actor, with the intent to arouse or gratify the sexual desire of the actor or the child.

1344 (3) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection
1345 (3)(b).

1346 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

1347 (i) the person is a sex offender as defined in Section [77-27-21.7](#); or

1348 (ii) the person has previously been convicted of a violation of this section.

1349 Section 14. Section **76-10-1302** is amended to read:

1350 **76-10-1302. Prostitution.**

1351 (1) An individual except for a child under Section [76-10-1315](#) is guilty of prostitution

1352 when the individual:

1353 (a) engages, offers, or agrees to engage in any sexual activity with another individual
1354 for a fee, or the functional equivalent of a fee;

1355 (b) takes steps in arranging a meeting through any form of advertising, agreeing to
1356 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
1357 or the functional equivalent of a fee; or

1358 (c) loiters in or within view of any public place for the purpose of being hired to
1359 engage in sexual activity.

1360 (2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, prostitution is
1361 a class B misdemeanor.

1362 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
1363 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
1364 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of
1365 a class A misdemeanor.

1366 (3) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
1367 the individual engages in a violation of Subsection (1) at or near the time the individual
1368 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
1369 following offenses, and the individual reports the offense or attempt to law enforcement in
1370 good faith:

1371 (a) assault, Section 76-5-102;

1372 (b) aggravated assault, Section 76-5-103;

1373 (c) mayhem, Section 76-5-105;

1374 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
1375 homicide, or homicide by assault under [Title 76,] Chapter 5, Part 2, Criminal Homicide;

1376 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
1377 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
1378 trafficking of a child under [Title 76,] Chapter 5, Part 3, Kidnapping, Trafficking, and

- 1379 Smuggling;
- 1380 (f) rape, Section 76-5-402;
- 1381 (g) rape of a child, Section 76-5-402.1;
- 1382 (h) object rape, Section 76-5-402.2;
- 1383 (i) object rape of a child, Section 76-5-402.3;
- 1384 (j) forcible sodomy, Section 76-5-403;
- 1385 (k) sodomy on a child, Section 76-5-403.1;
- 1386 (l) forcible sexual abuse, Section 76-5-404;
- 1387 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 1388 (n) aggravated sexual assault, Section 76-5-405;
- 1389 (o) sexual exploitation of a minor, Section 76-5b-201;
- 1390 (p) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 1391 ~~[(p)]~~ (q) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 1392 ~~[(q)]~~ (r) aggravated burglary or burglary of a dwelling under ~~[Title 76,]~~ Chapter 6, Part
- 1393 2, Burglary and Criminal Trespass;
- 1394 ~~[(r)]~~ (s) aggravated robbery or robbery under ~~[Title 76,]~~ Chapter 6, Part 3, Robbery; or
- 1395 ~~[(s)]~~ (t) theft by extortion under Subsection 76-6-406(2)(a) or (b).
- 1396 Section 15. Section 76-10-1602 is amended to read:
- 1397 **76-10-1602. Definitions.**
- 1398 As used in this part:
- 1399 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
- 1400 business trust, association, or other legal entity, and any union or group of individuals
- 1401 associated in fact although not a legal entity, and includes illicit as well as licit entities.
- 1402 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
- 1403 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
- 1404 have the same or similar purposes, results, participants, victims, or methods of commission, or
- 1405 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall

1406 demonstrate continuing unlawful conduct and be related either to each other or to the
1407 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
1408 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
1409 activity as defined by this part shall have occurred within five years of the commission of the
1410 next preceding act alleged as part of the pattern.

1411 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
1412 interest in property, including state, county, and local governmental entities.

1413 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
1414 command, encourage, or intentionally aid another person to engage in conduct which would
1415 constitute any offense described by the following crimes or categories of crimes, or to attempt
1416 or conspire to engage in an act which would constitute any of those offenses, regardless of
1417 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
1418 or a felony:

1419 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
1420 Recording Practices Act;

1421 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
1422 Code, Sections [19-1-101](#) through [19-7-109](#);

1423 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
1424 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
1425 Code of Utah, or Section [23-20-4](#);

1426 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
1427 26, Chapter 20, Utah False Claims Act, Sections [26-20-1](#) through [26-20-12](#);

1428 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
1429 Offenses and Procedure Act;

1430 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
1431 Land Sales Practices Act;

1432 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah

- 1433 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
1434 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
1435 Clandestine Drug Lab Act;
- 1436 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
1437 Securities Act;
- 1438 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
1439 Procurement Code;
- 1440 (j) assault or aggravated assault, Sections [76-5-102](#) and [76-5-103](#);
- 1441 (k) a threat of terrorism, Section [76-5-107.3](#);
- 1442 (l) criminal homicide, Sections [76-5-201](#), [76-5-202](#), and [76-5-203](#);
- 1443 (m) kidnapping or aggravated kidnapping, Sections [76-5-301](#) and [76-5-302](#);
- 1444 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
1445 human trafficking, Sections [76-5-308](#), [76-5-308.5](#), [76-5-309](#), and [76-5-310](#);
- 1446 (o) sexual exploitation of a minor or aggravated sexual exploitation of a minor,
1447 ~~[Section]~~ Sections [76-5b-201](#) and [76-5b-201.1](#);
- 1448 (p) arson or aggravated arson, Sections [76-6-102](#) and [76-6-103](#);
- 1449 (q) causing a catastrophe, Section [76-6-105](#);
- 1450 (r) burglary or aggravated burglary, Sections [76-6-202](#) and [76-6-203](#);
- 1451 (s) burglary of a vehicle, Section [76-6-204](#);
- 1452 (t) manufacture or possession of an instrument for burglary or theft, Section [76-6-205](#);
- 1453 (u) robbery or aggravated robbery, Sections [76-6-301](#) and [76-6-302](#);
- 1454 (v) theft, Section [76-6-404](#);
- 1455 (w) theft by deception, Section [76-6-405](#);
- 1456 (x) theft by extortion, Section [76-6-406](#);
- 1457 (y) receiving stolen property, Section [76-6-408](#);
- 1458 (z) theft of services, Section [76-6-409](#);
- 1459 (aa) forgery, Section [76-6-501](#);

- 1460 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
1461 76-6-506.6;
- 1462 (cc) deceptive business practices, Section 76-6-507;
- 1463 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
1464 criticism of goods, Section 76-6-508;
- 1465 (ee) bribery of a labor official, Section 76-6-509;
- 1466 (ff) defrauding creditors, Section 76-6-511;
- 1467 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 1468 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 1469 (ii) bribery or threat to influence contest, Section 76-6-514;
- 1470 (jj) making a false credit report, Section 76-6-517;
- 1471 (kk) criminal simulation, Section 76-6-518;
- 1472 (ll) criminal usury, Section 76-6-520;
- 1473 (mm) fraudulent insurance act, Section 76-6-521;
- 1474 (nn) retail theft, Section 76-6-602;
- 1475 (oo) computer crimes, Section 76-6-703;
- 1476 (pp) identity fraud, Section 76-6-1102;
- 1477 (qq) mortgage fraud, Section 76-6-1203;
- 1478 (rr) sale of a child, Section 76-7-203;
- 1479 (ss) bribery to influence official or political actions, Section 76-8-103;
- 1480 (tt) threats to influence official or political action, Section 76-8-104;
- 1481 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 1482 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
1483 76-8-106;
- 1484 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 1485 (xx) obstruction of justice, Section 76-8-306;
- 1486 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;

- 1487 (zz) false or inconsistent material statements, Section 76-8-502;
- 1488 (aaa) false or inconsistent statements, Section 76-8-503;
- 1489 (bbb) written false statements, Section 76-8-504;
- 1490 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 1491 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 1492 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 1493 (fff) tampering with evidence, Section 76-8-510.5;
- 1494 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 1495 a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and
- 1496 Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist
- 1497 Disclosure and Regulation Act;
- 1498 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 1499 76-8-1205;
- 1500 (iii) unemployment insurance fraud, Section 76-8-1301;
- 1501 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
- 1502 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 1503 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
- 1504 parts, Section 76-10-306;
- 1505 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
- 1506 device, Section 76-10-307;
- 1507 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 1508 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
- 1509 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 1510 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
- 1511 76-10-1002;
- 1512 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
- 1513 Section 76-10-1003;

1514 (rrr) sales in containers bearing registered trademark of substituted articles, Section
1515 76-10-1004;

1516 (sss) selling or dealing with article bearing registered trademark or service mark with
1517 intent to defraud, Section 76-10-1006;

1518 (ttt) gambling, Section 76-10-1102;

1519 (uuu) gambling fraud, Section 76-10-1103;

1520 (vvv) gambling promotion, Section 76-10-1104;

1521 (www) possessing a gambling device or record, Section 76-10-1105;

1522 (xxx) confidence game, Section 76-10-1109;

1523 (yyy) distributing pornographic material, Section 76-10-1204;

1524 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;

1525 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;

1526 (bbbb) distribution of pornographic films, Section 76-10-1222;

1527 (cccc) indecent public displays, Section 76-10-1228;

1528 (dddd) prostitution, Section 76-10-1302;

1529 (eeee) aiding prostitution, Section 76-10-1304;

1530 (ffff) exploiting prostitution, Section 76-10-1305;

1531 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;

1532 (hhhh) communications fraud, Section 76-10-1801;

1533 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
1534 Currency Transaction Reporting Act;

1535 (jjjj) vehicle compartment for contraband, Section 76-10-2801;

1536 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
1537 this state; and

1538 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
1539 Sec. 1961(1)(B), (C), and (D).

1540 Section 16. Section 77-22-2.5 is amended to read:

1541 **77-22-2.5. Court orders for criminal investigations for records concerning an**
1542 **electronic communications system or service or remote computing service -- Content --**
1543 **Fee for providing information.**

1544 (1) As used in this section:

1545 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
1546 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
1547 radio, electromagnetic, photoelectronic, or photooptical system.

1548 (ii) "Electronic communication" does not include:

1549 (A) a wire or oral communication;

1550 (B) a communication made through a tone-only paging device;

1551 (C) a communication from a tracking device; or

1552 (D) electronic funds transfer information stored by a financial institution in a
1553 communications system used for the electronic storage and transfer of funds.

1554 (b) "Electronic communications service" means a service which provides for users the
1555 ability to send or receive wire or electronic communications.

1556 (c) "Electronic communications system" means a wire, radio, electromagnetic,
1557 photooptical, or photoelectronic facilities for the transmission of wire or electronic
1558 communications, and a computer facilities or related electronic equipment for the electronic
1559 storage of the communication.

1560 (d) "Internet service provider" means the same as that term is defined in Section
1561 [76-10-1230](#).

1562 (e) "Prosecutor" means the same as that term is defined in Section [77-22-4.5](#).

1563 (f) "Remote computing service" means the provision to the public of computer storage
1564 or processing services by means of an electronic communications system.

1565 (g) "Sexual offense against a minor" means:

1566 (i) sexual exploitation of a minor or attempted sexual exploitation of a minor in
1567 violation of Section [76-5b-201](#);

- 1568 (ii) aggravated sexual exploitation of a minor or attempted aggravated sexual
1569 exploitation of a minor in violation of Section 76-5b-201.1;
- 1570 ~~[(ii)]~~ (iii) a sexual offense or attempted sexual offense committed against a minor in
1571 violation of Title 76, Chapter 5, Part 4, Sexual Offenses;
- 1572 ~~[(iii)]~~ (iv) dealing in or attempting to deal in material harmful to a minor in violation of
1573 Section 76-10-1206;
- 1574 ~~[(iv)]~~ (v) enticement of a minor or attempted enticement of a minor in violation of
1575 Section 76-4-401;
- 1576 ~~[(v)]~~ (vi) human trafficking of a child in violation of Section 76-5-308.5; or
- 1577 ~~[(vi)]~~ (vii) aggravated sexual extortion of a child in violation of Section 76-5b-204.
- 1578 (2) When a law enforcement agency is investigating a sexual offense against a minor,
1579 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
1580 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
1581 service or remote computing service has been used in the commission of a criminal offense, a
1582 law enforcement agent shall:
- 1583 (a) articulate specific facts showing reasonable grounds to believe that the records or
1584 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and
1585 material to an ongoing investigation;
- 1586 (b) present the request to a prosecutor for review and authorization to proceed; and
- 1587 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.
1588 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote
1589 computing service provider that owns or controls the Internet protocol address, websites, email
1590 address, or service to a specific telephone number, requiring the production of the following
1591 information, if available, upon providing in the court order the Internet protocol address, email
1592 address, telephone number, or other identifier, and the dates and times the address, telephone
1593 number, or other identifier is suspected of being used in the commission of the offense:
- 1594 (i) names of subscribers, service customers, and users;

1595 (ii) addresses of subscribers, service customers, and users;
1596 (iii) records of session times and durations;
1597 (iv) length of service, including the start date and types of service utilized; and
1598 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
1599 including a temporarily assigned network address.

1600 (3) A court order issued under this section shall state that the electronic
1601 communications system or service or remote computing service provider shall produce a record
1602 under Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the
1603 suspected criminal activity or offense as described in the court order.

1604 (4) (a) An electronic communications system or service or remote computing service
1605 provider that provides information in response to a court order issued under this section may
1606 charge a fee, not to exceed the actual cost, for providing the information.

1607 (b) The law enforcement agency conducting the investigation shall pay the fee.

1608 (5) The electronic communications system or service or remote computing service
1609 provider served with or responding to the court order may not disclose the court order to the
1610 account holder identified pursuant to the court order for a period of 90 days.

1611 (6) If the electronic communications system or service or remote computing service
1612 provider served with the court order does not own or control the Internet protocol address,
1613 websites, or email address, or provide service for the telephone number that is the subject of
1614 the court order, the provider shall notify the investigating law enforcement agency that the
1615 provider does not have the information.

1616 (7) There is no cause of action against a provider or wire or electronic communication
1617 service, or the provider or service's officers, employees, agents, or other specified persons, for
1618 providing information, facilities, or assistance in accordance with the terms of the court order
1619 issued under this section or statutory authorization.

1620 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
1621 Chapter 23b, Access to Electronic Communications.

1622 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
1623 Access to Electronic Communications, apply to providers and subscribers subject to a court
1624 order issued under this section.

1625 (9) A prosecutorial agency shall annually on or before February 15 report to the
1626 Commission on Criminal and Juvenile Justice:

1627 (a) the number of requests for court orders authorized by the prosecutorial agency;

1628 (b) the number of orders issued by the court and the criminal offense, pursuant to
1629 Subsection (2), each order was used to investigate; and

1630 (c) if the court order led to criminal charges being filed, the type and number of
1631 offenses charged.

1632 Section 17. Section **77-36-1** is amended to read:

1633 **77-36-1. Definitions.**

1634 As used in this chapter:

1635 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

1636 (2) "Department" means the Department of Public Safety.

1637 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
1638 3, Divorce.

1639 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
1640 involving violence or physical harm or threat of violence or physical harm, or any attempt,
1641 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
1642 when committed by one cohabitant against another. "Domestic violence" or "domestic
1643 violence offense" includes commission or attempt to commit, any of the following offenses by
1644 one cohabitant against another:

1645 (a) aggravated assault, as described in Section [76-5-103](#);

1646 (b) aggravated cruelty to an animal, as described in Subsection [76-9-301\(4\)](#), with the
1647 intent to harass or threaten the other cohabitant;

1648 (c) assault, as described in Section [76-5-102](#);

- 1649 (d) criminal homicide, as described in Section 76-5-201;
- 1650 (e) harassment, as described in Section 76-5-106;
- 1651 (f) electronic communication harassment, as described in Section 76-9-201;
- 1652 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
- 1653 76-5-301, 76-5-301.1, and 76-5-302;
- 1654 (h) mayhem, as described in Section 76-5-105;
- 1655 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 1656 [~~Section 76-5b-201, Sexual exploitation of a minor -- Offenses;~~] sexual exploitation of a minor
- 1657 and aggravated sexual exploitation of a minor, as described in Sections 76-5b-201 and
- 1658 76-5b-201.1;
- 1659 (j) stalking, as described in Section 76-5-106.5;
- 1660 (k) unlawful detention or unlawful detention of a minor, as described in Section
- 1661 76-5-304;
- 1662 (l) violation of a protective order or ex parte protective order, as described in Section
- 1663 76-5-108;
- 1664 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 1665 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
- 1666 Part 3, Robbery;
- 1667 (n) possession of a deadly weapon with criminal intent, as described in Section
- 1668 76-10-507;
- 1669 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 1670 person, building, or vehicle, as described in Section 76-10-508;
- 1671 (p) disorderly conduct, as defined in Section 76-9-102, if a conviction or adjudication
- 1672 of disorderly conduct is the result of a plea agreement in which the perpetrator was originally
- 1673 charged with a domestic violence offense otherwise described in this Subsection (4), except
- 1674 that a conviction or adjudication of disorderly conduct as a domestic violence offense, in the
- 1675 manner described in this Subsection (4)(p), does not constitute a misdemeanor crime of

1676 domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18
1677 U.S.C. Sec. 921 et seq.;

1678 (q) child abuse, as described in Section 76-5-109.1;

1679 (r) threatening use of a dangerous weapon, as described in Section 76-10-506;

1680 (s) threatening violence, as described in Section 76-5-107;

1681 (t) tampering with a witness, as described in Section 76-8-508;

1682 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;

1683 (v) unlawful distribution of an intimate image, as described in Section 76-5b-203, or
1684 unlawful distribution of a counterfeit intimate image, as described in Section 76-5b-205;

1685 (w) sexual battery, as described in Section 76-9-702.1;

1686 (x) voyeurism, as described in Section 76-9-702.7;

1687 (y) damage to or interruption of a communication device, as described in Section
1688 76-6-108; or

1689 (z) an offense described in Subsection 78B-7-806(1).

1690 (5) "Jail release agreement" means the same as that term is defined in Section
1691 78B-7-801.

1692 (6) "Jail release court order" means the same as that term is defined in Section
1693 78B-7-801.

1694 (7) "Marital status" means married and living together, divorced, separated, or not
1695 married.

1696 (8) "Married and living together" means a couple whose marriage was solemnized
1697 under Section 30-1-4 or 30-1-6 and who are living in the same residence.

1698 (9) "Not married" means any living arrangement other than married and living together,
1699 divorced, or separated.

1700 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).

1701 (11) "Pretrial protective order" means a written order:

1702 (a) specifying and limiting the contact a person who has been charged with a domestic

1703 violence offense may have with an alleged victim or other specified individuals; and
1704 (b) specifying other conditions of release under [Sections] Section 78B-7-802 or
1705 78B-7-803, pending trial in the criminal case.

1706 (12) "Sentencing protective order" means a written order of the court as part of
1707 sentencing in a domestic violence case that limits the contact an individual who is convicted or
1708 adjudicated of a domestic violence offense may have with a victim or other specified
1709 individuals under Section 78B-7-804.

1710 (13) "Separated" means a couple who have had their marriage solemnized under
1711 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

1712 (14) "Victim" means a cohabitant who has been subjected to domestic violence.

1713 Section 18. Section 77-41-102 is amended to read:

1714 **77-41-102. Definitions.**

1715 As used in this chapter:

1716 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
1717 Safety established in section 53-10-201.

1718 (2) "Business day" means a day on which state offices are open for regular business.

1719 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
1720 Identification showing that the offender has met the requirements of Section 77-41-112.

1721 (4) "Department" means the Department of Corrections.

1722 (5) "Division" means the Division of Juvenile Justice Services.

1723 (6) "Employed" or "carries on a vocation" includes employment that is full time or part
1724 time, whether financially compensated, volunteered, or for the purpose of government or
1725 educational benefit.

1726 (7) "Indian Country" means:

1727 (a) all land within the limits of any Indian reservation under the jurisdiction of the
1728 United States government, regardless of the issuance of any patent, and includes rights-of-way
1729 running through the reservation;

1730 (b) all dependent Indian communities within the borders of the United States whether
1731 within the original or subsequently acquired territory, and whether or not within the limits of a
1732 state; and

1733 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
1734 not been extinguished, including rights-of-way running through the allotments.

1735 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any
1736 property under the jurisdiction of the United States military, Canada, the United Kingdom,
1737 Australia, or New Zealand.

1738 (9) "Kidnap offender" means any individual, other than a natural parent of the victim:

1739 (a) who has been convicted in this state of a violation of:

1740 (i) Subsection 76-5-301(1)(c) or (d), kidnapping;

1741 (ii) Section 76-5-301.1, child kidnapping;

1742 (iii) Section 76-5-302, aggravated kidnapping;

1743 (iv) Section 76-5-308, human trafficking for labor and human smuggling;

1744 (v) Section 76-5-308, human smuggling, when the individual smuggled is under 18
1745 years old;

1746 (vi) Section 76-5-308.5, human trafficking of a child for labor;

1747 (vii) Section 76-5-310, aggravated human trafficking and aggravated human
1748 smuggling, on or after May 10, 2011;

1749 (viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

1750 (ix) attempting, soliciting, or conspiring to commit any felony offense listed in
1751 Subsections (9)(a)(i) through (iii);

1752 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy
1753 to commit a crime in another jurisdiction, including any state, federal, or military court that is
1754 substantially equivalent to the offenses listed in Subsection (9)(a); and

1755 (ii) who is:

1756 (A) a Utah resident; or

1757 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of
1758 10 or more days, regardless of whether or not the offender intends to permanently reside in this
1759 state;

1760 (c) (i) (A) who is required to register as a kidnap offender in any other jurisdiction of
1761 original conviction;

1762 (B) who is required to register as a kidnap offender by any state, federal, or military
1763 court; or

1764 (C) who would be required to register as a kidnap offender if residing in the
1765 jurisdiction of the conviction regardless of the date of the conviction or any previous
1766 registration requirements; and

1767 (ii) in any 12-month period, who is in this state for a total of 10 or more days,
1768 regardless of whether or not the offender intends to permanently reside in this state;

1769 (d) (i) (A) who is a nonresident regularly employed or working in this state; or

1770 (B) who is a student in this state; and

1771 (ii) (A) who was convicted of one or more offenses listed in Subsection (9), or any
1772 substantially equivalent offense in another jurisdiction; or

1773 (B) as a result of the conviction, who is required to register in the individual's state of
1774 residence;

1775 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction
1776 of one or more offenses listed in Subsection (9); or

1777 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1778 Subsection (9)(a); and

1779 (ii) who has been committed to the division for secure care, as defined in Section
1780 80-1-102, for that offense and:

1781 (A) the individual remains in the division's custody until 30 days before the individual's
1782 21st birthday; or

1783 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual

1784 under Section 80-6-605, the individual remains in the division's custody until 30 days before
1785 the individual's 25th birthday.

1786 (10) "Natural parent" means a minor's biological or adoptive parent, and includes the
1787 minor's noncustodial parent.

1788 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
1789 as defined in Subsection (17).

1790 (12) "Online identifier" or "Internet identifier":

1791 (a) means any electronic mail, chat, instant messenger, social networking, or similar
1792 name used for Internet communication; and

1793 (b) does not include date of birth, social security number, PIN number, or Internet
1794 passwords.

1795 (13) "Primary residence" means the location where the offender regularly resides, even
1796 if the offender intends to move to another location or return to another location at any future
1797 date.

1798 (14) "Register" means to comply with the requirements of this chapter and
1799 administrative rules of the department made under this chapter.

1800 (15) "Registration website" means the Sex and Kidnap Offender Notification and
1801 Registration website described in Section 77-41-110 and the information on the website.

1802 (16) "Secondary residence" means any real property that the offender owns or has a
1803 financial interest in, or any location where, in any 12-month period, the offender stays
1804 overnight a total of 10 or more nights when not staying at the offender's primary residence.

1805 (17) "Sex offender" means any individual:

1806 (a) convicted in this state of:

1807 (i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

1808 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
1809 2011;

1810 (iii) Section 76-5-308, human trafficking for sexual exploitation;

- 1811 (iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 1812 (v) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 1813 (vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 1814 (vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in
- 1815 Subsection 76-5-401(3)(b) or (c);
- 1816 (viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection
- 1817 76-5-401.1(3);
- 1818 (ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 1819 (x) Section 76-5-402, rape;
- 1820 (xi) Section 76-5-402.1, rape of a child;
- 1821 (xii) Section 76-5-402.2, object rape;
- 1822 (xiii) Section 76-5-402.3, object rape of a child;
- 1823 (xiv) a felony violation of Section 76-5-403, forcible sodomy;
- 1824 (xv) Section 76-5-403.1, sodomy on a child;
- 1825 (xvi) Section 76-5-404, forcible sexual abuse;
- 1826 (xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a
- 1827 child;
- 1828 (xviii) Section 76-5-405, aggravated sexual assault;
- 1829 (xix) Section 76-5-412, custodial sexual relations, when the individual in custody is
- 1830 younger than 18 years old, if the offense is committed on or after May 10, 2011;
- 1831 (xx) Section 76-5b-201, sexual exploitation of a minor;
- 1832 (xxi) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- 1833 [~~xxi~~] (xxii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 1834 [~~xxii~~] (xxiii) Section 76-7-102, incest;
- 1835 [~~xxiii~~] (xxiv) Section 76-9-702, lewdness, if the individual has been convicted of the
- 1836 offense four or more times;
- 1837 [~~xxiv~~] (xxv) Section 76-9-702.1, sexual battery, if the individual has been convicted

1838 of the offense four or more times;

1839 [~~(xxv)~~] (xxvi) any combination of convictions of Section 76-9-702, lewdness, and of

1840 Section 76-9-702.1, sexual battery, that total four or more convictions;

1841 [~~(xxvi)~~] (xxvii) Section 76-9-702.5, lewdness involving a child;

1842 [~~(xxvii)~~] (xxviii) a felony or class A misdemeanor violation of Section 76-9-702.7,

1843 voyeurism;

1844 [~~(xxviii)~~] (xxix) Section 76-10-1306, aggravated exploitation of prostitution; or

1845 [~~(xxix)~~] (xxx) attempting, soliciting, or conspiring to commit any felony offense listed

1846 in this Subsection (17)(a);

1847 (b) (i) who has been convicted of any crime, or an attempt, solicitation, or conspiracy

1848 to commit a crime in another jurisdiction, including any state, federal, or military court that is

1849 substantially equivalent to the offenses listed in Subsection (17)(a); and

1850 (ii) who is:

1851 (A) a Utah resident; or

1852 (B) not a Utah resident, but who, in any 12-month period, is in this state for a total of

1853 10 or more days, regardless of whether the offender intends to permanently reside in this state;

1854 (c) (i) (A) who is required to register as a sex offender in any other jurisdiction of

1855 original conviction;

1856 (B) who is required to register as a sex offender by any state, federal, or military court;

1857 or

1858 (C) who would be required to register as a sex offender if residing in the jurisdiction of

1859 the original conviction regardless of the date of the conviction or any previous registration

1860 requirements; and

1861 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,

1862 regardless of whether or not the offender intends to permanently reside in this state;

1863 (d) (i) (A) who is a nonresident regularly employed or working in this state; or

1864 (B) who is a student in this state; and

1865 (ii) (A) who was convicted of one or more offenses listed in Subsection (17)(a), or any
1866 substantially equivalent offense in any jurisdiction; or

1867 (B) who is, as a result of the conviction, required to register in the individual's
1868 jurisdiction of residence;

1869 (e) who is found not guilty by reason of insanity in this state, or in any other
1870 jurisdiction of one or more offenses listed in Subsection (17)(a); or

1871 (f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
1872 Subsection (17)(a); and

1873 (ii) who has been committed to the division for secure care, as defined in Section
1874 80-1-102, for that offense and:

1875 (A) the individual remains in the division's custody until 30 days before the individual's
1876 21st birthday; or

1877 (B) if the juvenile court extended the juvenile court's jurisdiction over the individual
1878 under Section 80-6-605, the individual remains in the division's custody until 30 days before
1879 the individual's 25th birthday.

1880 (18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,
1881 Driving Under the Influence and Reckless Driving.

1882 (19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
1883 any jurisdiction.

1884 Section 19. Section 77-41-106 is amended to read:

1885 **77-41-106. Registerable offenses.**

1886 Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

1887 (1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the
1888 conviction, the offender has previously been convicted of an offense listed in Subsection
1889 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense
1890 committed as a juvenile;

1891 (2) a conviction for any of the following offenses, including attempting, soliciting, or

- 1892 conspiring to commit any felony of:
- 1893 (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
- 1894 the victim;
- 1895 (b) Section 76-5-402, rape;
- 1896 (c) Section 76-5-402.1, rape of a child;
- 1897 (d) Section 76-5-402.2, object rape;
- 1898 (e) Section 76-5-402.3, object rape of a child;
- 1899 (f) Section 76-5-403.1, sodomy on a child;
- 1900 (g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
- 1901 (h) Section 76-5-405, aggravated sexual assault;
- 1902 (3) Section 76-5-308, human trafficking for sexual exploitation;
- 1903 (4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;
- 1904 (5) Section 76-5-310, aggravated human trafficking for sexual exploitation;
- 1905 (6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
- 1906 (7) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- 1907 (8) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 1908 of the victim;
- 1909 (9) Section 76-5-403, forcible sodomy;
- 1910 (10) Section 76-5-404.1, sexual abuse of a child;
- 1911 (11) Section 76-5b-201, sexual exploitation of a minor;
- 1912 (12) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
- 1913 ~~[(12)]~~ (13) Subsection 76-5b-204(4), aggravated sexual extortion; or
- 1914 ~~[(13)]~~ (14) Section 76-10-1306, aggravated exploitation of prostitution, on or after May
- 1915 10, 2011.
- 1916 Section 20. Section 78B-6-117 is amended to read:
- 1917 **78B-6-117. Who may adopt -- Adoption of minor.**
- 1918 (1) A minor child may be adopted by an adult individual, in accordance with this

1919 section and this part.

1920 (2) A child may be adopted by:

1921 (a) adults who are legally married to each other in accordance with the laws of this
1922 state, including adoption by a stepparent; or

1923 (b) subject to Subsections (3) and (4), a single adult.

1924 (3) A child may not be adopted by an individual who is cohabiting in a relationship that
1925 is not a legally valid and binding marriage under the laws of this state unless the individual is a
1926 relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C.
1927 Sec. 1901 et seq.

1928 (4) To provide a child who is in the custody of the division with the most beneficial
1929 family structure, when a child in the custody of the division is placed for adoption, the division
1930 or child-placing agency shall place the child with a married couple, unless:

1931 (a) there are no qualified married couples who:

1932 (i) have applied to adopt a child;

1933 (ii) are willing to adopt the child; and

1934 (iii) are an appropriate placement for the child;

1935 (b) the child is placed with a relative of the child;

1936 (c) the child is placed with an individual who has already developed a substantial
1937 relationship with the child;

1938 (d) the child is placed with an individual who:

1939 (i) is selected by a parent or former parent of the child, if the parent or former parent
1940 consented to the adoption of the child; and

1941 (ii) the parent or former parent described in Subsection (4)(d)(i):

1942 (A) knew the individual with whom the child is placed before the parent consented to
1943 the adoption; or

1944 (B) became aware of the individual with whom the child is placed through a source
1945 other than the division or the child-placing agency that assists with the adoption of the child; or

- 1946 (e) it is in the best interests of the child to place the child with a single adult.
- 1947 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
- 1948 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
- 1949 to a felony or attempted felony involving conduct that constitutes any of the following:
- 1950 (a) child abuse, as described in Section [76-5-109](#);
- 1951 (b) child abuse homicide, as described in Section [76-5-208](#);
- 1952 (c) child kidnapping, as described in Section [76-5-301.1](#);
- 1953 (d) human trafficking of a child, as described in Section [76-5-308.5](#);
- 1954 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);
- 1955 (f) rape of a child, as described in Section [76-5-402.1](#);
- 1956 (g) object rape of a child, as described in Section [76-5-402.3](#);
- 1957 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 1958 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 1959 Section [76-5-404.1](#);
- 1960 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); [~~or~~]
- 1961 (k) aggravated sexual exploitation of a minor, as described in Section [76-5b-201.1](#); or
- 1962 [~~(k)~~] (l) an offense in another state that, if committed in this state, would constitute an
- 1963 offense described in this Subsection (5).
- 1964 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
- 1965 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
- 1966 child except as provided in this Subsection (6).
- 1967 (b) An individual described in Subsection (5) may only be considered for adoption of a
- 1968 child if the following criteria are met by clear and convincing evidence:
- 1969 (i) at least 10 years have elapsed from the day on which the individual is successfully
- 1970 released from prison, jail, parole, or probation related to a disqualifying offense;
- 1971 (ii) during the 10 years before the day on which the individual files a petition with the
- 1972 court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no

1973 contest to an offense greater than an infraction or traffic violation that would likely impact the
1974 health, safety, or well-being of the child;

1975 (iii) the individual can provide evidence of successful treatment or rehabilitation
1976 directly related to the disqualifying offense;

1977 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
1978 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any
1979 time in the future when considering all of the following:

1980 (A) the child's age;

1981 (B) the child's gender;

1982 (C) the child's development;

1983 (D) the nature and seriousness of the disqualifying offense;

1984 (E) the preferences of a child 12 years old or older;

1985 (F) any available assessments, including custody evaluations, home studies,
1986 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
1987 assessments, and bonding assessments; and

1988 (G) any other relevant information;

1989 (v) the individual can provide evidence of all of the following:

1990 (A) the relationship with the child is of long duration;

1991 (B) that an emotional bond exists with the child; and

1992 (C) that adoption by the individual who has committed the disqualifying offense
1993 ensures the best interests of the child are met; and

1994 (vi) the adoption is by:

1995 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

1996 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102
1997 and there is not another relative without a disqualifying offense filing an adoption petition.

1998 (c) The individual with the disqualifying offense bears the burden of proof regarding
1999 why adoption with that individual is in the best interest of the child over another responsible

2000 relative or equally situated individual who does not have a disqualifying offense.

2001 (d) If there is an alternative responsible relative who does not have a disqualifying
2002 offense filing an adoption petition, the following applies:

2003 (i) preference for adoption shall be given to a relative who does not have a
2004 disqualifying offense; and

2005 (ii) before the court may grant adoption to the individual who has the disqualifying
2006 offense over another responsible, willing, and able relative:

2007 (A) an impartial custody evaluation shall be completed; and

2008 (B) a guardian ad litem shall be assigned.

2009 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a
2010 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

2011 Section 21. Section **80-1-102** is amended to read:

2012 **80-1-102. Juvenile code definitions.**

2013 As used in this title:

2014 (1) (a) "Abuse" means:

2015 (i) (A) nonaccidental harm of a child;

2016 (B) threatened harm of a child;

2017 (C) sexual exploitation;

2018 (D) sexual abuse; or

2019 (E) human trafficking of a child in violation of Section [76-5-308.5](#); or

2020 (ii) that a child's natural parent:

2021 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
2022 child;

2023 (B) is identified by a law enforcement agency as the primary suspect in an investigation
2024 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

2025 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
2026 recklessly causing the death of another parent of the child.

- 2027 (b) "Abuse" does not include:
- 2028 (i) reasonable discipline or management of a child, including withholding privileges;
- 2029 (ii) conduct described in Section 76-2-401; or
- 2030 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 2031 (A) in self-defense;
- 2032 (B) in defense of others;
- 2033 (C) to protect the child; or
- 2034 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 2035 Subsections (1)(b)(iii)(A) through (C).
- 2036 (2) "Abused child" means a child who has been subjected to abuse.
- 2037 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the
- 2038 facts alleged in the petition have been proved.
- 2039 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance
- 2040 with Section 80-6-402.
- 2041 (4) (a) "Adult" means an individual who is 18 years old or older.
- 2042 (b) "Adult" does not include an individual:
- 2043 (i) who is 18 years old or older; and
- 2044 (ii) who is a minor.
- 2045 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
- 2046 78A-2-801.
- 2047 (6) "Board" means the Board of Juvenile Court Judges.
- 2048 (7) "Child" means an individual who is under 18 years old.
- 2049 (8) "Child and family plan" means a written agreement between a child's parents or
- 2050 guardian and the Division of Child and Family Services as described in Section 62A-4a-205.
- 2051 (9) "Child placement agency" means:
- 2052 (a) a private agency licensed to receive a child for placement or adoption under this
- 2053 code; or

2054 (b) a private agency that receives a child for placement or adoption in another state,
2055 which is licensed or approved where such license or approval is required by law.

2056 (10) "Clandestine laboratory operation" means the same as that term is defined in
2057 Section 58-37d-3.

2058 (11) "Commit" or "committed" means, unless specified otherwise:

2059 (a) with respect to a child, to transfer legal custody; and

2060 (b) with respect to a minor who is at least 18 years old, to transfer custody.

2061 (12) "Community-based program" means a nonsecure residential or nonresidential
2062 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
2063 restrictive setting, consistent with public safety, and operated by or under contract with the
2064 Division of Juvenile Justice Services.

2065 (13) "Community placement" means placement of a minor in a community-based
2066 program described in Section 80-5-402.

2067 (14) "Correctional facility" means:

2068 (a) a county jail; or

2069 (b) a secure correctional facility as defined in Section 64-13-1.

2070 (15) "Criminogenic risk factors" means evidence-based factors that are associated with
2071 a minor's likelihood of reoffending.

2072 (16) "Department" means the Department of Human Services created in Section
2073 62A-1-102.

2074 (17) "Dependent child" or "dependency" means a child who is without proper care
2075 through no fault of the child's parent, guardian, or custodian.

2076 (18) "Deprivation of custody" means transfer of legal custody by the juvenile court
2077 from a parent or a previous custodian to another person, agency, or institution.

2078 (19) "Detention" means home detention or secure detention.

2079 (20) "Detention risk assessment tool" means an evidence-based tool established under
2080 Section 80-5-203 that:

- 2081 (a) assesses a minor's risk of failing to appear in court or reoffending before
2082 adjudication; and
- 2083 (b) is designed to assist in making a determination of whether a minor shall be held in
2084 detention.
- 2085 (21) "Developmental immaturity" means incomplete development in one or more
2086 domains that manifests as a functional limitation in the minor's present ability to:
- 2087 (a) consult with counsel with a reasonable degree of rational understanding; and
2088 (b) have a rational as well as factual understanding of the proceedings.
- 2089 (22) "Disposition" means an order by a juvenile court, after the adjudication of a
2090 minor, under Section [80-3-405](#) or [80-4-305](#) or Chapter 6, Part 7, Adjudication and Disposition.
- 2091 (23) "Educational neglect" means that, after receiving a notice of compulsory education
2092 violation under Section [53G-6-202](#), the parent or guardian fails to make a good faith effort to
2093 ensure that the child receives an appropriate education.
- 2094 (24) "Educational series" means an evidence-based instructional series:
- 2095 (a) obtained at a substance abuse program that is approved by the Division of
2096 Substance Abuse and Mental Health in accordance with Section [62A-15-105](#); and
2097 (b) designed to prevent substance use or the onset of a mental health disorder.
- 2098 (25) "Emancipated" means the same as that term is defined in Section [80-7-102](#).
- 2099 (26) "Evidence-based" means a program or practice that has had multiple randomized
2100 control studies or a meta-analysis demonstrating that the program or practice is effective for a
2101 specific population or has been rated as effective by a standardized program evaluation tool.
- 2102 (27) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).
- 2103 (28) "Formal probation" means a minor is:
- 2104 (a) supervised in the community by, and reports to, a juvenile probation officer or an
2105 agency designated by the juvenile court; and
2106 (b) subject to return to the juvenile court in accordance with Section [80-6-607](#).
- 2107 (29) "Group rehabilitation therapy" means psychological and social counseling of one

2108 or more individuals in the group, depending upon the recommendation of the therapist.

2109 (30) "Guardian" means a person appointed by a court to make decisions regarding a
2110 minor, including the authority to consent to:

2111 (a) marriage;

2112 (b) enlistment in the armed forces;

2113 (c) major medical, surgical, or psychiatric treatment; or

2114 (d) legal custody, if legal custody is not vested in another individual, agency, or
2115 institution.

2116 (31) "Guardian ad litem" means the same as that term is defined in Section [78A-2-801](#).

2117 (32) "Harm" means:

2118 (a) physical or developmental injury or damage;

2119 (b) emotional damage that results in a serious impairment in the child's growth,
2120 development, behavior, or psychological functioning;

2121 (c) sexual abuse; or

2122 (d) sexual exploitation.

2123 (33) "Home detention" means placement of a minor:

2124 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the
2125 consent of the minor's parent, guardian, or custodian, under terms and conditions established by
2126 the Division of Juvenile Justice Services or the juvenile court; or

2127 (b) if after a disposition, and in accordance with Section [78A-6-353](#) or [80-6-704](#), in the
2128 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or
2129 custodian, under terms and conditions established by the Division of Juvenile Justice Services
2130 or the juvenile court.

2131 (34) (a) "Incest" means engaging in sexual intercourse with an individual whom the
2132 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
2133 nephew, niece, or first cousin.

2134 (b) "Incest" includes:

2135 (i) blood relationships of the whole or half blood, without regard to legitimacy;

2136 (ii) relationships of parent and child by adoption; and

2137 (iii) relationships of stepparent and stepchild while the marriage creating the

2138 relationship of a stepparent and stepchild exists.

2139 (35) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2140 (36) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

2141 (37) "Indigent defense service provider" means the same as that term is defined in

2142 Section [78B-22-102](#).

2143 (38) "Indigent defense services" means the same as that term is defined in Section

2144 [78B-22-102](#).

2145 (39) "Indigent individual" means the same as that term is defined in Section

2146 [78B-22-102](#).

2147 (40) (a) "Intake probation" means a minor is:

2148 (i) monitored by a juvenile probation officer; and

2149 (ii) subject to return to the juvenile court in accordance with Section [80-6-607](#).

2150 (b) "Intake probation" does not include formal probation.

2151 (41) "Intellectual disability" means a significant subaverage general intellectual

2152 functioning existing concurrently with deficits in adaptive behavior that constitutes a

2153 substantial limitation to the individual's ability to function in society.

2154 (42) "Juvenile offender" means:

2155 (a) a serious youth offender; or

2156 (b) a youth offender.

2157 (43) "Juvenile probation officer" means a probation officer appointed under Section

2158 [78A-6-205](#).

2159 (44) "Juvenile receiving center" means a nonsecure, nonresidential program established

2160 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile

2161 Justice Services, that is responsible for minors taken into temporary custody under Section

2162 80-6-201.

2163 (45) "Legal custody" means a relationship embodying:

2164 (a) the right to physical custody of the minor;

2165 (b) the right and duty to protect, train, and discipline the minor;

2166 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
2167 medical care;

2168 (d) the right to determine where and with whom the minor shall live; and

2169 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

2170 (46) "Mental illness" means:

2171 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
2172 behavioral, or related functioning; or

2173 (b) the same as that term is defined in:

2174 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
2175 published by the American Psychiatric Association; or

2176 (ii) the current edition of the International Statistical Classification of Diseases and
2177 Related Health Problems.

2178 (47) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

2179 (a) a child; or

2180 (b) an individual:

2181 (i) (A) who is at least 18 years old and younger than 21 years old; and

2182 (B) for whom the Division of Child and Family Services has been specifically ordered
2183 by the juvenile court to provide services because the individual was an abused, neglected, or
2184 dependent child or because the individual was adjudicated for an offense; or

2185 (ii) (A) who is at least 18 years old and younger than 25 years old; and

2186 (B) whose case is under the continuing jurisdiction of the juvenile court under Chapter
2187 6, Juvenile Justice.

2188 (48) "Mobile crisis outreach team" means the same as that term is defined in Section

2189 [62A-15-102](#).

2190 (49) "Molestation" means that an individual, with the intent to arouse or gratify the
2191 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
2192 or the breast of a female child, or takes indecent liberties with a child as defined in Section
2193 [76-5-416](#).

2194 (50) (a) "Natural parent" means a minor's biological or adoptive parent.

2195 (b) "Natural parent" includes the minor's noncustodial parent.

2196 (51) (a) "Neglect" means action or inaction causing:

2197 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
2198 Relinquishment of a Newborn Child;

2199 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
2200 guardian, or custodian;

2201 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
2202 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or
2203 well-being;

2204 (iv) a child to be at risk of being neglected or abused because another child in the same
2205 home is neglected or abused;

2206 (v) abandonment of a child through an unregulated custody transfer; or

2207 (vi) educational neglect.

2208 (b) "Neglect" does not include:

2209 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
2210 reason, does not provide specified medical treatment for a child;

2211 (ii) a health care decision made for a child by the child's parent or guardian, unless the
2212 state or other party to a proceeding shows, by clear and convincing evidence, that the health
2213 care decision is not reasonable and informed;

2214 (iii) a parent or guardian exercising the right described in Section [80-3-304](#); or

2215 (iv) permitting a child, whose basic needs are met and who is of sufficient age and

2216 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,
2217 including:

2218 (A) traveling to and from school, including by walking, running, or bicycling;

2219 (B) traveling to and from nearby commercial or recreational facilities;

2220 (C) engaging in outdoor play;

2221 (D) remaining in a vehicle unattended, except under the conditions described in

2222 Subsection [76-10-2202\(2\)](#);

2223 (E) remaining at home unattended; or

2224 (F) engaging in a similar independent activity.

2225 (52) "Neglected child" means a child who has been subjected to neglect.

2226 (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile
2227 probation officer, without an adjudication of the minor's case under Section [80-6-701](#), upon the
2228 consent in writing of:

2229 (a) the assigned juvenile probation officer; and

2230 (b) (i) the minor; or

2231 (ii) the minor and the minor's parent, legal guardian, or custodian.

2232 (54) "Not competent to proceed" means that a minor, due to a mental illness,
2233 intellectual disability or related condition, or developmental immaturity, lacks the ability to:

2234 (a) understand the nature of the proceedings against the minor or of the potential
2235 disposition for the offense charged; or

2236 (b) consult with counsel and participate in the proceedings against the minor with a
2237 reasonable degree of rational understanding.

2238 (55) "Parole" means a conditional release of a juvenile offender from residency in
2239 secure care to live outside of secure care under the supervision of the Division of Juvenile
2240 Justice Services, or another person designated by the Division of Juvenile Justice Services.

2241 (56) "Physical abuse" means abuse that results in physical injury or damage to a child.

2242 (57) (a) "Probation" means a legal status created by court order, following an

2243 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's
2244 home under prescribed conditions.

2245 (b) "Probation" includes intake probation or formal probation.

2246 (58) "Prosecuting attorney" means:

2247 (a) the attorney general and any assistant attorney general;

2248 (b) any district attorney or deputy district attorney;

2249 (c) any county attorney or assistant county attorney; and

2250 (d) any other attorney authorized to commence an action on behalf of the state.

2251 (59) "Protective custody" means the shelter of a child by the Division of Child and
2252 Family Services from the time the child is removed from the home until the earlier of:

2253 (a) the day on which the shelter hearing is held under Section 80-3-301; or

2254 (b) the day on which the child is returned home.

2255 (60) "Protective supervision" means a legal status created by court order, following an
2256 adjudication on the ground of abuse, neglect, or dependency, whereby:

2257 (a) the minor is permitted to remain in the minor's home; and

2258 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
2259 by an agency designated by the juvenile court.

2260 (61) (a) "Related condition" means a condition that:

2261 (i) is found to be closely related to intellectual disability;

2262 (ii) results in impairment of general intellectual functioning or adaptive behavior
2263 similar to that of an intellectually disabled individual;

2264 (iii) is likely to continue indefinitely; and

2265 (iv) constitutes a substantial limitation to the individual's ability to function in society.

2266 (b) "Related condition" does not include mental illness, psychiatric impairment, or
2267 serious emotional or behavioral disturbance.

2268 (62) (a) "Residual parental rights and duties" means the rights and duties remaining
2269 with a parent after legal custody or guardianship, or both, have been vested in another person or

2270 agency, including:

2271 (i) the responsibility for support;

2272 (ii) the right to consent to adoption;

2273 (iii) the right to determine the child's religious affiliation; and

2274 (iv) the right to reasonable parent-time unless restricted by the court.

2275 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
2276 right to consent to:

2277 (i) marriage;

2278 (ii) enlistment; and

2279 (iii) major medical, surgical, or psychiatric treatment.

2280 (63) "Runaway" means a child, other than an emancipated child, who willfully leaves
2281 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,
2282 without permission.

2283 (64) "Secure care" means placement of a minor, who is committed to the Division of
2284 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the
2285 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the
2286 minor.

2287 (65) "Secure care facility" means a facility, established in accordance with Section
2288 [80-5-503](#), for juvenile offenders in secure care.

2289 (66) "Secure detention" means temporary care of a minor who requires secure custody
2290 in a physically restricting facility operated by, or under contract with, the Division of Juvenile
2291 Justice Services:

2292 (a) before disposition of an offense that is alleged to have been committed by the
2293 minor; or

2294 (b) under Section [80-6-704](#).

2295 (67) "Serious youth offender" means an individual who:

2296 (a) is at least 14 years old, but under 25 years old;

2297 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
2298 of the juvenile court was extended over the individual's case until the individual was 25 years
2299 old in accordance with Section 80-6-605; and

2300 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for
2301 secure care under Sections 80-6-703 and 80-6-705.

2302 (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
2303 child.

2304 (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
2305 child.

2306 (70) "Sexual abuse" means:

2307 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
2308 adult directed towards a child;

2309 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
2310 committed by a child towards another child if:

2311 (i) there is an indication of force or coercion;

2312 (ii) the children are related, as described in Subsection (34), including siblings by
2313 marriage while the marriage exists or by adoption;

2314 (iii) there have been repeated incidents of sexual contact between the two children,
2315 unless the children are 14 years old or older; or

2316 (iv) there is a disparity in chronological age of four or more years between the two
2317 children;

2318 (c) engaging in any conduct with a child that would constitute an offense under any of
2319 the following, regardless of whether the individual who engages in the conduct is actually
2320 charged with, or convicted of, the offense:

2321 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
2322 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

2323 (ii) child bigamy, Section 76-7-101.5;

- 2324 (iii) incest, Section [76-7-102](#);
- 2325 (iv) lewdness, Section [76-9-702](#);
- 2326 (v) sexual battery, Section [76-9-702.1](#);
- 2327 (vi) lewdness involving a child, Section [76-9-702.5](#); or
- 2328 (vii) voyeurism, Section [76-9-702.7](#); or
- 2329 (d) subjecting a child to participate in or threatening to subject a child to participate in
- 2330 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
- 2331 marriage.
- 2332 (71) "Sexual exploitation" means knowingly:
- 2333 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 2334 (i) pose in the nude for the purpose of sexual arousal of any individual; or
- 2335 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 2336 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 2337 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 2338 material depicting a child:
- 2339 (i) in the nude, for the purpose of sexual arousal of any individual; or
- 2340 (ii) engaging in sexual or simulated sexual conduct; or
- 2341 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),
- 2342 sexual exploitation of a minor, or Section [76-5b-201.1](#), aggravated sexual exploitation of a
- 2343 minor, regardless of whether the individual who engages in the conduct is actually charged
- 2344 with, or convicted of, the offense.
- 2345 (72) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 2346 pending a disposition or transfer to another jurisdiction.
- 2347 (73) "Shelter facility" means the same as that term is defined in Section [62A-4a-101](#).
- 2348 (74) "Single criminal episode" means the same as that term is defined in Section
- 2349 [76-1-401](#).
- 2350 (75) "Status offense" means an offense that would not be an offense but for the age of

2351 the offender.

2352 (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
2353 substances.

2354 (77) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).

2355 (78) "Supported" means the same as that term is defined in Section [62A-4a-101](#).

2356 (79) "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 (80) "Therapist" means:

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

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

2363 (81) "Threatened harm" means actions, inactions, or credible verbal threats, indicating
2364 that the child is at an unreasonable risk of harm or neglect.

2365 (82) "Ungovernable" means a child in conflict with a parent or guardian, and the
2366 conflict:

2367 (a) results in behavior that is beyond the control or ability of the child, or the parent or
2368 guardian, to manage effectively;

2369 (b) poses a threat to the safety or well-being of the child, the child's family, or others;

2370 or

2371 (c) results in the situations described in Subsections (82)(a) and (b).

2372 (83) "Unregulated custody transfer" means the placement of a child:

2373 (a) with an individual who is not the child's parent, step-parent, grandparent, adult
2374 sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with
2375 whom the child is familiar, or a member of the child's federally recognized tribe;

2376 (b) with the intent of severing the child's existing parent-child or guardian-child
2377 relationship; and

2378 (c) without taking:
2379 (i) reasonable steps to ensure the safety of the child and permanency of the placement;
2380 and
2381 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
2382 guardianship to the individual taking custody of the child.

2383 (84) "Unsupported" means the same as that term is defined in Section [62A-4a-101](#).

2384 (85) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

2385 (86) "Validated risk and needs assessment" means an evidence-based tool that assesses
2386 a minor's risk of reoffending and a minor's criminogenic needs.

2387 (87) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

2388 (88) "Youth offender" means an individual who is:

2389 (a) at least 12 years old, but under 21 years old; and

2390 (b) committed by the juvenile court to the Division of Juvenile Justice Services for
2391 secure care under Sections [80-6-703](#) and [80-6-705](#).

2392 Section 22. **Coordinating S.B. 167 with S.B. 123 -- Substantive and technical**
2393 **amendments.**

2394 If this S.B. 167 and S.B. 123, Criminal Code Recodification, both pass and become
2395 law, it is the intent of the Legislature that the Office of Legislative Research and General
2396 Counsel prepare the Utah Code database for publication by amending:

2397 (1) Subsection [76-5b-201.1\(1\)](#) to read:

2398 "(1) As used in this section:

2399 (a) "Physical abuse" or "physically abused" means the same as the term "physical
2400 abuse" is defined in Section [80-1-102](#).

2401 (b) The terms defined in Section [76-1-101.5](#) apply to this section."; and

2402 (2) Subsection [76-5b-205\(3\)\(c\)](#) to read:

2403 "(c) This section does not apply to an actor who engages in conduct that constitutes a
2404 violation of this section to the extent that the actor is chargeable, for the same conduct, under

2405 Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
2406 exploitation of a minor."