

1 **CRIMINAL CODE RECODIFICATION**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Karianne Lisonbee

6 Cosponsor:

7 Todd D. Weiler

8

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies Title 76, Chapters 5 and 5b by redrafting offense statutes into a new
12 structure and clarifies existing law.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ reorders language in offense statutes into a standardized format;
- 16 ▶ adds "semen" to list of bodily fluids to offenses concerning propelling an object or
17 substance;
- 18 ▶ clarifies language that certain employees and volunteers are included in the offense
19 concerning the propelling of an object or substance at a correctional or peace
20 officer;
- 21 ▶ reorganizes the offenses of child abuse, aggravated child abuse, and child
22 abandonment into three separate statutes;
- 23 ▶ removes the defense concerning reasonable discipline or management of a child
24 from the offense of aggravated child abuse;
- 25 ▶ removes the defense concerning treatment options for a child's medical condition
26 from the offense of child abandonment;
- 27 ▶ removes the defense concerning use of physical restraint or force on a child from
28 the offense of child abandonment;

- 29 ▶ reorganizes the offenses of abuse of a vulnerable adult, aggravated abuse of a
- 30 vulnerable adult, personal dignity exploitation of a vulnerable adult, and financial
- 31 exploitation of a vulnerable adult into four separate statutes;
- 32 ▶ removes the exemption concerning reliance on nonmedical healing from the
- 33 offenses of personal dignity exploitation of a vulnerable adult and financial
- 34 exploitation of a vulnerable adult;
- 35 ▶ modifies provisions of the criminal homicide statute to clarify that criminal
- 36 homicide is not a stand-alone offense but a general term for the collective
- 37 enumerated homicide offenses;
- 38 ▶ defines "criminal homicide";
- 39 ▶ for clarity, reenacts special mitigation provisions within respective offense statutes
- 40 and directs a court to enter the respective judgment of conviction if special
- 41 mitigation is established;
- 42 ▶ for clarity, reenacts imperfect self-defense provisions and directs a court to enter the
- 43 respective judgment of conviction if the defense is established;
- 44 ▶ amends special mitigation provisions to clarify that the jury must, consistent with
- 45 Utah Constitution, Article I, Section 10, unanimously find that the elements of the
- 46 offense are proven beyond a reasonable doubt;
- 47 ▶ repeals statute defining "targeting a law enforcement officer" and reenacts within
- 48 relevant provision;
- 49 ▶ for the offenses of unlawful sexual activity with a minor and unlawful adolescent
- 50 sexual activity, amends limiting offenses to include an attempt of a limiting offense;
- 51 ▶ for the offense of forcible sexual assault, amends limiting offenses to include an
- 52 attempted object rape;
- 53 ▶ reorganizes the offenses of sexual abuse of a child and aggravated sexual abuse of a
- 54 child by enacting aggravated sexual abuse as a stand-alone statute;
- 55 ▶ repeals and reenacts within relevant offense statutes provisions qualifying
- 56 commission of sexual penetration and touch;

- 57 ▶ reorganizes the offenses of custodial sexual relations and custodial sexual
- 58 misconduct by enacting custodial sexual misconduct as a stand-alone statute;
- 59 ▶ reorganizes the offenses of custodial sexual relations or misconduct with youth
- 60 receiving state services and custodial sexual misconduct with a youth receiving state
- 61 services by enacting custodial sexual misconduct with a youth receiving state
- 62 services as a stand-alone statute;
- 63 ▶ repeals statute defining "indecent liberties" and reenacts within relevant provision;
- 64 ▶ creates three new sections from the human trafficking and smuggling sections;
- 65 ▶ repeals section regarding lesser included offenses of kidnapping and unlawful
- 66 detention;
- 67 ▶ removes mentally incompetent language from kidnapping statute and replaces it
- 68 with dependent adult;
- 69 ▶ adds caretaker to the list of persons without whose consent a dependent adult may
- 70 not be held against their will;
- 71 ▶ narrows the definition of conviction for custodial interference; and
- 72 ▶ makes technical and conforming changes.

73 **Money Appropriated in this Bill:**

74 None

75 **Other Special Clauses:**

76 This bill provides a coordination clause.

77 This bill provides revisor instructions.

78 **Utah Code Sections Affected:**

79 AMENDS:

80 **76-1-301**, as last amended by Laws of Utah 2019, Chapter 26

81 **76-2-304.5**, as last amended by Laws of Utah 2016, Chapter 194

82 **76-2-401**, as last amended by Laws of Utah 2000, Chapter 126

83 **76-2-402**, as last amended by Laws of Utah 2019, Chapter 201

84 **76-2-404**, as last amended by Laws of Utah 2021, Chapters 150 and 260

- 85 **76-2-408**, as last amended by Laws of Utah 2021, Chapter 150
- 86 **76-3-202**, as last amended by Laws of Utah 2018, Chapter 334
- 87 **76-3-203.2**, as last amended by Laws of Utah 2011, Chapter 91
- 88 **76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278
- 89 **76-3-203.6**, as last amended by Laws of Utah 2020, Chapter 346
- 90 **76-3-203.7**, as last amended by Laws of Utah 2007, Chapter 339
- 91 **76-3-203.8**, as last amended by Laws of Utah 2004, Chapter 276
- 92 **76-3-203.10**, as enacted by Laws of Utah 2010, Chapter 359
- 93 **76-3-203.13**, as enacted by Laws of Utah 2018, Chapter 394
- 94 **76-3-406**, as last amended by Laws of Utah 2021, Chapters 260 and 262
- 95 **76-4-401**, as last amended by Laws of Utah 2019, Chapter 200
- 96 **76-5-101**, as last amended by Laws of Utah 2003, Chapter 171
- 97 **76-5-102**, as last amended by Laws of Utah 2015, Chapter 430
- 98 **76-5-102.3**, as last amended by Laws of Utah 2017, Chapter 123
- 99 **76-5-102.4**, as last amended by Laws of Utah 2017, Chapters 62 and 123
- 100 **76-5-102.5**, as enacted by Laws of Utah 1974, Chapter 32
- 101 **76-5-102.6**, as last amended by Laws of Utah 2019, Chapter 36
- 102 **76-5-102.7**, as last amended by Laws of Utah 2017, Chapters 123 and 326
- 103 **76-5-102.8**, as last amended by Laws of Utah 2010, Chapter 222
- 104 **76-5-102.9**, as enacted by Laws of Utah 2013, Chapter 153
- 105 **76-5-103**, as last amended by Laws of Utah 2017, Chapters 388 and 454
- 106 **76-5-103.5**, as last amended by Laws of Utah 2020, Chapter 346
- 107 **76-5-104**, as last amended by Laws of Utah 1997, Chapter 83
- 108 **76-5-105**, as enacted by Laws of Utah 1973, Chapter 196
- 109 **76-5-106**, as last amended by Laws of Utah 1995, Chapter 300
- 110 **76-5-106.5**, as last amended by Laws of Utah 2020, Chapter 142
- 111 **76-5-107**, as last amended by Laws of Utah 2015, Chapter 430
- 112 **76-5-107.1**, as last amended by Laws of Utah 2021, Chapter 262

- 113 [76-5-107.3](#), as last amended by Laws of Utah 2013, Chapter 39
- 114 [76-5-107.5](#), as last amended by Laws of Utah 2011, Chapter 340
- 115 [76-5-108](#), as last amended by Laws of Utah 2021, Chapter 262
- 116 [76-5-109](#), as last amended by Laws of Utah 2017, Chapter 388
- 117 [76-5-110](#), as last amended by Laws of Utah 2021, Chapter 262
- 118 [76-5-111](#), as last amended by Laws of Utah 2019, Chapter 281
- 119 [76-5-112](#), as enacted by Laws of Utah 1999, Chapter 66
- 120 [76-5-112.5](#), as last amended by Laws of Utah 2020, Chapter 132
- 121 [76-5-113](#), as last amended by Laws of Utah 2010, Chapter 276
- 122 [76-5-201](#), as last amended by Laws of Utah 2010, Chapter 13
- 123 [76-5-202](#), as last amended by Laws of Utah 2018, Chapter 343
- 124 [76-5-203](#), as last amended by Laws of Utah 2009, Chapters 125 and 206
- 125 [76-5-205](#), as last amended by Laws of Utah 2018, Chapter 372
- 126 [76-5-205.5](#), as last amended by Laws of Utah 2019, Chapter 312
- 127 [76-5-206](#), as last amended by Laws of Utah 2010, Chapter 157
- 128 [76-5-207](#), as last amended by Laws of Utah 2017, Chapter 283
- 129 [76-5-207.5](#), as last amended by Laws of Utah 2012, Chapter 193
- 130 [76-5-208](#), as last amended by Laws of Utah 2008, Chapter 152
- 131 [76-5-209](#), as enacted by Laws of Utah 1995, Chapter 291
- 132 [76-5-301](#), as last amended by Laws of Utah 2001, Chapter 301
- 133 [76-5-301.1](#), as last amended by Laws of Utah 2013, Chapter 81
- 134 [76-5-302](#), as last amended by Laws of Utah 2020, Chapter 298
- 135 [76-5-303](#), as last amended by Laws of Utah 2021, Chapter 343
- 136 [76-5-303.5](#), as enacted by Laws of Utah 2010, Chapter 374
- 137 [76-5-304](#), as last amended by Laws of Utah 2019, Chapter 106
- 138 [76-5-305](#), as last amended by Laws of Utah 2019, Chapter 26
- 139 [76-5-307](#), as last amended by Laws of Utah 2013, Chapters 196 and 278
- 140 [76-5-308](#), as last amended by Laws of Utah 2020, Chapter 108

- 141 [76-5-308.5](#), as last amended by Laws of Utah 2020, Chapter 108
- 142 [76-5-309](#), as last amended by Laws of Utah 2021, Chapter 241
- 143 [76-5-310](#), as last amended by Laws of Utah 2021, Chapter 241
- 144 [76-5-311](#), as last amended by Laws of Utah 2020, Chapter 108
- 145 [76-5-401](#), as last amended by Laws of Utah 2020, Chapter 108
- 146 [76-5-401.1](#), as last amended by Laws of Utah 2020, Chapter 108
- 147 [76-5-401.2](#), as last amended by Laws of Utah 2018, Chapters 192 and 394
- 148 [76-5-401.3](#), as last amended by Laws of Utah 2021, Chapter 262
- 149 [76-5-402](#), as last amended by Laws of Utah 2013, Chapter 81
- 150 [76-5-402.1](#), as last amended by Laws of Utah 2017, Chapter 290
- 151 [76-5-402.2](#), as last amended by Laws of Utah 2013, Chapter 81
- 152 [76-5-402.3](#), as last amended by Laws of Utah 2017, Chapter 290
- 153 [76-5-403](#), as last amended by Laws of Utah 2019, Chapter 189
- 154 [76-5-403.1](#), as last amended by Laws of Utah 2017, Chapter 290
- 155 [76-5-404](#), as last amended by Laws of Utah 2019, Chapter 189
- 156 [76-5-404.1](#), as last amended by Laws of Utah 2019, Chapter 146
- 157 [76-5-405](#), as last amended by Laws of Utah 2013, Chapter 81
- 158 [76-5-406.3](#), as enacted by Laws of Utah 1996, Chapter 40
- 159 [76-5-406.5](#), as last amended by Laws of Utah 2004, Chapter 213
- 160 [76-5-407](#), as last amended by Laws of Utah 2019, Chapters 189 and 378
- 161 [76-5-412](#), as last amended by Laws of Utah 2018, Chapter 192
- 162 [76-5-413](#), as last amended by Laws of Utah 2021, Chapter 262
- 163 [76-5-701](#), as enacted by Laws of Utah 2019, Chapter 398
- 164 [76-5-702](#), as last amended by Laws of Utah 2020, Chapter 354
- 165 [76-5-704](#), as enacted by Laws of Utah 2019, Chapter 398
- 166 [76-5b-103](#), as last amended by Laws of Utah 2013, Chapter 290
- 167 [76-5b-201](#), as last amended by Laws of Utah 2021, Chapter 262
- 168 [76-5b-202](#), as enacted by Laws of Utah 2011, Chapter 320

- 169 **76-5b-203**, as last amended by Laws of Utah 2021, Chapters 55 and 95
- 170 **76-5b-203.5**, as enacted by Laws of Utah 2021, Chapter 95
- 171 **76-5b-204**, as enacted by Laws of Utah 2017, Chapter 434
- 172 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134
- 173 **76-6-102**, as last amended by Laws of Utah 2013, Chapter 272
- 174 **76-6-203**, as last amended by Laws of Utah 1989, Chapter 170
- 175 **76-6-302**, as last amended by Laws of Utah 2003, Chapter 62
- 176 **76-7-101**, as last amended by Laws of Utah 2021, Chapter 159
- 177 **76-7-305**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
- 178 **76-8-309**, as last amended by Laws of Utah 2018, Chapter 25
- 179 **76-8-316**, as last amended by Laws of Utah 2013, Chapter 432
- 180 **76-8-318**, as enacted by Laws of Utah 2019, Chapter 478
- 181 **76-9-101**, as last amended by Laws of Utah 2021, Chapter 94 and last amended by
- 182 Coordination Clause, Laws of Utah 2021, Chapter 260
- 183 **76-9-702**, as last amended by Laws of Utah 2018, Chapter 192
- 184 **76-9-702.1**, as last amended by Laws of Utah 2015, Chapter 210
- 185 **76-9-804**, as enacted by Laws of Utah 2009, Chapter 313
- 186 **76-9-1003**, as last amended by Laws of Utah 2020, Chapter 108
- 187 **76-10-1302**, as last amended by Laws of Utah 2020, Chapters 108, 214 and last
- 188 amended by Coordination Clause, Laws of Utah 2020, Chapter 214
- 189 **76-10-1306**, as last amended by Laws of Utah 2017, Chapter 433
- 190 **76-10-1313**, as last amended by Laws of Utah 2020, Chapter 108
- 191 **76-10-1315**, as last amended by Laws of Utah 2021, Chapter 262
- 192 **76-10-1504**, as last amended by Laws of Utah 2016, Chapter 399
- 193 **76-10-1602**, as last amended by Laws of Utah 2019, Chapters 200 and 363
- 194 ENACTS:
- 195 **76-1-101.6**, Utah Code Annotated 1953
- 196 **76-5-109.2**, Utah Code Annotated 1953

- 197 **76-5-109.3**, Utah Code Annotated 1953
- 198 **76-5-111.2**, Utah Code Annotated 1953
- 199 **76-5-111.3**, Utah Code Annotated 1953
- 200 **76-5-111.4**, Utah Code Annotated 1953
- 201 **76-5-308.1**, Utah Code Annotated 1953
- 202 **76-5-308.3**, Utah Code Annotated 1953
- 203 **76-5-310.1**, Utah Code Annotated 1953
- 204 **76-5-404.3**, Utah Code Annotated 1953
- 205 **76-5-412.2**, Utah Code Annotated 1953
- 206 **76-5-413.2**, Utah Code Annotated 1953

207 RENUMBERS AND AMENDS:

208 **76-1-101.5**, (Renumbered from 76-1-601, as last amended by Laws of Utah 2020,
209 Chapter 287)

210 **76-5-114**, (Renumbered from 76-5-109.1, as last amended by Laws of Utah 2009,
211 Chapter 70)

212 REPEALS:

213 **76-5-210**, as enacted by Laws of Utah 2017, Chapter 454

214 **76-5-306**, as last amended by Laws of Utah 2012, Chapter 39

215 **76-5-416**, as last amended by Laws of Utah 2019, Chapter 378

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

217 **76-5-201**, as last amended by Laws of Utah 2010, Chapter 13



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

220 Section 1. Section **76-1-101.5**, which is renumbered from Section 76-1-601 is
221 renumbered and amended to read:

222 ~~[76-1-601]~~. **76-1-101.5**. **Definitions.**

223 Unless otherwise provided, as used in this title:

224 (1) "Act" means a voluntary bodily movement and includes speech.

225 (2) "Actor" means a person whose criminal responsibility is in issue in a criminal
226 action.

227 (3) "Affinity" means a relationship by marriage.

228 (4) "Bodily injury" means physical pain, illness, or any impairment of physical
229 condition.

230 (5) "Conduct" means an act or omission.

231 (6) "Consanguinity" means a relationship by blood to the first or second degree,
232 including an individual's parent, grandparent, sibling, child, aunt, uncle, niece, or nephew.

233 (7) "Dangerous weapon" means:

234 (a) any item capable of causing death or serious bodily injury; or

235 (b) a facsimile or representation of the item, if:

236 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
237 believe the item is likely to cause death or serious bodily injury; or

238 (ii) the actor represents to the victim verbally or in any other manner that ~~[he]~~ the actor
239 is in control of such an item.

240 (8) "Grievous sexual offense" means:

241 (a) rape, Section [76-5-402](#);

242 (b) rape of a child, Section [76-5-402.1](#);

243 (c) object rape, Section [76-5-402.2](#);

244 (d) object rape of a child, Section [76-5-402.3](#);

245 (e) forcible sodomy, Subsection [76-5-403\(2\)](#);

246 (f) sodomy on a child, Section [76-5-403.1](#);

247 (g) aggravated sexual abuse of a child, [~~Subsection [76-5-404.1\(4\)](#)~~] [Section 76-5-404.3](#);

248 (h) aggravated sexual assault, Section [76-5-405](#);

249 (i) any felony attempt to commit an offense described in Subsections (8)(a) through
250 (h); or

251 (j) an offense in another state, territory, or district of the United States that, if
252 committed in Utah, would constitute an offense described in Subsections (8)(a) through (i).

253 (9) "Offense" means a violation of any penal statute of this state.

254 (10) "Omission" means a failure to act when there is a legal duty to act and the actor is
255 capable of acting.

256 (11) "Person" means an individual, public or private corporation, government,
257 partnership, or unincorporated association.

258 (12) "Possess" means to have physical possession of or to exercise dominion or control
259 over tangible property.

260 (13) "Public entity" means:

261 (a) the state, or an agency, bureau, office, department, division, board, commission,
262 institution, laboratory, or other instrumentality of the state;

263 (b) a political subdivision of the state, including a county, municipality, interlocal
264 entity, local district, special service district, school district, or school board;

265 (c) an agency, bureau, office, department, division, board, commission, institution,
266 laboratory, or other instrumentality of a political subdivision of the state; or

267 (d) another entity that:

268 (i) performs a public function; and

269 (ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.

270 (14) (a) "Public money" or "public funds" means money, funds, or accounts, regardless
271 of the source from which they are derived, that:

272 (i) are owned, held, or administered by an entity described in Subsections (13)(a)
273 through (c); or

274 (ii) are in the possession of an entity described in Subsection (13)(d)(i) for the purpose
275 of performing a public function.

276 (b) "Public money" or "public funds" includes money, funds, or accounts described in
277 Subsection (14)(a) after the money, funds, or accounts are transferred by a public entity to an
278 independent contractor of the public entity.

279 (c) "Public money" or "public funds" remains public money or public funds while in
280 the possession of an independent contractor of a public entity for the purpose of providing a

281 program or service for, or on behalf of, the public entity.

282 (15) "Public officer" means:

283 (a) an elected official of a public entity;

284 (b) an individual appointed to, or serving an unexpired term of, an elected official of a
285 public entity;

286 (c) a judge of a court of record or not of record, including justice court judges; or

287 (d) a member of the Board of Pardons and Parole.

288 (16) (a) "Public servant" means:

289 (i) a public officer;

290 (ii) an appointed official, employee, consultant, or independent contractor of a public
291 entity; or

292 (iii) a person hired or paid by a public entity to perform a government function.

293 (b) Public servant includes a person described in Subsection (16)(a) upon the person's
294 election, appointment, contracting, or other selection, regardless of whether the person has
295 begun to officially occupy the position of a public servant.

296 (17) "Serious bodily injury" means bodily injury that creates or causes serious
297 permanent disfigurement, protracted loss or impairment of the function of any bodily member
298 or organ, or creates a substantial risk of death.

299 (18) "Substantial bodily injury" means bodily injury, not amounting to serious bodily
300 injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary
301 loss or impairment of the function of any bodily member or organ.

302 (19) "Writing" or "written" includes any handwriting, typewriting, printing, electronic
303 storage or transmission, or any other method of recording information or fixing information in
304 a form capable of being preserved.

305 Section 2. Section **76-1-101.6** is enacted to read:

306 **76-1-101.6. Application of definitions to title.**

307 (1) For formatting purposes, sections in this title that contain a criminal offense include
308 an express provision that states that the title definitions in Section [76-1-101.5](#) apply to that

309 section.

310 (2) Although a provision described in Subsection (1) is not included in non-offense
311 sections in Title 76 or in other titles, title definitions apply to all statutes within a title unless
312 otherwise expressly provided.

313 Section 3. Section **76-1-301** is amended to read:

314 **76-1-301. Offenses for which prosecution may be commenced at any time.**

315 (1) As used in this section:

316 (a) "Aggravating offense" means any offense incident to which a homicide was
317 committed as described in Subsection ~~76-5-202(1)(d) or (e)~~76-5-202(2)(a)(iv) or (v) or Subsection
318 76-5-202(2)(b).

319 (b) "Predicate offense" means an offense described in ~~[Section]~~ Subsection
320 76-5-203(1)(a) if a person other than a party as defined in Section ~~76-2-202~~ was killed in the
321 course of the commission, attempted commission, or immediate flight from the commission or
322 attempted commission of the offense.

323 (2) Notwithstanding any other provisions of this code, prosecution for the following
324 offenses may be commenced at any time:

- 325 (a) capital felony;
- 326 (b) aggravated murder;
- 327 (c) murder;
- 328 (d) manslaughter;
- 329 (e) child abuse homicide;
- 330 (f) aggravated kidnapping;
- 331 (g) child kidnapping;
- 332 (h) rape;
- 333 (i) rape of a child;
- 334 (j) object rape;
- 335 (k) object rape of a child;
- 336 (l) forcible sodomy;

- 337 (m) sodomy on a child;
- 338 (n) sexual abuse of a child;
- 339 (o) aggravated sexual abuse of a child;
- 340 (p) aggravated sexual assault;
- 341 (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
- 342 (r) aggravated human trafficking or aggravated human smuggling in violation of

343 Section [76-5-310](#);

- 344 (s) aggravated exploitation of prostitution involving a child, under Section [76-10-1306](#);

345 or

- 346 (t) human trafficking of a child, under Section [76-5-308.5](#).

347 Section 4. Section **76-2-304.5** is amended to read:

348 **76-2-304.5. Mistake as to victim's age not a defense.**

349 (1) It is not a defense to the crime of child kidnapping, a violation of Section
 350 [76-5-301.1](#); rape of a child, a violation of Section [76-5-402.1](#); object rape of a child, a violation
 351 of Section [76-5-402.3](#); sodomy on a child, a violation of Section [76-5-403.1](#); sexual abuse of a
 352 child, a violation of Section [~~76-5-404.1~~] [76-5-404.1](#); aggravated sexual abuse of a child, a
 353 violation of [~~Subsection 76-5-404.1(4)~~] [Section 76-5-404.3](#); or an attempt to commit any of
 354 these offenses, that the actor mistakenly believed the victim to be 14 years [~~of age~~] old or older
 355 at the time of the alleged offense or was unaware of the victim's true age.

356 (2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation
 357 of Section [76-5-401](#); sexual abuse of a minor, a violation of Section [76-5-401.1](#); or an attempt
 358 to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years
 359 [~~of age~~] old or older at the time of the alleged offense or was unaware of the victim's true age.

360 (3) It is not a defense to the crime of aggravated human trafficking [~~or~~], a violation of
 361 Section [76-5-310](#), aggravated human smuggling, a violation of Section [~~76-5-310~~] [76-5-310.1](#),
 362 or human trafficking of a child, a violation of Section [76-5-308.5](#), that the actor mistakenly
 363 believed the victim to be 18 years [~~of age~~] old or older at the time of the alleged offense or was
 364 unaware of the victim's true age.

365 (4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation
366 of Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years
367 [of age] old or older at the time of the alleged offense or was unaware of the victim's true age.

368 (5) It is not a defense to any of the following crimes that the actor mistakenly believed
369 the victim to be 18 years [of age] old or older at the time of the alleged offense or was unaware
370 of the victim's true age:

- 371 (a) patronizing a prostitute, a violation of Section 76-10-1303;
- 372 (b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or
- 373 (c) sexual solicitation, a violation of Section 76-10-1313.

374 Section 5. Section 76-2-401 is amended to read:

375 **76-2-401. Justification as defense -- When allowed.**

376 (1) Conduct which is justified is a defense to prosecution for any offense based on the
377 conduct. The defense of justification may be claimed:

- 378 (a) when the actor's conduct is in defense of persons or property under the
379 circumstances described in Sections 76-2-402 through 76-2-406 of this part;
- 380 (b) when the actor's conduct is reasonable and in fulfillment of his duties as a
381 governmental officer or employee;
- 382 (c) when the actor's conduct is reasonable discipline of minors by parents, guardians,
383 teachers, or other persons in loco parentis, as limited by Subsection (2);
- 384 (d) when the actor's conduct is reasonable discipline of persons in custody under the
385 laws of the state; or
- 386 (e) when the actor's conduct is justified for any other reason under the laws of this
387 state.

388 (2) The defense of justification under Subsection (1)(c) is not available if the offense
389 charged involves causing serious bodily injury, as defined in Section [~~76-1-601~~] 76-1-101.5,
390 serious physical injury, as defined in Section 76-5-109, or the death of the minor.

391 Section 6. Section 76-2-402 is amended to read:

392 **76-2-402. Force in defense of person -- Forcible felony defined.**

393 (1) As used in this section:

394 (a) "Forcible felony" means aggravated assault, mayhem, aggravated murder, murder,
395 manslaughter, kidnapping and aggravated kidnapping, rape, forcible sodomy, rape of a child,
396 object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child,
397 and aggravated sexual assault as defined in [~~Title 76,~~] Chapter 5, Offenses Against the [~~Person~~]
398 Individual, and arson, robbery, and burglary as defined in [~~Title 76,~~] Chapter 6, Offenses
399 Against Property.

400 (b) "Forcible felony" includes any other felony offense that involves the use of force or
401 violence against an individual that poses a substantial danger of death or serious bodily injury.

402 (c) "Forcible felony" does not include burglary of a vehicle, as defined in Section
403 [76-6-204](#), unless the vehicle is occupied at the time unlawful entry is made or attempted.

404 (2) (a) An individual is justified in threatening or using force against another individual
405 when and to the extent that the individual reasonably believes that force or a threat of force is
406 necessary to defend the individual or another individual against the imminent use of unlawful
407 force.

408 (b) An individual is justified in using force intended or likely to cause death or serious
409 bodily injury only if the individual reasonably believes that force is necessary to prevent death
410 or serious bodily injury to the individual or another individual as a result of imminent use of
411 unlawful force, or to prevent the commission of a forcible felony.

412 (3) (a) An individual is not justified in using force under the circumstances specified in
413 Subsection (2) if the individual:

414 (i) initially provokes the use of force against another individual with the intent to use
415 force as an excuse to inflict bodily harm upon the other individual;

416 (ii) is attempting to commit, committing, or fleeing after the commission or attempted
417 commission of a felony, unless the use of force is a reasonable response to factors unrelated to
418 the commission, attempted commission, or fleeing after the commission of that felony; or

419 (iii) was the aggressor or was engaged in a combat by agreement, unless the individual
420 withdraws from the encounter and effectively communicates to the other individual the intent

421 to withdraw from the encounter and, notwithstanding, the other individual continues or
422 threatens to continue the use of unlawful force.

423 (b) For purposes of Subsection (3)(a)(iii) the following do not, alone, constitute
424 "combat by agreement":

425 (i) voluntarily entering into or remaining in an ongoing relationship; or

426 (ii) entering or remaining in a place where one has a legal right to be.

427 (4) Except as provided in Subsection (3)(a)(iii):

428 (a) an individual does not have a duty to retreat from the force or threatened force
429 described in Subsection (2) in a place where that individual has lawfully entered or remained;
430 and

431 (b) the failure of an individual to retreat under the provisions of Subsection (4)(a) is not
432 a relevant factor in determining whether the individual who used or threatened force acted
433 reasonably.

434 (5) In determining imminence or reasonableness under Subsection (2), the trier of fact
435 may consider:

436 (a) the nature of the danger;

437 (b) the immediacy of the danger;

438 (c) the probability that the unlawful force would result in death or serious bodily
439 injury;

440 (d) the other individual's prior violent acts or violent propensities;

441 (e) any patterns of abuse or violence in the parties' relationship; and

442 (f) any other relevant factors.

443 Section 7. Section **76-2-404** is amended to read:

444 **76-2-404. Law enforcement officer use of deadly force.**

445 (1) As used in this section:

446 (a) "Deadly force" means force that creates or is likely to create, or that the individual
447 using the force intends to create, a substantial likelihood of death or serious bodily injury to an
448 individual.

449 (b) "Officer" means an officer described in Section [53-13-102](#).

450 (c) "Serious bodily injury" means the same as that term is defined in Section
451 ~~[76-1-601]~~ [76-1-101.5](#).

452 (2) The defense of justification applies to the use of deadly force by an officer, or an
453 individual acting by the officer's command in providing aid and assistance, when:

454 (a) the officer is acting in obedience to and in accordance with the judgment of a
455 competent court in executing a penalty of death under Subsection [77-18-113](#)(2), (3), or (4);

456 (b) effecting an arrest or preventing an escape from custody following an arrest, if:

457 (i) the officer reasonably believes that deadly force is necessary to prevent the arrest
458 from being defeated by escape; and

459 (ii) (A) the officer has probable cause to believe that the suspect has committed a
460 felony offense involving the infliction or threatened infliction of death or serious bodily injury;

461 or

462 (B) the officer has probable cause to believe the suspect poses a threat of death or
463 serious bodily injury to the officer or to an individual other than the suspect if apprehension is
464 delayed; or

465 (c) the officer reasonably believes that the use of deadly force is necessary to prevent
466 death or serious bodily injury to the officer or an individual other than the suspect.

467 (3) If feasible, a verbal warning should be given by the officer prior to any use of
468 deadly force under Subsection (2)(b) or (2)(c).

469 Section 8. Section **76-2-408** is amended to read:

470 **76-2-408. Officer use of force -- Investigations.**

471 (1) As used in this section:

472 (a) "Dangerous weapon" means a firearm or an object that in the manner of its use or
473 intended use is capable of causing death or serious bodily injury to a person.

474 (b) "Deadly force" means a force that creates or is likely to create, or that the person
475 using the force intends to create, a substantial likelihood of death or serious bodily injury to a
476 person.

477 (c) "In custody" means in the legal custody of a state prison, county jail, or other
478 correctional facility, including custody that results from:

- 479 (i) a detention to secure attendance as a witness in a criminal case;
- 480 (ii) an arrest for or charging with a crime and committing for trial;
- 481 (iii) committing for contempt, upon civil process, or by other authority of law; or
- 482 (iv) sentencing to imprisonment on conviction of a crime.

483 (d) "Investigating agency" means a law enforcement agency, the county or district
484 attorney's office, or an interagency task force composed of officers from multiple law
485 enforcement agencies.

486 (e) "Officer" means an officer described in Section [53-13-102](#).

487 (f) "Officer-involved critical incident" means any of the following:

- 488 (i) an officer's use of deadly force;
- 489 (ii) an officer's use of a dangerous weapon against a person who causes injury to any
490 person;

491 (iii) death or serious bodily injury to any person, other than the officer, resulting from
492 an officer's:

- 493 (A) use of a motor vehicle while the officer is on duty; or
- 494 (B) use of a government vehicle while the officer is off duty;
- 495 (iv) the death of a person who is in custody, but excluding a death that is the result of
496 disease, natural causes, or conditions that have been medically diagnosed prior to the person's
497 death; or

498 (v) the death of or serious bodily injury to a person not in custody, other than an
499 officer, resulting from an officer's attempt to prevent a person's escape from custody, to make
500 an arrest, or otherwise to gain physical control of a person.

501 (g) "Serious bodily injury" means the same as that term is defined in Section
502 ~~[76-1-601]~~ [76-1-101.5](#).

503 (2) When an officer-involved critical incident occurs:

504 (a) upon receiving notice of the officer-involved critical incident, the law enforcement

505 agency having jurisdiction where the incident occurred shall, as soon as practical, notify the
506 county or district attorney having jurisdiction where the incident occurred; and

507 (b) the chief executive of the law enforcement agency and the county or district
508 attorney having jurisdiction where the incident occurred shall:

509 (i) jointly designate an investigating agency for the officer-involved critical incident;
510 and

511 (ii) designate which agency is the lead investigative agency if the officer-involved
512 critical incident involves multiple investigations.

513 (3) The investigating agency under Subsection (2) may not be the law enforcement
514 agency employing the officer who is alleged to have caused or contributed to the
515 officer-involved critical incident.

516 (4) This section does not preclude the law enforcement agency employing an officer
517 alleged to have caused or contributed to the officer-involved critical incident from conducting
518 an internal administrative investigation.

519 (5) Each law enforcement agency that is part of or administered by the state or any of
520 the state's political subdivisions shall adopt and post on the agency's publicly accessible
521 website:

522 (a) the policies and procedures the agency has adopted to select the investigating
523 agency if an officer-involved critical incident occurs in the agency's jurisdiction and one of the
524 agency's officers is alleged to have caused or contributed to the officer-involved incident; and

525 (b) the protocols the agency has adopted to ensure that any investigation of
526 officer-involved incidents occurring in the agency's jurisdiction are conducted professionally,
527 thoroughly, and impartially.

528 Section 9. Section **76-3-202** is amended to read:

529 **76-3-202. Paroled individuals -- Termination or discharge from sentence -- Time**
530 **served on parole -- Discretion of Board of Pardons and Parole.**

531 (1) Every individual committed to the state prison to serve an indeterminate term and,
532 after December 31, 2018, released on parole shall complete a term of parole that extends

533 through the expiration of the individual's maximum sentence unless the parole is earlier
534 terminated by the Board of Pardons and Parole in accordance with the supervision length
535 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as
536 described in Subsection 77-27-5(7), to the extent the guidelines are consistent with the
537 requirements of the law.

538 (2) (a) Except as provided in Subsection (2)(b), every individual committed to the state
539 prison to serve an indeterminate term and released on parole on or after October 1, 2015, but
540 before January 1, 2019, shall, upon completion of three years on parole outside of confinement
541 and without violation, be terminated from the individual's sentence unless the parole is earlier
542 terminated by the Board of Pardons and Parole or is terminated pursuant to Section 64-13-21.

543 (b) Every individual committed to the state prison to serve an indeterminate term and
544 later released on parole on or after July 1, 2008, but before January 1, 2019, and who was
545 convicted of any felony offense under [~~Title 76;~~] Chapter 5, Offenses Against the [~~Person~~]
546 Individual, or any attempt, conspiracy, or solicitation to commit any of these felony offenses,
547 shall complete a term of parole that extends through the expiration of the individual's
548 maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

549 (3) Every individual convicted of a second degree felony for violating Section
550 76-5-404, forcible sexual abuse[~~;~~ or]; Section 76-5-404.1, sexual abuse of a child [~~and~~]; or
551 Section 76-5-404.3, aggravated sexual abuse of a child[~~;~~]; or attempting, conspiring, or
552 soliciting the commission of a violation of any of those sections, and who is paroled before
553 July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without
554 violation, be terminated from the sentence unless the individual is earlier terminated by the
555 Board of Pardons and Parole.

556 (4) An individual who violates the terms of parole, while serving parole, for any
557 offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and
558 Parole be recommitted to prison to serve the portion of the balance of the term as determined
559 by the Board of Pardons and Parole, but not to exceed the maximum term.

560 (5) An individual paroled following a former parole revocation may not be discharged

561 from the individual's sentence until:

562 (a) the individual has served the applicable period of parole under this section outside
563 of confinement;

564 (b) the individual's maximum sentence has expired; or

565 (c) the Board of Pardons and Parole orders the individual to be discharged from the
566 sentence.

567 (6) (a) All time served on parole, outside of confinement and without violation,
568 constitutes service toward the total sentence.

569 (b) Any time an individual spends outside of confinement after commission of a parole
570 violation does not constitute service toward the total sentence unless the individual is
571 exonerated at a parole revocation hearing.

572 (c) (i) Any time an individual spends in confinement awaiting a hearing before the
573 Board of Pardons and Parole or a decision by the board concerning revocation of parole
574 constitutes service toward the total sentence.

575 (ii) In the case of exoneration by the board, the time spent is included in computing the
576 total parole term.

577 (7) When a parolee causes the parolee's absence from the state without authority from
578 the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence,
579 avoidance, or evasion tolls the parole period.

580 (8) (a) While on parole, time spent in confinement outside the state may not be credited
581 toward the service of any Utah sentence.

582 (b) Time in confinement outside the state or in the custody of any tribal authority or the
583 United States government for a conviction obtained in another jurisdiction tolls the expiration
584 of the Utah sentence.

585 (9) This section does not preclude the Board of Pardons and Parole from paroling or
586 discharging an inmate at any time within the discretion of the Board of Pardons and Parole
587 unless otherwise specifically provided by law.

588 (10) A parolee sentenced to lifetime parole may petition the Board of Pardons and

589 Parole for termination of lifetime parole.

590 Section 10. Section **76-3-203.2** is amended to read:

591 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
592 **about school premises -- Enhanced penalties.**

593 (1) (a) As used in this section "on or about school premises" means:

594 (i) (A) in a public or private elementary or secondary school; or

595 (B) on the grounds of any of those schools;

596 (ii) (A) in a public or private institution of higher education; or

597 (B) on the grounds of a public or private institution of higher education;

598 (iii) within 1,000 feet of any school, institution, or grounds included in Subsections

599 (1)(a)(i) and (ii); and

600 (iv) in or on the grounds of a preschool or child care facility.

601 (b) As used in this section:

602 (i) "Dangerous weapon" has the same definition as in Section [~~76-1-601~~] [76-1-101.5](#).

603 (ii) "Educator" means a person who is:

604 (A) employed by a public school district; and

605 (B) required to hold a certificate issued by the State Board of Education in order to
606 perform duties of employment.

607 (iii) "Within the course of employment" means that an educator is providing services or
608 engaging in conduct required by the educator's employer to perform the duties of employment.

609 (2) A person who, on or about school premises, commits an offense and uses or
610 threatens to use a dangerous weapon, as defined in Section [~~76-1-601~~] [76-1-101.5](#), in the
611 commission of the offense is subject to an enhanced degree of offense as provided in
612 Subsection (4).

613 (3) (a) A person who commits an offense against an educator when the educator is
614 acting within the course of employment is subject to an enhanced degree of offense as provided
615 in Subsection (4).

616 (b) As used in Subsection (3)(a), "offense" means:

617 (i) an offense under [~~Title 76,~~] Chapter 5, Offenses Against the [~~Person~~] Individual;
618 and

619 (ii) an offense under [~~Title 76,~~] Chapter 6, Part 3, Robbery.

620 (4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or
621 about school premises, commits an offense and in the commission of the offense uses or
622 threatens to use a dangerous weapon, or that the defendant committed an offense against an
623 educator when the educator was acting within the course of the educator's employment, the
624 enhanced penalty for a:

625 (a) class B misdemeanor is a class A misdemeanor;

626 (b) class A misdemeanor is a third degree felony;

627 (c) third degree felony is a second degree felony; or

628 (d) second degree felony is a first degree felony.

629 (5) The enhanced penalty for a first degree felony offense of a convicted person:

630 (a) is imprisonment for a term of not less than five years and which may be for life, and
631 imposition or execution of the sentence may not be suspended unless the court finds that the
632 interests of justice would be best served and states the specific circumstances justifying the
633 disposition on the record; and

634 (b) is subject also to the dangerous weapon enhancement provided in Section
635 [76-3-203.8](#), except for an offense committed under Subsection (3) that does not involve a
636 firearm.

637 (6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
638 notice upon the information or indictment that the defendant is subject to the enhanced degree
639 of offense or penalty under Subsection (4) or (5).

640 (7) In cases where an offense is enhanced under Subsection (4), or under Subsection
641 (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the
642 convicted person is not subject to the dangerous weapon enhancement in Section [76-3-203.8](#).

643 (8) The sentencing enhancement described in this section does not apply if:

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

- 645 (i) a grievous sexual offense;
- 646 (ii) child kidnapping under Section 76-5-301.1;
- 647 (iii) aggravated kidnapping under Section 76-5-302; or
- 648 (iv) forcible sexual abuse under Section 76-5-404; and
- 649 (b) applying the sentencing enhancement provided for in this section would result in a
- 650 lower maximum penalty than the penalty provided for under the section that describes the
- 651 offense for which the person is being sentenced.

652 Section 11. Section 76-3-203.5 is amended to read:

653 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

654 (1) As used in this section:

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

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

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

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

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

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

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

662 (c) "Violent felony" means:

663 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit

664 any of the following offenses punishable as a felony:

665 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,

666 [~~Title 76;~~ Chapter 6, Part 1, Property Destruction;

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

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

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

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

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

672 (G) stalking, Subsection 76-5-106.5(2) [~~or (3)~~];

- 673 (H) threat of terrorism, Section [76-5-107.3](#);
- 674 (I) aggravated child abuse, Subsection [~~76-5-109(2)(a) or (b)~~] [76-5-109.2\(3\)\(a\) or \(b\)](#);
- 675 (J) commission of domestic violence in the presence of a child, Section [~~76-5-109.1~~]
- 676 [76-5-114](#);
- 677 (K) abuse or neglect of a child with a disability, Section [76-5-110](#);
- 678 (L) abuse[, ~~neglect,~~] or exploitation of a vulnerable adult, Section [76-5-111](#),
- 679 [76-5-111.2](#), [76-5-111.3](#), or [76-5-111.4](#);
- 680 (M) endangerment of a child or vulnerable adult, Section [76-5-112.5](#);
- 681 (N) criminal homicide offenses under [~~Title 76,~~] Chapter 5, Part 2, Criminal Homicide;
- 682 (O) kidnapping, child kidnapping, and aggravated kidnapping under [~~Title 76,~~] Chapter
- 683 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 684 (P) rape, Section [76-5-402](#);
- 685 (Q) rape of a child, Section [76-5-402.1](#);
- 686 (R) object rape, Section [76-5-402.2](#);
- 687 (S) object rape of a child, Section [76-5-402.3](#);
- 688 (T) forcible sodomy, Section [76-5-403](#);
- 689 (U) sodomy on a child, Section [76-5-403.1](#);
- 690 (V) forcible sexual abuse, Section [76-5-404](#);
- 691 (W) [~~aggravated sexual abuse of a child or~~] sexual abuse of a child, Section
- 692 [76-5-404.1](#), or aggravated sexual abuse of a child, Section [76-5-404.3](#);
- 693 (X) aggravated sexual assault, Section [76-5-405](#);
- 694 (Y) sexual exploitation of a minor, Section [76-5b-201](#);
- 695 (Z) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 696 (AA) aggravated burglary and burglary of a dwelling under [~~Title 76,~~] Chapter 6, Part
- 697 2, Burglary and Criminal Trespass;
- 698 (BB) aggravated robbery and robbery under [~~Title 76,~~] Chapter 6, Part 3, Robbery;
- 699 (CC) theft by extortion under Subsection [76-6-406\(2\)\(a\) or \(b\)](#);
- 700 (DD) tampering with a witness under Subsection [76-8-508\(1\)](#);

701 (EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;

702 (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);

703 (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any

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

705 76-6-406(2)(a), (b), and (i);

706 (HH) possession, use, or removal of explosive, chemical, or incendiary devices under

707 Subsections 76-10-306(3) through (6);

708 (II) unlawful delivery of explosive, chemical, or incendiary devices under Section

709 76-10-307;

710 (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person

711 under Section 76-10-503;

712 (KK) unlawful discharge of a firearm under Section 76-10-508;

713 (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

714 (MM) bus hijacking under Section 76-10-1504; and

715 (NN) discharging firearms and hurling missiles under Section 76-10-1505; or

716 (ii) any felony violation of a criminal statute of any other state, the United States, or

717 any district, possession, or territory of the United States which would constitute a violent

718 felony as defined in this Subsection (1) if committed in this state.

719 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the

720 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender

721 under this section, the penalty for a:

722 (a) third degree felony is as if the conviction were for a first degree felony;

723 (b) second degree felony is as if the conviction were for a first degree felony; or

724 (c) first degree felony remains the penalty for a first degree penalty except:

725 (i) the convicted person is not eligible for probation; and

726 (ii) the Board of Pardons and Parole shall consider that the convicted person is a

727 habitual violent offender as an aggravating factor in determining the length of incarceration.

728 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall

729 provide notice in the information or indictment that the defendant is subject to punishment as a
730 habitual violent offender under this section. Notice shall include the case number, court, and
731 date of conviction or commitment of any case relied upon by the prosecution.

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

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

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

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

- 742 (i) defendant's previous convictions for violent felonies, except as otherwise provided
743 in the Utah Rules of Evidence; or
- 744 (ii) allegation against the defendant of being a habitual violent offender.

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

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

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

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

755 (d) If any previous conviction and commitment is based upon a plea of guilty or no
756 contest, there is a rebuttable presumption that the conviction and commitment were regular and

757 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
758 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
759 to establish by a preponderance of the evidence that the defendant was then represented by
760 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
761 was understandingly and voluntarily entered.

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

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

768 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
769 Subsection (1)(c) shall include any felony sexual offense violation of [Title 76,] Chapter 5, Part
770 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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

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

773 (i) a grievous sexual offense;

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

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

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

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

780 Section 12. Section 76-3-203.6 is amended to read:

781 **76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

782 (1) As used in this section, "serving a sentence" means a prisoner is sentenced and
783 committed to the custody of the Department of Corrections, the sentence has not been
784 terminated or voided, and the prisoner:

- 785 (a) has not been paroled; or
- 786 (b) is in custody after arrest for a parole violation.
- 787 (2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence
- 788 for a capital felony or a first degree felony commits any offense listed in Subsection (5), the
- 789 offense is a first degree felony and the court shall sentence the defendant to life in prison
- 790 without parole.
- 791 (3) Notwithstanding Subsection (2), the court may sentence the defendant to an
- 792 indeterminate prison term of not less than 20 years and that may be for life if the court finds
- 793 that the interests of justice would best be served and states the specific circumstances justifying
- 794 the disposition on the record.
- 795 (4) Subsection (2) does not apply if the prisoner is younger than 18 years [~~of age~~] old at
- 796 the time the offense listed in Subsection (5) is committed and is sentenced on or after May 10,
- 797 2016.
- 798 (5) Offenses referred to in Subsection (2) are:
- 799 (a) aggravated assault by a prisoner, Section [76-5-103.5](#);
- 800 (b) mayhem, Section [76-5-105](#);
- 801 (c) attempted murder, Section [76-5-203](#);
- 802 (d) kidnapping, Section [76-5-301](#);
- 803 (e) child kidnapping, Section [76-5-301.1](#);
- 804 (f) aggravated kidnapping, Section [76-5-302](#);
- 805 (g) rape, Section [76-5-402](#);
- 806 (h) rape of a child, Section [76-5-402.1](#);
- 807 (i) object rape, Section [76-5-402.2](#);
- 808 (j) object rape of a child, Section [76-5-402.3](#);
- 809 (k) forcible sodomy, Section [76-5-403](#);
- 810 (l) sodomy on a child, Section [76-5-403.1](#);
- 811 (m) aggravated sexual abuse of a child, Section [~~76-5-404.1~~] [76-5-404.3](#);
- 812 (n) aggravated sexual assault, Section [76-5-405](#);

- 813 (o) aggravated arson, Section [76-6-103](#);
- 814 (p) aggravated burglary, Section [76-6-203](#); and
- 815 (q) aggravated robbery, Section [76-6-302](#).
- 816 (6) The sentencing enhancement described in this section does not apply if:
 - 817 (a) the offense for which the person is being sentenced is:
 - 818 (i) a grievous sexual offense;
 - 819 (ii) child kidnapping, Section [76-5-301.1](#); or
 - 820 (iii) aggravated kidnapping, Section [76-5-302](#); and
 - 821 (b) applying the sentencing enhancement provided for in this section would result in a
 - 822 lower maximum penalty than the penalty provided for under the section that describes the
 - 823 offense for which the person is being sentenced.

824 Section 13. Section [76-3-203.7](#) is amended to read:

825 **[76-3-203.7. Increase of sentence for violent felony if body armor used.](#)**

826 (1) As used in this section:

827 (a) "Body armor" means any material designed or intended to provide bullet
828 penetration resistance or protection from bodily injury caused by a dangerous weapon.

829 (b) "Dangerous weapon" [~~has the same definition as~~] means the same as that term is
830 defined in Section [~~76-1-601~~] [76-1-101.5](#).

831 (c) "Violent felony" [~~has the same definition as~~] means the same as that term is defined
832 in Section [76-3-203.5](#).

833 (2) A person convicted of a violent felony may be sentenced to imprisonment for an
834 indeterminate term, as provided in Section [76-3-203](#), but if the trier of fact finds beyond a
835 reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also
836 used or wore body armor, with the intent to facilitate the commission of the violent felony, and
837 the violent felony is:

838 (a) a first degree felony, the court shall sentence the person convicted for a term of not
839 less than six years, and which may be for life;

840 (b) a second degree felony, the court shall sentence the person convicted for a term of

841 not less than two years nor more than 15 years, and the court may sentence the person
842 convicted for a term of not less than two years nor more than 20 years; and

843 (c) a third degree felony, the court shall sentence the person convicted for a term of not
844 less than one year nor more than five years, and the court may sentence the person convicted
845 for a term of not less than one year nor more than 10 years.

846 (3) The sentencing enhancement described in this section does not apply if:

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

848 (i) a grievous sexual offense;

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

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

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

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

855 Section 14. Section **76-3-203.8** is amended to read:

856 **76-3-203.8. Increase of sentence if dangerous weapon used.**

857 (1) As used in this section, "dangerous weapon" [~~has the same definition as~~] means the
858 same as that term is defined in Section [~~76-1-601~~] [76-1-101.5](#).

859 (2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was
860 used in the commission or furtherance of a felony, the court:

861 (a) (i) shall increase by one year the minimum term of the sentence applicable by law;

862 and

863 (ii) if the minimum term applicable by law is zero, shall set the minimum term as one
864 year; and

865 (b) may increase by five years the maximum sentence applicable by law in the case of a
866 felony of the second or third degree.

867 (3) A defendant who is a party to a felony offense shall be sentenced to the increases in
868 punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

869 (a) a dangerous weapon was used in the commission or furtherance of the felony; and

870 (b) the defendant knew that the dangerous weapon was present.

871 (4) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced

872 to a term of imprisonment for a felony in which a dangerous weapon was used in the

873 commission of or furtherance of the felony and that person is subsequently convicted of

874 another felony in which a dangerous weapon was used in the commission of or furtherance of

875 the felony, the court shall, in addition to any other sentence imposed including those in

876 Subsection (2), impose an indeterminate prison term to be not less than five nor more than 10

877 years to run consecutively and not concurrently.

878 Section 15. Section **76-3-203.10** is amended to read:

879 **76-3-203.10. Violent offense committed in presence of a child -- Penalties.**

880 (1) As used in this section:

881 (a) "In the presence of a child" means:

882 (i) in the physical presence of a child younger than 14 years [~~of age~~] old; and

883 (ii) having knowledge that the child is present and may see or hear the commission of a

884 violent criminal offense.

885 (b) "Violent criminal offense" means any criminal offense involving violence or

886 physical harm or threat of violence or physical harm, or any attempt to commit a criminal

887 offense involving violence or physical harm that is not a domestic violence offense as defined

888 in Section [77-36-1](#).

889 (2) A person commits a violent criminal offense in the presence of a child if the

890 person:

891 (a) commits or attempts to commit criminal homicide, as defined in Section [76-5-201](#),

892 against a third party in the presence of a child;

893 (b) intentionally causes or attempts to cause serious bodily injury to a third party or

894 uses a dangerous weapon, as defined in Section [~~76-1-601~~] [76-1-101.5](#), or other means or force

895 likely to produce death or serious bodily injury, against a third party in the presence of a child;

896 or

897 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b),
898 commits a violent criminal offense in the presence of a child.

899 (3) A person who violates Subsection (2) is guilty of a class B misdemeanor.

900 Section 16. Section **76-3-203.13** is amended to read:

901 **76-3-203.13. Enhanced penalty for unlawful sexual contact with a student.**

902 (1) A person convicted of a sexual offense described in Section **76-5-401.1** or
903 **76-5-401.2** may be subject to an enhanced penalty if, at the time of the commission of the
904 sexual offense, the actor:

905 (a) was 18 years [~~of age~~] old or older;

906 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as
907 that position is defined in Subsection **76-5-404.1(1)(~~c~~)(~~xix~~)(a)(iv)(S)**; and

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

910 (2) The enhancement of a penalty described in Subsection (1) shall be an enhancement
911 of one classification higher than the offense of which the person was convicted.

912 Section 17. Section **76-3-406** is amended to read:

913 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
914 **offense, or hospitalization may not be granted.**

915 (1) Notwithstanding Sections **76-3-201** and **77-18-105** and Title 77, Chapter 16a,
916 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
917 **76-5-406.5**, probation may not be granted, the execution or imposition of sentence may not be
918 suspended, the court may not enter a judgment for a lower category of offense, and
919 hospitalization may not be ordered, the effect of which would in any way shorten the prison
920 sentence for an individual who commits a capital felony or a first degree felony involving:

921 (a) Section **76-5-202**, aggravated murder;

922 (b) Section **76-5-203**, murder;

923 (c) Section **76-5-301.1**, child kidnaping;

924 (d) Section **76-5-302**, aggravated kidnaping;

- 925 (e) Section 76-5-402, rape, if the individual is sentenced under Subsection
- 926 76-5-402(3)(b), (3)(c), or (4);
- 927 (f) Section 76-5-402.1, rape of a child;
- 928 (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection
- 929 76-5-402.2~~[(1)(b), (1)(c), or (2)]~~(3)(b), (3)(c), or (4);
- 930 (h) Section 76-5-402.3, object rape of a child;
- 931 (i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection
- 932 76-5-403(3)(b), (3)(c), or (4);
- 933 (j) Section 76-5-403.1, sodomy on a child;
- 934 (k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under
- 935 Subsection 76-5-404~~[(2)(b) or (3)]~~(3)(b)(i) or (ii);
- 936 (l) [~~Subsections 76-5-404.1(4) and (5)~~] Section 76-5-404.3, aggravated sexual abuse of
- 937 a child;
- 938 (m) Section 76-5-405, aggravated sexual assault; or
- 939 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 940 (2) Except for an offense before the district court in accordance with Section 80-6-502
- 941 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the
- 942 defendant:
- 943 (a) was under 18 years old at the time of the offense; and
- 944 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
- 945 delayed filing of the information.

Section 18. Section 76-4-401 is amended to read:

76-4-401. Enticing a minor -- Elements -- Penalties.

(1) As used in this section:

- 949 (a) "Minor" means a person who is under the age of 18.
- 950 (b) "Text messaging" means a communication in the form of electronic text or one or
- 951 more electronic images sent by the actor from a telephone, computer, or other electronic
- 952 communication device to another person's telephone, computer, or other electronic

953 communication device by addressing the communication to the person's telephone number or
954 other electronic communication access code or number.

955 (2) (a) A person commits enticement of a minor when the person knowingly uses the
956 Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit,
957 seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to
958 engage in any sexual activity which is a violation of state criminal law.

959 (b) A person commits enticement of a minor when the person knowingly uses the
960 Internet or text messaging to:

961 (i) initiate contact with a minor or a person the actor believes to be a minor; and

962 (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written
963 means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the
964 minor or a person the actor believes to be the minor to engage in any sexual activity which is a
965 violation of state criminal law.

966 (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an
967 attempt to commit this offense, that a law enforcement officer or an undercover operative who
968 is employed by a law enforcement agency was involved in the detection or investigation of the
969 offense.

970 (4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

971 (a) enticement to engage in sexual activity which would be a first degree felony for the
972 actor is a:

973 (i) second degree felony upon the first conviction for violation of this Subsection
974 (4)(a); and

975 (ii) first degree felony punishable by imprisonment for an indeterminate term of not
976 fewer than three years and which may be for life, upon a second or any subsequent conviction
977 for a violation of this Subsection (4)(a);

978 (b) enticement to engage in sexual activity which would be a second degree felony for
979 the actor is a third degree felony;

980 (c) enticement to engage in sexual activity which would be a third degree felony for the

981 actor is a class A misdemeanor;

982 (d) enticement to engage in sexual activity which would be a class A misdemeanor for
983 the actor is a class B misdemeanor; and

984 (e) enticement to engage in sexual activity which would be a class B misdemeanor for
985 the actor is a class C misdemeanor.

986 (5) (a) When a person who commits a felony violation of this section has been
987 previously convicted of an offense under Subsection (5)(b), the court may not in any way
988 shorten the prison sentence, and the court may not:

- 989 (i) grant probation;
- 990 (ii) suspend the execution or imposition of the sentence;
- 991 (iii) enter a judgment for a lower category of offense; or
- 992 (iv) order hospitalization.

993 (b) The sections referred to in Subsection (5)(a) are:

- 994 (i) Section 76-4-401, enticing a minor;
- 995 (ii) Section 76-5-301.1, child kidnapping;
- 996 (iii) Section 76-5-402, rape;
- 997 (iv) Section 76-5-402.1, rape of a child;
- 998 (v) Section 76-5-402.2, object rape;
- 999 (vi) Section 76-5-402.3, object rape of a child;
- 1000 (vii) Subsection 76-5-403(2), forcible sodomy;
- 1001 (viii) Section 76-5-403.1, sodomy on a child;
- 1002 (ix) Section 76-5-404, forcible sexual abuse;
- 1003 (x) Section 76-5-404.1, sexual abuse of a child and Section 76-5-404.3, aggravated
1004 sexual abuse of a child;
- 1005 (xi) Section 76-5-405, aggravated sexual assault;
- 1006 (xii) Section 76-5-308.5, human trafficking of a child;
- 1007 (xiii) any offense in any other state or federal jurisdiction which constitutes or would
1008 constitute a crime in Subsections (5)(b)(i) through (xii); or

1009 (xiv) the attempt, solicitation, or conspiracy to commit any of the offenses in
1010 Subsections (5)(b)(i) through (xiii).

1011 Section 19. Section 76-5-101 is amended to read:

1012 **CHAPTER 5. OFFENSES AGAINST THE INDIVIDUAL**

1013 **76-5-101. Definitions.**

1014 [~~For purposes of this part "prisoner" means any person]~~

1015 Unless otherwise provided, as used in this part:

1016 (1) "Detained individual" means an individual detained under Section 77-7-15.

1017 (2) "Prisoner" means an individual who is in custody of a peace officer pursuant to a
1018 lawful arrest or who is confined in a jail or other penal institution or a facility used for
1019 confinement of delinquent juveniles operated by the Division of Juvenile Justice Services
1020 regardless of whether the confinement is legal.

1021 Section 20. Section 76-5-102 is amended to read:

1022 **76-5-102. Assault -- Penalties.**

1023 [~~(1) Assault is:~~]

1024 (1) Terms defined in Section 76-1-101.5 apply to this section.

1025 (2) An actor commits assault if the actor:

1026 (a) [~~an attempt~~] attempts, with unlawful force or violence, to [~~do~~] inflict bodily injury
1027 [~~to another~~] on an individual; or

1028 (b) commits an act, [~~committed~~] with unlawful force or violence, that:

1029 (i) causes bodily injury to [~~another~~] an individual; or

1030 (ii) creates a substantial risk of bodily injury to [~~another~~] an individual.

1031 [~~(2) Assault~~] (3) (a) A violation of Subsection (2) is a class B misdemeanor.

1032 [~~(3) Assault~~] (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a
1033 class A misdemeanor if:

1034 [~~(a)~~] (i) the [~~person~~] actor causes substantial bodily injury to [~~another~~] an individual; or

1035 [~~(b)~~] (ii) the [~~victim~~] individual is pregnant and the [~~person~~] actor has knowledge of the
1036 pregnancy.

1037 (4) ~~[It is not a defense against assault, that the accused]~~ The fact that the actor caused
 1038 serious bodily injury to ~~[another]~~ an individual is not a defense to a violation of this section.

1039 Section 21. Section **76-5-102.3** is amended to read:

1040 **76-5-102.3. Assault or threat of violence against a school employee.**

1041 (1) (a) As used in this section:

1042 (i) "Assault" means an offense under Section 76-5-102.

1043 (ii) "Employee" includes a volunteer.

1044 (iii) "Threat of violence" means an offense under Section 76-5-107.

1045 (b) Terms defined in Section 76-1-101.5 apply to this section.

1046 ~~[(1) Any person who commits an assault as defined in Section 76-5-102, or commits]~~

1047 (2) An actor commits assault or threat of violence against a school employee if:

1048 (a) the actor commits assault or a threat of violence [as defined in Section 76-5-107,]

1049 against an employee of a public or private school~~[, with];~~

1050 (b) the actor has knowledge that the individual is an employee[;]; and [when]

1051 (c) the employee is acting within the scope of [his] the employee's authority as an

1052 employee~~[, is guilty of a class A misdemeanor.].~~

1053 ~~[(2) As used in this section, "employee" includes a volunteer.]~~

1054 (3) A violation of Subsection (2) is a class A misdemeanor.

1055 Section 22. Section **76-5-102.4** is amended to read:

1056 **76-5-102.4. Assault against peace officer or a military servicemember in uniform**

1057 **-- Penalties.**

1058 (1) (a) As used in this section:

1059 ~~[(a)]~~ (i) "Assault" means [the same as that term is defined in] an offense under Section

1060 76-5-102.

1061 ~~[(b)]~~ (ii) "Military servicemember in uniform" means:

1062 ~~[(i)]~~ (A) a member of any branch of the United States military who is wearing a

1063 uniform as authorized by the member's branch of service; or

1064 ~~[(ii)]~~ (B) a member of the National Guard serving as provided in Section 39-1-5 or

1065 39-1-9.

1066 [(e)] (iii) "Peace officer" means:

1067 [(i)] (A) a law enforcement officer certified under Section 53-13-103;

1068 [(ii)] (B) a correctional officer under Section 53-13-104;

1069 [(iii)] (C) a special function officer under Section 53-13-105; or

1070 [(iv)] (D) a federal officer under Section 53-13-106.

1071 [(d)] (iv) "Threat of violence" means [~~the same as that term is defined in~~] an offense
 1072 under Section 76-5-107.

1073 (b) Terms defined in Section 76-1-101.5 apply to this section.

1074 [(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3)
 1075 and (4), who:]

1076 (2) (a) An actor commits assault against a peace officer if:

1077 [(a)] (i) the actor commits an assault or threat of violence against a peace officer, with
 1078 knowledge that the [~~person~~] peace officer is a peace officer[~~, and when~~]; and

1079 (ii) at the time of the assault or threat of violence, the peace officer [is] was acting
 1080 within the scope of authority as a peace officer[; or].

1081 (b) An actor commits an assault or threat of violence against a military servicemember
 1082 in uniform [~~when that~~] if:

1083 (i) the actor commits an assault or threat of violence against a military servicemember
 1084 in uniform; and

1085 (ii) at the time of the assault or threat of violence, the servicemember [is] was on orders
 1086 and acting within the scope of authority granted to the military servicemember in uniform.

1087 (3) (a) A [~~person who violates~~] violation of Subsection (2) is [guilty of a third degree
 1088 felony if the person:] a class A misdemeanor.

1089 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
 1090 felony if the actor:

1091 [(a)] (i) has been previously convicted of a class A misdemeanor or a felony violation
 1092 of this section; or

1093 ~~[(b) the person]~~ (ii) causes substantial bodily injury.

1094 ~~[(4) A person who violates]~~ (c) Notwithstanding Subsection (3)(a) or (b), a violation
1095 of Subsection (2) is [guilty of] a second degree felony if the [person] actor uses:

1096 ~~[(a)]~~ (i) a dangerous weapon ~~[as defined in Section 76-1-601]~~; or

1097 ~~[(b)]~~ (ii) other means or force likely to produce death or serious bodily injury.

1098 (4) This section does not affect or limit any individual's constitutional right to the
1099 lawful expression of free speech, the right of assembly, or any other recognized rights secured
1100 by the Constitution or laws of Utah or by the Constitution or laws of the United States.

1101 (5) ~~[A person]~~ An actor who violates this section shall serve, in jail or another
1102 correctional facility, a minimum of:

1103 (a) 90 consecutive days for a second offense; and

1104 (b) 180 consecutive days for each subsequent offense.

1105 (6) The court may suspend the imposition or execution of the sentence required under
1106 Subsection (5) if the court finds that the interests of justice would be best served by the
1107 suspension and the court makes specific findings concerning the disposition on the record.

1108 ~~[(7) This section does not affect or limit any individual's constitutional right to the~~
1109 ~~lawful expression of free speech, the right of assembly, or any other recognized rights secured~~
1110 ~~by the Constitution or laws of Utah or by the Constitution or laws of the United States.]~~

1111 Section 23. Section **76-5-102.5** is amended to read:

1112 **76-5-102.5. Assault by prisoner.**

1113 ~~[Any prisoner who commits assault,]~~

1114 (1) (a) As used in this section, "assault" means an offense under Section 76-5-102.

1115 (b) Terms defined in Section 76-1-101.5 apply to this section.

1116 (2) An actor commits assault by prisoner if the actor:

1117 (a) is a prisoner; and

1118 (b) intending to cause bodily injury, commits an assault.

1119 (3) A violation of Subsection (2) is [guilty of a felony of the] a third degree felony.

1120 Section 24. Section **76-5-102.6** is amended to read:

1121 **76-5-102.6. Propelling object or substance at a correctional or peace officer --**
1122 **Penalties.**

1123 ~~[(1) It is unlawful for]~~ (1) (a) As used in this section, "infectious agent" means the
1124 same as that term is defined in Section [26-6-2](#).

1125 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

1126 (2) An actor commits the offense of propelling an object or substance at a correctional
1127 or peace officer if the actor:

1128 (a) is a prisoner or a detained individual ~~[detained pursuant to Section [77-7-15](#) to~~
1129 ~~throw]; and~~

1130 (b) throws or otherwise ~~[propel any]~~ propels an object or substance at a peace officer, a
1131 correctional officer, or an employee or volunteer, including a health care provider.

1132 ~~[(2) Except as provided in Subsection (3), a]~~

1133 (3) (a) A violation of Subsection ~~[(1)]~~ (2) is a class A misdemeanor.

1134 ~~[(3) A]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection ~~[(1)]~~ (2) is a
1135 third degree felony if:

1136 ~~[(a)]~~ (i) the object or substance causes substantial bodily injury to the peace officer, the
1137 correctional officer, or the employee or volunteer, including a health care provider; or

1138 ~~[(b) (i)]~~ (ii) (A) the object or substance is:

1139 ~~[(A)]~~ (I) blood, urine, semen, or fecal material;

1140 ~~[(B)]~~ (II) an infectious agent ~~[as defined in Section [26-6-2](#)]~~ or a material that carries an
1141 infectious agent;

1142 ~~[(C)]~~ (III) vomit or a material that carries vomit; or

1143 ~~[(D)]~~ (IV) the ~~[prisoner's or detained individual's]~~ actor's saliva, and the ~~[prisoner or~~
1144 ~~detained individual]~~ actor knows ~~[he or she]~~ the actor is infected with HIV, hepatitis B, or
1145 hepatitis C; and

1146 ~~[(i)]~~ (B) the object or substance comes into contact with any portion of the officer's,
1147 employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes
1148 into contact with any open wound on the officer's, employee's, volunteer's, or health care

1149 provider's body.

1150 (4) If an offense committed under this section amounts to an offense subject to a
1151 greater penalty under another provision of state law than under this section, this section does
1152 not prohibit prosecution and sentencing for the more serious offense.

1153 Section 25. Section **76-5-102.7** is amended to read:

1154 **76-5-102.7. Assault or threat of violence against health care provider or**
1155 **emergency medical service worker -- Penalty.**

1156 (1) (a) As used in this section:

1157 (i) "Assault" means an offense under Section [76-5-102](#).

1158 (ii) "Emergency medical service worker" means an individual licensed under Section
1159 [26-8a-302](#).

1160 (iii) "Health care provider" means the same as that term is defined in Section
1161 [78B-3-403](#).

1162 (iv) "Threat of violence" means an offense under Section [76-5-107](#).

1163 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

1164 ~~[(1) A person who]~~ (2) An actor commits ~~[an]~~ assault or threat of violence against a
1165 health care provider or emergency medical service worker ~~[is guilty of a class A misdemeanor]~~
1166 if:

1167 ~~(a) the [person] actor~~ is not a prisoner or a ~~[person detained under Section [77-7-15](#)]~~
1168 ~~detained individual;~~

1169 (b) the actor commits an assault or threat of violence;

1170 ~~[(b)]~~ (c) the [person] actor knew that the victim was a health care provider or
1171 emergency medical service worker; and

1172 ~~[(c)]~~ (d) the health care provider or emergency medical service worker was performing
1173 emergency or life saving duties within the scope of his or her authority at the time of the assault
1174 or threat of violence.

1175 ~~[(2) A person who violates]~~ (3) (a) A violation of Subsection [(1)] (2) is a class A
1176 misdemeanor.

1177 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is [guilty of] a
 1178 third degree felony if the [person] actor:

1179 ~~[(a)] (i) causes substantial bodily injury[, as defined in Section 76-1-601]; and~~
 1180 ~~[(b)] (ii) acts intentionally or knowingly.~~

1181 ~~[(3) As used in this section:]~~

1182 ~~[(a) "Assault" means the same as that term is defined in Section 76-5-102.]~~

1183 ~~[(b) "Emergency medical service worker" means a person licensed under Section~~
 1184 ~~26-8a-302.]~~

1185 ~~[(c) "Health care provider" means the same as that term is defined in Section~~
 1186 ~~78B-3-403.]~~

1187 ~~[(d) "Threat of violence" means the same as that term is defined in Section 76-5-107.]~~

1188 Section 26. Section **76-5-102.8** is amended to read:

1189 **76-5-102.8. Disarming a peace officer -- Penalties.**

1190 (1) (a) As used in this section:

1191 ~~[(a)] (i) "Conductive energy device" means a weapon that uses electrical current to~~
 1192 ~~disrupt voluntary control of muscles.~~

1193 ~~[(b)] (ii) "Firearm" [has the same meaning as] means the same as that term is defined in~~
 1194 ~~Section 76-10-501.~~

1195 (b) Terms defined in Section 76-1-101.5 apply to this section.

1196 (2) An actor ~~[is guilty of an offense under Subsection (3) who]~~ commits disarming a
 1197 peace officer if the actor intentionally takes or removes, or attempts to take or remove a firearm
 1198 or a conductive energy device from [the person] an individual or immediate presence of [a
 1199 person] an individual who the actor knows is a peace officer:

1200 (a) without the consent of the peace officer; and

1201 (b) while the peace officer is acting within the scope of [his] the peace officer's
 1202 authority as a peace officer.

1203 (3) (a) ~~[Conduct under]~~ A violation of Subsection (2) regarding a firearm is a first
 1204 degree felony.

1205 (b) ~~[Conduct under]~~ A violation of Subsection (2) regarding a conductive energy
 1206 device is a third degree felony.

1207 Section 27. Section **76-5-102.9** is amended to read:

1208 **76-5-102.9. Propelling a bodily substance or material -- Penalties.**

1209 (1) (a) As used in this section~~[, a listed substance or material is]:~~

1210 (i) "Bodily substance or material" means:

1211 ~~[(a)]~~ (A) saliva, blood, urine, semen, or fecal material;

1212 ~~[(b)]~~ (B) an infectious agent ~~[as defined in Section 26-6-2 of]~~ or a material that carries
 1213 an infectious agent; or

1214 ~~[(c)]~~ (C) vomit or a material that carries vomit.

1215 (ii) "Infectious agent" means the same as that term is defined in Section 26-6-2.

1216 (b) Terms defined in Section 76-1-101.5 apply to this section.

1217 (2) ~~[Any person who]~~ An actor commits propelling a bodily substance or material if the
 1218 actor knowingly or intentionally throws or otherwise propels [any] a bodily substance or
 1219 material [listed under Subsection (1)] at another [person is guilty of a class B misdemeanor,
 1220 except as provided in Subsection (3)] individual.

1221 (3) (a) A violation of ~~[this section]~~ Subsection (2) is a class B misdemeanor.

1222 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A
 1223 misdemeanor if [the substance or material propelled is listed in Subsection (1), and]:

1224 ~~[(a)]~~ (i) [if] the bodily substance or material is the [person's] actor's saliva[;] and the
 1225 [person] actor knows [he or she] the actor is infected with HIV, hepatitis B, or hepatitis C; or

1226 ~~[(b)]~~ (ii) the bodily substance or material comes into contact with any portion of the
 1227 other [person's] individual's face, including the eyes or mouth, or comes into contact with any
 1228 open wound on the other [person's] individual's body.

1229 (4) If an offense committed under this section amounts to an offense subject to a
 1230 greater penalty under another provision of state law than under this section, this section does
 1231 not prohibit prosecution and sentencing for the more serious offense.

1232 Section 28. Section **76-5-103** is amended to read:

- 1233 **76-5-103. Aggravated assault -- Penalties.**
- 1234 [~~(1) Aggravated assault is an actor's conduct:~~]
- 1235 [~~(a) that is:~~]
- 1236 (1) (a) As used in this section, "targeting a law enforcement officer" means the same as
- 1237 that term is defined in Section 76-5-202.
- 1238 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1239 (2) An actor commits aggravated assault if the actor:
- 1240 (a) (i) [~~an attempt~~] attempts, with unlawful force or violence, to do bodily injury to
- 1241 another;
- 1242 (ii) makes a threat, accompanied by a show of immediate force or violence, to do
- 1243 bodily injury to another; or
- 1244 (iii) commits an act, committed with unlawful force or violence, that causes bodily
- 1245 injury to another or creates a substantial risk of bodily injury to another; and
- 1246 (b) [~~that~~] includes in the actor's conduct under Subsection (2)(a) the use of:
- 1247 (i) a dangerous weapon [~~as defined in Section 76-1-601~~];
- 1248 (ii) any act that impedes the breathing or the circulation of blood of another [~~person~~]
- 1249 individual by the actor's use of unlawful force or violence that is likely to produce a loss of
- 1250 consciousness by:
- 1251 (A) applying pressure to the neck or throat of [~~a person~~] an individual; or
- 1252 (B) obstructing the nose, mouth, or airway of [~~a person~~] an individual; or
- 1253 (iii) other means or force likely to produce death or serious bodily injury.
- 1254 [~~(2)~~] (3) (a) [~~Any act under this section is punishable as~~] A violation of Subsection (2)
- 1255 is a third degree felony[, ~~except that an act under this section is punishable as a second degree~~
- 1256 felony if:].
- 1257 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
- 1258 felony if:
- 1259 (i) the act results in serious bodily injury; or
- 1260 (ii) an act under Subsection [~~(1)~~] (2)(b)(ii) produces a loss of consciousness.

1261 ~~[(b) Aggravated assault that is a violation of Section 76-5-210, Targeting a law~~
1262 ~~enforcement officer, and results in serious bodily injury is a first degree felony.]~~

1263 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a first
1264 degree felony if the conduct constitutes targeting a law enforcement officer and results in
1265 serious bodily injury.

1266 Section 29. Section **76-5-103.5** is amended to read:

1267 **76-5-103.5. Aggravated assault by prisoner.**

1268 ~~[Any prisoner who commits aggravated assault is guilty of:]~~

1269 ~~[(1) a]~~ (1) (a) As used in this section, "aggravated assault" means an offense under
1270 Section 76-5-103.

1271 (b) Terms defined in Section 76-1-101.5 apply to this section.

1272 (2) An actor commits aggravated assault by prisoner if the actor:

1273 (a) is a prisoner; and

1274 (b) commits aggravated assault.

1275 (3) (a) A violation of Subsection (2) is a second degree felony~~[if no serious bodily~~
1276 ~~injury was intentionally caused; or].~~

1277 ~~[(2)]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a first
1278 degree felony if serious bodily injury was intentionally caused.

1279 Section 30. Section **76-5-104** is amended to read:

1280 **76-5-104. Consensual altercation.**

1281 (1) As used in this section, "ultimate fighting match" means the same as that term is
1282 defined in Section 76-9-705.

1283 (2) In any prosecution for criminal homicide under Part 2, Criminal Homicide, or
1284 assault as that offense is described in Section 76-5-102, it is no defense to the prosecution that
1285 the defendant was a party to any duel, mutual combat, or other consensual altercation if during
1286 the course of the duel, combat, or altercation:

1287 (a) any dangerous weapon ~~[as defined in Section 76-1-601]~~ was used; or [if]

1288 (b) the defendant was engaged in an ultimate fighting match ~~[as defined in Section~~

1289 ~~76-9-705~~].

1290 Section 31. Section **76-5-105** is amended to read:

1291 **76-5-105. Mayhem.**

1292 (1) Terms defined in Section 76-1-101.5 apply to this section.

1293 ~~[(1) Every person who]~~ (2) An actor commits mayhem if the actor unlawfully and
1294 intentionally;

1295 (a) deprives [a human being] an individual of a member of [his] the individual's body[;
1296 or];

1297 (b) disables or renders [it] useless[; or who] a member of an individual's body;

1298 (c) cuts out or disables [the] an individual's tongue[;];

1299 (d) puts out an individual's eye[;]; or

1300 (e) slits [the] an individual's nose, ear, or lip[; is guilty of mayhem].

1301 ~~[(2) Mayhem is a felony of the second degree.]~~

1302 (3) A violation of Subsection (2) is a second degree felony.

1303 Section 32. Section **76-5-106** is amended to read:

1304 **76-5-106. Harassment.**

1305 ~~[(1) A person is guilty of]~~

1306 (1) Terms defined in Section 76-1-101.5 apply to this section.

1307 (2) An actor commits harassment if, with intent to frighten or harass another, ~~[he]~~ the
1308 actor communicates a written or recorded threat to commit ~~[any]~~ a violent felony.

1309 ~~[(2) Harassment]~~ (3) A violation of Subsection (2) is a class B misdemeanor.

1310 Section 33. Section **76-5-106.5** is amended to read:

1311 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law**
1312 **enforcement officer.**

1313 (1) (a) As used in this section:

1314 ~~[(a)]~~ (i) "Course of conduct" means two or more acts directed at or toward a specific
1315 ~~[person]~~ individual, including:

1316 ~~[(i)]~~ (A) acts in which the actor follows, monitors, observes, photographs, surveils,

1317 threatens, or communicates to or about [~~a person~~] an individual, or interferes with [~~a person's~~]
1318 an individual's property:

1319 [~~(A)~~] (I) directly, indirectly, or through any third party; and

1320 [~~(B)~~] (II) by any action, method, device, or means; or

1321 [~~(i)~~] (B) when the actor engages in any of the following acts or causes someone else to
1322 engage in any of these acts:

1323 [~~(A)~~] (I) approaches or confronts [~~a person~~] an individual;

1324 [~~(B)~~] (II) appears at the [~~person's~~] individual's workplace or contacts the [~~person's~~]
1325 individual's employer or coworkers;

1326 [~~(C)~~] (III) appears at [~~a person's~~] an individual's residence or contacts [~~a person's~~] an
1327 individual's neighbors, or enters property owned, leased, or occupied by [~~a person~~] an
1328 individual;

1329 [~~(D)~~] (IV) sends material by any means to the [~~person~~] individual or for the purpose of
1330 obtaining or disseminating information about or communicating with the [~~person~~] individual to
1331 a member of the [~~person's~~] individual's family or household, employer, coworker, friend, or
1332 associate of the [~~person~~] individual;

1333 [~~(E)~~] (V) places an object on or delivers an object to property owned, leased, or
1334 occupied by [~~a person~~] an individual, or to the [~~person's~~] individual's place of employment with
1335 the intent that the object be delivered to the [~~person~~] individual; or

1336 [~~(F)~~] (VI) uses a computer, the Internet, text messaging, or any other electronic means
1337 to commit an act that is a part of the course of conduct.

1338 [~~(b)~~] (ii) "Emotional distress" means significant mental or psychological suffering,
1339 whether or not medical or other professional treatment or counseling is required.

1340 [~~(c)~~] (iii) "Immediate family" means a spouse, parent, child, sibling, or any other
1341 [~~person~~] individual who regularly resides in the household or who regularly resided in the
1342 household within the prior six months.

1343 [~~(d)~~] (iv) "Reasonable person" means a reasonable person in the victim's
1344 circumstances.

1345 ~~[(e)]~~ (v) "Stalking" means an offense as described in Subsection (2)~~[-or-(3)]~~.

1346 ~~[(f)]~~ (vi) "Text messaging" means a communication in the form of electronic text or
1347 one or more electronic images sent by the actor from a telephone or computer to another
1348 ~~[person's]~~ individual's telephone or computer by addressing the communication to the
1349 recipient's telephone number.

1350 (b) Terms defined in Section 76-1-101.5 apply to this section.

1351 (2) ~~[A person is guilty of stalking who]~~ An actor commits stalking if the actor
1352 intentionally or knowingly:

1353 (a) engages in a course of conduct directed at a specific ~~[person]~~ individual and knows
1354 or should know that the course of conduct would cause a reasonable person:

1355 ~~[(a)]~~ (i) to fear for the ~~[person's]~~ individual's own safety or the safety of a third ~~[person]~~
1356 individual; or

1357 ~~[(b)]~~ (ii) to suffer other emotional distress~~[-]; or~~

1358 ~~[(3) A person is guilty of stalking who intentionally or knowingly]~~

1359 (b) violates:

1360 ~~[(a)]~~ (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking
1361 Injunctions; or

1362 ~~[(b)]~~ (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7,
1363 Part 9, Criminal Stalking Injunctions.

1364 ~~[(4) In any prosecution under this section, it is not a defense that the actor:]~~

1365 ~~[(a) was not given actual notice that the course of conduct was unwanted; or]~~

1366 ~~[(b) did not intend to cause the victim fear or other emotional distress.]~~

1367 ~~[(5) An offense of stalking may be prosecuted under this section in any jurisdiction~~
1368 ~~where one or more of the acts that is part of the course of conduct was initiated or caused an~~
1369 ~~effect on the victim.]~~

1370 ~~[(6) Stalking is a class A misdemeanor:]~~

1371 (3) (a) A violation of Subsection (2) is a class A misdemeanor:

1372 ~~[(a)]~~ (i) upon the ~~[offender's]~~ actor's first violation of Subsection (2); or

1373 ~~[(b)]~~ (ii) if the ~~[offender]~~ actor violated a stalking injunction issued under Title 78B,
1374 Chapter 7, Part 7, Civil Stalking Injunctions.

1375 ~~[(7) Stalking]~~ (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a
1376 third degree felony if the ~~[offender]~~ actor:

1377 ~~[(a)]~~ (i) has been previously convicted of an offense of stalking;

1378 ~~[(b)]~~ (ii) has been previously convicted in another jurisdiction of an offense that is
1379 substantially similar to the offense of stalking;

1380 ~~[(c)]~~ (iii) has been previously convicted of any felony offense in Utah or of any crime
1381 in another jurisdiction which if committed in Utah would be a felony, in which the victim of
1382 the stalking offense or a member of the victim's immediate family was also a victim of the
1383 previous felony offense;

1384 ~~[(d)]~~ (iv) violated a permanent criminal stalking injunction issued under Title 78B,
1385 Chapter 7, Part 9, Criminal Stalking Injunctions; or

1386 ~~[(e)]~~ (v) has been or is at the time of the offense a cohabitant, as defined in Section
1387 [78B-7-102](#), of the victim.

1388 ~~[(8) Stalking]~~ (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection
1389 (2) is a second degree felony if the ~~[offender]~~ actor:

1390 ~~[(a)]~~ (i) used a dangerous weapon ~~[as defined in Section [76-1-601](#)]~~ or used other means
1391 or force likely to produce death or serious bodily injury, in the commission of the crime of
1392 stalking;

1393 ~~[(b)]~~ (ii) has been previously convicted two or more times of the offense of stalking;

1394 ~~[(c)]~~ (iii) has been convicted two or more times in another jurisdiction or jurisdictions
1395 of offenses that are substantially similar to the offense of stalking;

1396 ~~[(d)]~~ (iv) has been convicted two or more times, in any combination, of offenses under
1397 Subsection ~~[(7)(a), (b), or (c)]~~ (3)(b)(i), (ii), or (iii);

1398 ~~[(e)]~~ (v) has been previously convicted two or more times of felony offenses in Utah or
1399 of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be
1400 felonies, in which the victim of the stalking was also a victim of the previous felony offenses;

1401 or

1402 ~~[(f)]~~ (vi) has been previously convicted of an offense under Subsection ~~[(7)(d) or (e)]~~
1403 (3)(b)(iv) or (v).

1404 (4) In a prosecution under this section, it is not a defense that the actor:

1405 (a) was not given actual notice that the course of conduct was unwanted; or

1406 (b) did not intend to cause the victim fear or other emotional distress.

1407 (5) An offense of stalking may be prosecuted under this section in any jurisdiction

1408 where one or more of the acts that is part of the course of conduct was initiated or caused an

1409 effect on the victim.

1410 ~~[(9)]~~ (6) (a) A permanent criminal stalking injunction limiting the contact between the
1411 ~~[defendant]~~ actor and victim may be filed in accordance with Section [78B-7-902](#).

1412 (b) This section does not preclude the filing of criminal information for stalking based
1413 on the same act which is the basis for the violation of the stalking injunction issued under Title
1414 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction
1415 issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

1416 ~~[(10)]~~ (7) (a) A law enforcement officer who responds to an allegation of stalking shall
1417 use all reasonable means to protect the victim and prevent further violence, including:

1418 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for
1419 the safety of the victim and any family or household member;

1420 (ii) confiscating the weapon or weapons involved in the alleged stalking;

1421 (iii) making arrangements for the victim and any child to obtain emergency housing or
1422 shelter;

1423 (iv) providing protection while the victim removes essential personal effects;

1424 (v) arranging, facilitating, or providing for the victim and any child to obtain medical
1425 treatment; and

1426 (vi) arranging, facilitating, or providing the victim with immediate and adequate notice
1427 of the rights of victims and of the remedies and services available to victims of stalking, in
1428 accordance with Subsection ~~[(10)]~~ (7)(b).

1429 (b) (i) A law enforcement officer shall give written notice to the victim in simple
1430 language, describing the rights and remedies available under this section and Title 78B,
1431 Chapter 7, Part 7, Civil Stalking Injunctions.

1432 (ii) The written notice shall also include:

1433 (A) a statement that the forms needed in order to obtain a stalking injunction are
1434 available from the court clerk's office in the judicial district where the victim resides or is
1435 temporarily domiciled; and

1436 (B) a list of shelters, services, and resources available in the appropriate community,
1437 together with telephone numbers, to assist the victim in accessing any needed assistance.

1438 (c) If a weapon is confiscated under this Subsection [~~(10)~~] (7), the law enforcement
1439 agency shall return the weapon to the individual from whom the weapon is confiscated if a
1440 stalking injunction is not issued or once the stalking injunction is terminated.

1441 Section 34. Section **76-5-107** is amended to read:

1442 **76-5-107. Threat of violence -- Penalty.**

1443 (1) Terms defined in Section 76-1-101.5 apply to this section.

1444 [~~(1) A person~~] (2) (a) An actor commits a threat of violence if the actor:

1445 [~~(a) the person~~] (i) (A) threatens to commit [any] an offense involving bodily injury,
1446 death, or substantial property damage[;]; and

1447 (B) acts with intent to place [a person] an individual in fear of imminent serious bodily
1448 injury, substantial bodily injury, or death; or

1449 [~~(b) the person~~] (ii) makes a threat, accompanied by a show of immediate force or
1450 violence, to do bodily injury to [another] an individual.

1451 (b) A threat under this section may be express or implied.

1452 [~~(2)~~] (3) (a) A violation of [this section] Subsection (2) is a class B misdemeanor.

1453 (b) An actor who commits an offense under this section is subject to punishment for
1454 that offense, in addition to any other offense committed, including the carrying out of the
1455 threatened act.

1456 (c) In addition to any other penalty authorized by law, a court shall order an actor

1457 convicted of a violation of this section to reimburse any federal, state, or local unit of
 1458 government, or any private business, organization, individual, or entity for all expenses and
 1459 losses incurred in responding to the violation, unless the court states on the record the reasons
 1460 why the reimbursement would be inappropriate.

1461 ~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt to
 1462 or was incapable of carrying out the threat.

1463 ~~[(4) A threat under this section may be express or implied.]~~

1464 ~~[(5) A person who commits an offense under this section is subject to punishment for~~
 1465 ~~that offense, in addition to any other offense committed, including the carrying out of the~~
 1466 ~~threatened act.]~~

1467 ~~[(6) In addition to any other penalty authorized by law, a court shall order any person~~
 1468 ~~convicted of any violation of this section to reimburse any federal, state, or local unit of~~
 1469 ~~government, or any private business, organization, individual, or entity for all expenses and~~
 1470 ~~losses incurred in responding to the violation, unless the court states on the record the reasons~~
 1471 ~~why the reimbursement would be inappropriate.]~~

1472 Section 35. Section **76-5-107.1** is amended to read:

1473 **76-5-107.1. Threats against schools.**

1474 (1) (a) As used in this section~~[-"school"]~~:

1475 (i) "Hoax weapon of mass destruction" means the same as that term is defined in
 1476 Section [76-10-401](#).

1477 (ii) "School" means a preschool or a public or private elementary or secondary school.

1478 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

1479 (2) An ~~[individual]~~ actor is guilty of making a threat against a school if the ~~[individual]~~
 1480 actor threatens in person or via electronic means, either with real intent or as an intentional
 1481 hoax, to commit any offense involving bodily injury, death, or substantial property damage~~[-]~~
 1482 and the actor:

1483 (a) threatens the use of a firearm or weapon or hoax weapon of mass destruction~~[-as~~
 1484 defined in Section [76-10-401](#)];

1485 (b) acts with intent to:

1486 (i) disrupt the regular schedule of the school or influence or affect the conduct of
1487 students, employees, or the general public at the school;

1488 (ii) prevent or interrupt the occupancy of the school or a portion of the school, or a
1489 facility or vehicle used by the school; or

1490 (iii) intimidate or coerce students or employees of the school; or

1491 (c) causes an official or volunteer agency organized to deal with emergencies to take
1492 action due to the risk to the school or general public.

1493 (3) (a) (i) A violation of Subsection (2)(a), (b)(i), or (b)(iii) is a class A misdemeanor.

1494 [~~(b)~~] (ii) A violation of Subsection (2)(b)(ii) is a class B misdemeanor.

1495 [~~(c)~~] (iii) A violation of Subsection (2)(c) is a class C misdemeanor.

1496 [~~(4) Counseling for the minor and the minor's family may be made available through
1497 state and local health department programs.]~~

1498 [~~(5) It is not a defense to this section that the individual did not attempt to carry out or
1499 was incapable of carrying out the threat.]~~

1500 [~~(6) In addition to any other penalty authorized by law, a court shall order an individual
1501 convicted of a violation of this section to pay restitution to any federal, state, or local unit of
1502 government, or any private business, organization, individual, or entity for expenses and losses
1503 incurred in responding to the threat, unless the court states on the record the reasons why the
1504 reimbursement would be inappropriate. Restitution ordered in the case of a minor adjudicated
1505 for a violation of this section shall be determined in accordance with Section 80-6-710.]~~

1506 (b) (i) In addition to any other penalty authorized by law, a court shall order an actor
1507 convicted of a violation of this section to pay restitution to any federal, state, or local unit of
1508 government, or any private business, organization, individual, or entity for expenses and losses
1509 incurred in responding to the threat, unless the court states on the record the reasons why the
1510 reimbursement would be inappropriate.

1511 (ii) Restitution ordered in the case of a minor adjudicated for a violation of this section
1512 shall be determined in accordance with Section 80-6-710.

1513 (4) It is not a defense to this section that the actor did not attempt to carry out or was
1514 incapable of carrying out the threat.

1515 ~~[(7)]~~ (5) (a) A violation of this section shall be reported to the local law enforcement
1516 agency.

1517 (b) If the ~~[individual]~~ actor alleged to have violated this section is a minor, the minor
1518 may be referred to the juvenile court.

1519 (6) Counseling for the minor and the minor's family may be made available through
1520 state and local health department programs.

1521 Section 36. Section **76-5-107.3** is amended to read:

1522 **76-5-107.3. Threat of terrorism -- Penalty.**

1523 (1) (a) As used in this section:

1524 (i) "Hoax weapon of mass destruction" means the same as that term is defined in
1525 Section [76-10-401](#).

1526 (ii) "Weapon of mass destruction" means the same as that term is defined in Section
1527 [76-10-401](#).

1528 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

1529 ~~[(1) A person]~~ (2) (a) An actor commits a threat of terrorism if the ~~[person]~~ actor
1530 threatens to commit ~~[any]~~ an offense involving bodily injury, death, or substantial property
1531 damage~~[-]~~ and the actor:

1532 ~~[(a)-(i)]~~ (i) (A) threatens the use of a weapon of mass destruction~~[-as defined in~~
1533 Section ~~76-10-401~~]; or

1534 ~~[(ii)]~~ (B) threatens the use of a hoax weapon of mass destruction~~[-as defined in Section~~
1535 ~~76-10-401~~]; or

1536 ~~[(b)]~~ (ii) acts with intent to:

1537 ~~[(i)]~~ (A) intimidate or coerce a civilian population or to influence or affect the conduct
1538 of a government or a unit of government;

1539 ~~[(i)]~~ (B) prevent or interrupt the occupation of a building or a portion of the building, a
1540 place to which the public has access, or a facility or vehicle of public transportation operated by

1541 a common carrier; or

1542 ~~[(iii)]~~ (C) cause an official or volunteer agency organized to deal with emergencies to
1543 take action due to the ~~[person's]~~ actor's conduct posing a serious and substantial risk to the
1544 general public.

1545 (b) A threat under this section may be express or implied.

1546 ~~[(2)]~~ (3) (a) (i) A violation of Subsection ~~[(1)(a) or (1)(b)(i)]~~ (2)(a)(i) or (2)(a)(ii)(A) is
1547 a second degree felony.

1548 ~~[(b)]~~ (ii) A violation of Subsection ~~[(1)(b)(ii)]~~ (2)(a)(ii)(B) is a third degree felony.

1549 ~~[(c)]~~ (iii) A violation of Subsection ~~[(1)(b)(iii)]~~ (2)(a)(ii)(C) is a class B misdemeanor.

1550 (b) An actor who commits an offense under this section is subject to punishment for
1551 that offense, in addition to any other offense committed, including the carrying out of the
1552 threatened act.

1553 (c) In addition to any other penalty authorized by law, a court shall order an actor
1554 convicted of a violation of this section to reimburse any federal, state, or local unit of
1555 government, or any private business, organization, individual, or entity for all expenses and
1556 losses incurred in responding to the violation, unless the court states on the record the reasons
1557 why the reimbursement would be inappropriate.

1558 ~~[(3)]~~ (4) It is not a defense under this section that the ~~[person]~~ actor did not attempt to
1559 carry out or was incapable of carrying out the threat.

1560 ~~[(4) A threat under this section may be express or implied.]~~

1561 ~~[(5) A person who commits an offense under this section is subject to punishment for~~
1562 ~~that offense, in addition to any other offense committed, including the carrying out of the~~
1563 ~~threatened act.]~~

1564 ~~[(6) In addition to any other penalty authorized by law, a court shall order any person~~
1565 ~~convicted of any violation of this section to reimburse any federal, state, or local unit of~~
1566 ~~government, or any private business, organization, individual, or entity for all expenses and~~
1567 ~~losses incurred in responding to the violation, unless the court states on the record the reasons~~
1568 ~~why the reimbursement would be inappropriate.]~~

1569 Section 37. Section **76-5-107.5** is amended to read:

1570 **76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.**

1571 (1) Terms defined in Section 76-1-101.5 apply to this section.

1572 ~~[(1) A person is guilty of]~~ (2) An actor commits hazing if [that person] the actor
1573 intentionally, knowingly, or recklessly commits an act or causes another to commit an act that:

1574 (a) (i) endangers the mental or physical health or safety of ~~[another]~~ an individual;

1575 (ii) involves any brutality of a physical nature such as whipping, beating, branding,
1576 calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or
1577 exposure to the elements;

1578 (iii) involves consumption of any food, alcoholic product, drug, or other substance or
1579 any other physical activity that endangers the mental or physical health and safety of an
1580 individual; or

1581 (iv) involves any activity that would subject the individual to extreme mental stress,
1582 such as sleep deprivation, extended isolation from social contact, or conduct that subjects
1583 another to extreme embarrassment, shame, or humiliation; and

1584 (b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in,
1585 or as a condition for continued membership in any organization; or

1586 (ii) if the actor knew that the ~~[victim]~~ individual is a member of or candidate for
1587 membership with a school team or school organization to which the actor belongs or did
1588 belong within the preceding two years.

1589 ~~[(2) It is not a defense to prosecution of hazing that a person under 21, against whom~~
1590 ~~the hazing was directed, consented to or acquiesced in the hazing activity.]~~

1591 ~~[(3) An actor who hazes another is guilty of a:]~~

1592 (3) (a) A violation of Subsection (2) is a class B misdemeanor [except as provided in
1593 Subsection (3)(b), (c), (d), or (e)].

1594 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A
1595 misdemeanor if the act involves:

1596 (i) the operation or other use of a motor vehicle;

1597 (ii) the consumption of an alcoholic product as defined in Section 32B-1-102; or

1598 (iii) the consumption of a drug or a substance as defined in Section 76-5-113[;].

1599 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a third

1600 degree felony if the act involves the use of a dangerous weapon [~~as defined in Section~~

1601 ~~76-1-601~~];.

1602 (d) Notwithstanding Subsection (3)(a), (b), or (c), a violation of Subsection (2) is a

1603 third degree felony if the hazing results in serious bodily injury to [~~a person, or~~] an individual.

1604 (e) Notwithstanding Subsection (3)(a), (b), (c), or (d), a violation of Subsection (2) is a

1605 second degree felony if hazing under Subsection (3)(d) involves the use of a dangerous weapon

1606 [~~as defined in Section 76-1-601~~].

1607 (4) (a) A person who in good faith reports or participates in reporting of an alleged

1608 hazing is not subject to any civil or criminal liability regarding the reporting.

1609 (b) It is not a defense to prosecution of hazing that an individual under 21 years old,

1610 against whom the hazing was directed, consented to or acquiesced in the hazing activity.

1611 (5) (a) This section does not apply to military training or other official military

1612 activities.

1613 (b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

1614 (6) (a) A prosecution under this section does not bar a prosecution of the actor for:

1615 (i) any other offense for which the actor may be liable as a party for conduct committed

1616 by the [~~person~~] individual hazed; or

1617 (ii) any offense, caused in the course of the hazing, that the actor commits against the

1618 [~~person who is~~] individual hazed.

1619 (b) Under Subsection (6)(a)(i) [~~a person~~] an actor may be separately punished, both for

1620 the hazing offense and the conduct committed by the [~~person~~] individual hazed.

1621 (c) Under Subsection (6)(a)(ii) [~~a person~~] an actor may not be punished both for hazing

1622 and for the other offense, but shall be punished for the offense carrying the greater maximum

1623 penalty.

1624 Section 38. Section **76-5-108** is amended to read:

1625 **76-5-108. Violation of protective order.**
 1626 ~~[(1) Any person who]~~ (1) Terms defined in Section 76-1-101.5 apply to this section.
 1627 (2) An actor commits violation of protective order if the actor:
 1628 (a) is the respondent or defendant subject to a protective order, child protective order,
 1629 ex parte protective order, ~~[or] ex parte child protective order, or foreign protection order~~ issued
 1630 under ~~[the following who], or for the purposes of Subsection (2)(a)(i), enforceable under:~~
 1631 (i) Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence
 1632 Protection Orders Act;
 1633 (ii) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;
 1634 (iii) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or
 1635 (iv) Title 80, Utah Juvenile Code; and
 1636 (b) intentionally or knowingly violates that order after having been properly served or
 1637 having been present, in person or through court video conferencing, when the order was
 1638 issued[;].
 1639 (3) A violation of Subsection (2) is ~~[guilty of]~~ a class A misdemeanor, except as a
 1640 greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act[;].
 1641 ~~[(a) Title 80, Utah Juvenile Code;]~~
 1642 ~~[(b) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;]~~
 1643 ~~[(c) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or]~~
 1644 ~~[(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform~~
 1645 ~~Interstate Enforcement of Domestic Violence Protection Orders Act.]~~
 1646 ~~[(2)]~~ (4) Violation of an order [as] described in Subsection ~~[(1)]~~ (2) is a domestic
 1647 violence offense under Section 77-36-1 and subject to increased penalties in accordance with
 1648 Section 77-36-1.1.
 1649 Section 39. Section **76-5-109** is amended to read:
 1650 **76-5-109. Child abuse.**
 1651 (1) (a) As used in this section:
 1652 ~~[(a)]~~ (i) "Child" means ~~[a human being who is under]~~ an individual who is younger

1653 than 18 years [~~of age~~] old.

1654 [~~(b) (i) "Child abandonment" means that a parent or legal guardian of a child:~~
1655 [~~(A) intentionally ceases to maintain physical custody of the child;~~
1656 [~~(B) intentionally fails to make reasonable arrangements for the safety, care, and~~
1657 ~~physical custody of the child; and]~~

1658 [~~(C) (I) intentionally fails to provide the child with food, shelter, or clothing;~~
1659 [~~(H) manifests an intent to permanently not resume physical custody of the child; or]~~
1660 [~~(HH) for a period of at least 30 days;~~
1661 [~~(Aa) intentionally fails to resume physical custody of the child; and]~~
1662 [~~(Bb) fails to manifest a genuine intent to resume physical custody of the child.]~~
1663 [~~(ii) "Child abandonment" does not include:~~
1664 [~~(A) safe relinquishment of a child pursuant to the provisions of Section ~~62A-4a-802;~~~~
1665 ~~or]~~

1666 [~~(B) giving legal consent to a court order for termination of parental rights:]~~
1667 [~~(f) in a legal adoption proceeding; or]~~
1668 [~~(H) in a case where a petition for the termination of parental rights, or the termination~~
1669 ~~of a guardianship, has been filed.]~~

1670 [~~(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in~~
1671 ~~Section ~~76-5-109.1.~~~~

1672 [~~(d) "Enterprise" is as defined in Section ~~76-10-1602.~~~~
1673 [~~(e) (ii) "Physical injury" means an injury to or condition of a child which impairs the~~
1674 ~~physical condition of the child, including:~~

1675 [~~(i) (A) a bruise or other contusion of the skin;~~
1676 [~~(ii) (B) a minor laceration or abrasion;~~
1677 [~~(iii) (C) failure to thrive or malnutrition; or~~
1678 [~~(iv) (D) any other condition which imperils the child's health or welfare and ~~[which]~~~~
1679 ~~that is not a serious physical injury [~~as defined in Subsection (1)(f)].~~~~

1680 [~~(f) (i) (iii) (A) "Serious physical injury" means any physical injury or set of injuries~~

1681 that:

1682 ~~[(A)]~~ (I) seriously impairs the child's health;

1683 ~~[(B)]~~ (II) involves physical torture;

1684 ~~[(C)]~~ (III) causes serious emotional harm to the child; or

1685 ~~[(D)]~~ (IV) involves a substantial risk of death to the child.

1686 ~~[(ii)]~~ (B) "Serious physical injury" includes:

1687 ~~[(A)]~~ (I) fracture of any bone or bones;

1688 ~~[(B)]~~ (II) intracranial bleeding, swelling or contusion of the brain, whether caused by

1689 blows, shaking, or causing the child's head to impact with an object or surface;

1690 ~~[(C)]~~ (III) any burn, including burns inflicted by hot water, or those caused by placing a

1691 hot object upon the skin or body of the child;

1692 ~~[(D)]~~ (IV) any injury caused by use of a dangerous weapon ~~[as defined in Section~~

1693 ~~76-1-601]~~;

1694 ~~[(E)]~~ (V) any combination of two or more physical injuries inflicted by the same

1695 person, either at the same time or on different occasions;

1696 ~~[(F)]~~ (VI) any damage to internal organs of the body;

1697 ~~[(G)]~~ (VII) any conduct toward a child that results in severe emotional harm, severe

1698 developmental delay or intellectual disability, or severe impairment of the child's ability to

1699 function;

1700 ~~[(H)]~~ (VIII) any injury that creates a permanent disfigurement or protracted loss or

1701 impairment of the function of a bodily member, limb, or organ;

1702 ~~[(I)]~~ (IX) any impediment of the breathing or the circulation of blood by application of

1703 pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely to

1704 produce a loss of consciousness;

1705 ~~[(J)]~~ (X) any conduct that results in starvation or failure to thrive or malnutrition that

1706 jeopardizes the child's life; or

1707 ~~[(K)]~~ (XI) unconsciousness caused by the unlawful infliction of a brain injury or

1708 unlawfully causing any deprivation of oxygen to the brain.

1709 (b) Terms defined in Section 76-1-101.5 apply to this section.
1710 ~~[(2) Any person who inflicts upon a child serious physical injury or, having the care or~~
1711 ~~custody of such child, causes or permits another to inflict serious physical injury upon a child is~~
1712 ~~guilty of an offense as follows:]~~
1713 ~~[(a) if done intentionally or knowingly, the offense is a felony of the second degree;]~~
1714 ~~[(b) if done recklessly, the offense is a felony of the third degree; or]~~
1715 ~~[(c) if done with criminal negligence, the offense is a class A misdemeanor.]~~
1716 ~~[(3) Any person who]~~ (2) An actor commits child abuse if the actor:
1717 (a) inflicts upon a child physical injury [or]; or
1718 (b) having the care or custody of such child, causes or permits another to inflict
1719 physical injury upon a child [is guilty of an offense as follows:].
1720 (3) (a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or
1721 knowingly[; the offense is a class A misdemeanor;].
1722 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly[; the
1723 offense is a class B misdemeanor; or].
1724 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal
1725 negligence[; the offense is a class C misdemeanor].
1726 ~~[(4) A person who commits child abandonment, or encourages or causes another to~~
1727 ~~commit child abandonment, or an enterprise that encourages, commands, or causes another to~~
1728 ~~commit child abandonment, is:]~~
1729 ~~[(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or]~~
1730 ~~[(b) guilty of a felony of the second degree, if, as a result of the child abandonment:]~~
1731 ~~[(i) the child suffers a serious physical injury; or]~~
1732 ~~[(ii) the person or enterprise receives, directly or indirectly, any benefit.]~~
1733 ~~[(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order~~
1734 ~~the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and~~
1735 ~~prosecuting the offense and the costs of securing any forfeiture provided for under Subsection~~
1736 ~~(5)(b).]~~

1737 ~~[(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to~~
1738 ~~criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.]~~

1739 ~~[(6)]~~ (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
1740 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1741 practices of an established church or religious denomination of which the parent or legal
1742 guardian is a member or adherent ~~[shall]~~ may not, for that reason alone, be considered to have
1743 committed an offense under this section.

1744 ~~[(7)]~~ (b) A parent or guardian of a child does not violate this section by selecting a
1745 treatment option for ~~[the]~~ a medical condition of the child, if the treatment option is one that a
1746 reasonable parent or guardian would believe to be in the best interest of the child.

1747 ~~[(8) A person]~~ (c) An actor is not guilty of an offense under this section for conduct
1748 that constitutes:

1749 ~~[(a)]~~ (i) reasonable discipline or management of a child, including withholding
1750 privileges;

1751 ~~[(b)]~~ (ii) conduct described in Section [76-2-401](#); or

1752 ~~[(c)]~~ (iii) the use of reasonable and necessary physical restraint or force on a child:

1753 ~~[(i)]~~ (A) in self-defense;

1754 ~~[(ii)]~~ (B) in defense of others;

1755 ~~[(iii)]~~ (C) to protect the child; or

1756 ~~[(iv)]~~ (D) to remove a weapon in the possession of a child for any of the reasons
1757 described in Subsections ~~[(8)(c)(i) through (iii)]~~ (4)(c)(iii)(A) through (C).

1758 Section 40. Section **76-5-109.2** is enacted to read:

1759 **76-5-109.2. Aggravated child abuse.**

1760 (1) (a) As used in this section:

1761 (i) "Child" means the same as that term is defined in Section [76-5-109](#).

1762 (ii) "Serious physical injury" means the same as that term is defined in Section
1763 [76-5-109](#).

1764 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

1765 (2) An actor commits aggravated child abuse if the actor:
1766 (a) inflicts upon a child serious physical injury; or
1767 (b) having the care or custody of such child, causes or permits another to inflict serious
1768 physical injury upon a child.

1769 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
1770 knowingly.

1771 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

1772 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal
1773 negligence.

1774 (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
1775 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1776 practices of an established church or religious denomination of which the parent or legal
1777 guardian is a member or adherent may not, for that reason alone, be considered to have
1778 committed an offense under this section.

1779 (b) A parent or guardian of a child does not violate this section by selecting a treatment
1780 option for the medical condition of the child, if the treatment option is one that a reasonable
1781 parent or guardian would believe to be in the best interest of the child.

1782 (c) An actor is not guilty of an offense under this section for conduct that constitutes:

1783 (i) conduct described in Section [76-2-401](#); or

1784 (ii) the use of reasonable and necessary physical restraint or force on a child:

1785 (A) in self-defense;

1786 (B) in defense of others;

1787 (C) to protect the child; or

1788 (D) to remove a weapon in the possession of a child for any of the reasons described in
1789 Subsections (4)(c)(ii)(A) through (C).

1790 Section 41. Section **76-5-109.3** is enacted to read:

1791 **76-5-109.3. Child abandonment.**

1792 (1) (a) As used in this section:

1793 (i) "Child" means the same as that term is defined in Section 76-5-109.
1794 (ii) "Enterprise" means the same as that term is defined in Section 76-10-1602.
1795 (iii) "Serious physical injury" means the same as that term is defined in Section
1796 76-5-109.
1797 (b) Terms defined in Section 76-1-101.5 apply to this section.
1798 (2) (a) Except as provided in Subsection (4), an actor commits child abandonment if
1799 the actor:
1800 (i) is a parent or legal guardian of a child, and:
1801 (A) intentionally ceases to maintain physical custody of the child;
1802 (B) intentionally fails to make reasonable arrangements for the safety, care, and
1803 physical custody of the child; and
1804 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
1805 (II) manifests an intent to permanently not resume physical custody of the child; or
1806 (III) for a period of at least 30 days, intentionally fails to resume physical custody of
1807 the child and fails to manifest a genuine intent to resume physical custody of the child; or
1808 (ii) encourages or causes the parent or legal guardian of a child to violate Subsection
1809 (2)(a)(i).
1810 (b) Except as provided in Subsection (4), an enterprise commits child abandonment if
1811 the enterprise encourages, commands, or causes another to violate Subsection (2)(a).
1812 (3) (a) (i) A violation of Subsection (2) is a third degree felony.
1813 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second
1814 degree felony if, as a result of the child abandonment:
1815 (A) the child suffers a serious physical injury; or
1816 (B) the actor or enterprise receives, directly or indirectly, any benefit.
1817 (b) (i) In addition to the penalty described in Subsection (3)(a)(ii), the court may order
1818 the actor or enterprise described in Subsection (3)(a)(ii)(B) to pay the costs of investigating and
1819 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection
1820 (3)(b)(ii).

1821 (ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is subject
 1822 to criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

1823 (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
 1824 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
 1825 practices of an established church or religious denomination of which the parent or legal
 1826 guardian is a member or adherent may not, for that reason alone, be considered to have
 1827 committed an offense under this section.

1828 (b) An actor is not guilty of an offense under this section for conduct that constitutes:

1829 (i) the safe relinquishment of a child pursuant to the provisions of Section [62A-4a-802](#);

1830 (ii) giving legal consent to a court order for termination of parental rights:

1831 (A) in a legal adoption proceeding; or

1832 (B) in a case in which a petition for the termination of parental rights, or the

1833 termination of a guardianship, has been filed;

1834 (iii) reasonable discipline or management of a child, including withholding privileges;

1835 or

1836 (iv) conduct described in Section [76-2-401](#).

1837 Section 42. Section **76-5-110** is amended to read:

1838 **76-5-110. Abuse or neglect of a child with a disability.**

1839 (1) (a) As used in this section:

1840 [(a)] (i) "Abuse" means:

1841 [(i)] (A) inflicting physical injury[, as that term is defined in Section [76-5-109](#)];

1842 [(ii)] (B) having the care or custody of a child with a disability, causing or permitting

1843 another to inflict physical injury[, as that term is defined in Section [76-5-109](#)]; or

1844 [(iii)] (C) unreasonable confinement.

1845 [(b)] (ii) "Caretaker" means:

1846 [(i)] (A) any parent, legal guardian, or other person having under that person's care and
 1847 custody a child with a disability; or

1848 [(ii)] (B) any person, corporation, or public institution that has assumed by contract or

1849 court order the responsibility to provide food, shelter, clothing, medical, and other necessities
1850 to a child with a disability.

1851 ~~[(c)]~~ (iii) "Child with a disability" means ~~[any person]~~ an individual under 18 years old
1852 who is impaired because of mental illness, mental deficiency, physical illness or disability, or
1853 other cause, to the extent that the ~~[person]~~ individual is unable to care for the ~~[person's]~~
1854 individual's own personal safety or to provide necessities such as food, shelter, clothing, and
1855 medical care.

1856 ~~[(d)]~~ (iv) "Neglect" means failure by a caretaker to provide care, nutrition, clothing,
1857 shelter, supervision, or medical care.

1858 (v) "Physical injury" means the same as that term is defined in Section 76-5-109.

1859 (b) Terms defined in Section 76-1-101.5 apply to this section.

1860 (2) ~~[Any caretaker who]~~ An actor commits abuse or neglect of a child with a disability
1861 if the actor is a caretaker and intentionally, knowingly, or recklessly abuses or neglects a child
1862 with a disability ~~[is guilty of a third degree felony].~~

1863 (3) A violation of Subsection (2) is a third degree felony.

1864 ~~[(3)]~~ (4) (a) A parent or legal guardian who provides a child with treatment by spiritual
1865 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1866 practices of an established church or religious denomination of which the parent or legal
1867 guardian is a member or adherent ~~[shall]~~ may not, for that reason alone, be considered to be in
1868 violation under this section.

1869 (b) Subject to Section 80-3-109, the exception under Subsection ~~[(3)]~~ (4)(a) does not
1870 preclude a court from ordering medical services from a physician licensed to engage in the
1871 practice of medicine to be provided to the child where there is substantial risk of harm to the
1872 child's health or welfare if the treatment is not provided.

1873 (c) A caretaker of a child with a disability does not violate this section by selecting a
1874 treatment option for a medical condition of a child with a disability, if the treatment option is
1875 one that a reasonable caretaker would believe to be in the best interest of the child with a
1876 disability.

1877 Section 43. Section **76-5-111** is amended to read:

1878 **76-5-111. Abuse of a vulnerable adult -- Penalties.**

1879 (1) (a) As used in this section:

1880 ~~[(a)]~~ (i) "Abandonment" means a knowing or intentional action or inaction, including
1881 desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable
1882 adult without the means or ability to obtain necessary food, clothing, shelter, or medical or
1883 other health care.

1884 ~~[(b)]~~ (ii) "Abuse" means:

1885 ~~[(i)]~~ (A) attempting to cause harm, intentionally or knowingly causing harm, or
1886 intentionally or knowingly placing another in fear of imminent harm;

1887 ~~[(ii)]~~ (B) causing physical injury by knowing or intentional acts or omissions;

1888 ~~[(iii)]~~ (C) unreasonable or inappropriate use of physical restraint, medication, or
1889 isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a
1890 physician's orders or used as an unauthorized substitute for treatment, unless that conduct
1891 furthers the health and safety of the vulnerable adult; or

1892 ~~[(iv)]~~ (D) deprivation of life-sustaining treatment, except:

1893 ~~[(A)]~~ (I) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

1894 ~~[(B)]~~ (II) when informed consent, as defined in this section, has been obtained.

1895 ~~[(c)]~~ "Business relationship" means a relationship between two or more individuals or
1896 entities where there exists an oral or written agreement for the exchange of goods or services.]

1897 ~~[(d)]~~ (iii) "Caretaker" means a person or public institution that is entrusted with or
1898 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
1899 supervision, medical or other health care, or other necessities for pecuniary gain, by contract, or
1900 as a result of friendship, or in a position of trust and confidence with a vulnerable adult,
1901 including a relative, a household member, an attorney-in-fact, a neighbor, a person who is
1902 employed or who provides volunteer work, a court-appointed or voluntary guardian, or a
1903 person who contracts or is under court order to provide care.

1904 ~~[(e)]~~ "Deception" means:

1905 [~~(i)~~ a misrepresentation or concealment;]

1906 [~~(A)~~ of a material fact relating to services rendered, disposition of property, or use of

1907 property intended to benefit a vulnerable adult;]

1908 [~~(B)~~ of the terms of a contract or agreement entered into with a vulnerable adult; or]

1909 [~~(C)~~ relating to the existing or preexisting condition of any property involved in a

1910 contract or agreement entered into with a vulnerable adult; or]

1911 [~~(ii)~~ the use or employment of any misrepresentation, false pretense, or false promise in

1912 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.]

1913 [~~(f)~~~~(i)~~ (iv) (A) "Dependent adult" means an individual 18 years old or older, who has

1914 a physical or mental impairment that restricts the individual's ability to carry out normal

1915 activities or to protect the individual's rights.

1916 [~~(i)~~ (B) "Dependent adult" includes an individual who has physical or developmental

1917 disabilities or whose physical or mental capacity has substantially diminished because of age.

1918 [~~(g)~~ (v) "Elder adult" means an individual 65 years old or older.

1919 [~~(h)~~ "Endeavor" means to attempt or try.]

1920 [~~(i)~~ (vi) "Exploitation" means an offense described in [~~Subsection (4) or (9) or~~

1921 ~~Section~~] Section 76-5-111.3, 76-5-111.4, or 76-5b-202.

1922 [~~(j)~~ (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or

1923 psychological damage, physical injury, suffering, or distress inflicted knowingly or

1924 intentionally.

1925 [~~(k)~~ (viii) "Informed consent" means:

1926 [~~(i)~~ (A) a written expression by the individual or authorized by the individual, stating

1927 that the individual fully understands the potential risks and benefits of the withdrawal of food,

1928 water, medication, medical services, shelter, cooling, heating, or other services necessary to

1929 maintain minimum physical or mental health, and that the individual desires that the services

1930 be withdrawn, except that a written expression is valid only if the individual is of sound mind

1931 when the consent is given, and the consent is witnessed by at least two individuals who do not

1932 benefit from the withdrawal of services; or

1933 [(ii)] (B) consent to withdraw food, water, medication, medical services, shelter,
1934 cooling, heating, or other services necessary to maintain minimum physical or mental health, as
1935 permitted by court order.

1936 [~~(f)~~] "~~Intimidation~~" means communication conveyed through verbal or nonverbal
1937 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
1938 interaction, supervision, health care, or companionship, or which threatens isolation or harm.]

1939 [~~(m)-(i)~~] (ix) (A) "Isolation" means knowingly or intentionally preventing a vulnerable
1940 adult from having contact with another person, unless the restriction of personal rights is
1941 authorized by court order, by:

1942 [~~(A)~~] (I) preventing the vulnerable adult from communicating, visiting, interacting, or
1943 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
1944 calls, contrary to the express wishes of the vulnerable adult, or communicating to a visitor that
1945 the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing
1946 that communication to be false;

1947 [~~(B)~~] (II) physically restraining the vulnerable adult in order to prevent the vulnerable
1948 adult from meeting with a visitor; or

1949 [~~(C)~~] (III) making false or misleading statements to the vulnerable adult in order to
1950 induce the vulnerable adult to refuse to receive communication from visitors or other family
1951 members.

1952 [(ii)] (B) "Isolation" does not include an act:

1953 [~~(A)~~] (I) intended in good faith to protect the physical or mental welfare of the
1954 vulnerable adult; or

1955 [~~(B)~~] (II) performed pursuant to the treatment plan or instructions of a physician or
1956 other professional advisor of the vulnerable adult.

1957 [~~(n)~~] "~~Lacks capacity to consent~~" means an impairment by reason of mental illness,
1958 developmental disability, organic brain disorder, physical illness or disability, chronic use of
1959 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
1960 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions

1961 concerning the adult's person or property.]

1962 [~~(e)~~] (x) "Neglect" means:

1963 [~~(i)~~] (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision,
1964 personal care, or dental or other health care, or failure to provide protection from health and
1965 safety hazards or maltreatment;

1966 [~~(ii)~~] (B) failure of a caretaker to provide care to a vulnerable adult in a timely manner
1967 and with the degree of care that a reasonable person in a like position would exercise;

1968 [~~(iii)~~] (C) a pattern of conduct by a caretaker, without the vulnerable adult's informed
1969 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1970 heating, or other services necessary to maintain the vulnerable adult's well being;

1971 [~~(iv)~~] (D) intentional failure by a caretaker to carry out a prescribed treatment plan that
1972 results or could result in physical injury or physical harm; or

1973 [~~(v)~~] (E) abandonment by a caretaker.

1974 [~~(p)~~ ~~(i)~~] (xi) (A) "Physical injury" includes damage to any bodily tissue caused by
1975 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
1976 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
1977 the tissue cannot be restored to a sound and healthy condition.

1978 [~~(ii)~~] (B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
1979 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
1980 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
1981 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
1982 serious physical injury as defined in this section.

1983 [~~(q)~~] (xii) "Position of trust and confidence" means the position of a person who:

1984 [~~(i)~~] (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;

1985 [~~(ii)~~] (B) is a joint tenant or tenant in common with a vulnerable adult;

1986 [~~(iii)~~] (C) has a legal or fiduciary relationship with a vulnerable adult, including a
1987 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

1988 [~~(iv)~~] (D) is a caretaker of a vulnerable adult.

1989 ~~[(r)]~~ (xiii) "Serious physical injury" means any physical injury or set of physical
1990 injuries that:

1991 ~~[(i)]~~ (A) seriously impairs a vulnerable adult's health;

1992 ~~[(ii)]~~ (B) was caused by use of a dangerous weapon [~~as defined in Section 76-1-601~~];

1993 ~~[(iii)]~~ (C) involves physical torture or causes serious emotional harm to a vulnerable
1994 adult; or

1995 ~~[(iv)]~~ (D) creates a reasonable risk of death.

1996 ~~[(s) "Undue influence" occurs when a person:]~~

1997 ~~[(i) uses influence to take advantage of a vulnerable adult's mental or physical~~
1998 ~~impairment; or]~~

1999 ~~[(ii) uses the person's role, relationship, or power:]~~

2000 ~~[(A) to exploit, or knowingly assist or cause another to exploit, the trust, dependency,~~
2001 ~~or fear of a vulnerable adult; or]~~

2002 ~~[(B) to gain control deceptively over the decision making of the vulnerable adult.]~~

2003 ~~[(t)]~~ (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a
2004 mental or physical impairment which substantially affects that individual's ability to:

2005 ~~[(i)]~~ (A) provide personal protection;

2006 ~~[(ii)]~~ (B) provide necessities such as food, shelter, clothing, or medical or other health
2007 care;

2008 ~~[(iii)]~~ (C) obtain services necessary for health, safety, or welfare;

2009 ~~[(iv)]~~ (D) carry out the activities of daily living;

2010 ~~[(v)]~~ (E) manage the adult's own resources; or

2011 ~~[(vi)]~~ (F) comprehend the nature and consequences of remaining in a situation of
2012 abuse, neglect, or exploitation.

2013 ~~[(2) Under any circumstances likely to produce death or serious physical injury, a~~
2014 ~~person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or;~~
2015 ~~having the care or custody of a vulnerable adult, causes or permits that adult's person or health~~
2016 ~~to be injured, or causes or permits a vulnerable adult to be placed in a situation where the~~

2017 ~~adult's person or health is endangered, is guilty of the offense of aggravated abuse of a~~
 2018 ~~vulnerable adult as follows:]~~

2019 ~~[(a) if done intentionally or knowingly, the offense is a second degree felony;]~~
 2020 ~~[(b) if done recklessly, the offense is third degree felony; and]~~
 2021 ~~[(c) if done with criminal negligence, the offense is a class A misdemeanor.]~~

2022 (b) Terms defined in Section 76-1-101.5 apply to this section.

2023 ~~[(3)(a) Under] (2) An actor, including a caretaker, commits abuse of a vulnerable~~
 2024 ~~adult if the actor, under~~ circumstances other than those likely to produce death or serious
 2025 physical injury~~[-, except as provided in Subsection (3)(b), any person, including a caretaker,~~
 2026 ~~who]:~~

2027 (a) causes a vulnerable adult to suffer harm, abuse, or neglect[-, or];
 2028 (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable
 2029 adult's person or health to be injured, abused, or neglected[-]; or

2030 (c) causes or permits a vulnerable adult to be placed in a situation [where the] in which
 2031 the vulnerable adult's person or health is endangered[-, is guilty of the offense of abuse of a
 2032 vulnerable adult as follows:].

2033 (3) (a) A violation of Subsection (2):

2034 (i) is a class A misdemeanor if done intentionally or knowingly[-, the offense is a class
 2035 A misdemeanor];

2036 (ii) is a class B misdemeanor if done recklessly[-, the offense is a class B misdemeanor;
 2037 and]; or

2038 (iii) is a class C misdemeanor if done with criminal negligence[-, the offense is a class
 2039 C misdemeanor].

2040 (b) [A] Notwithstanding Subsection (3)(a), a violation of [this Subsection (3)]
 2041 Subsection (2) that is based on isolation of a vulnerable adult is a third degree felony.

2042 ~~[(4) Except as provided in Subsection (5), a caretaker of a vulnerable adult commits the~~
 2043 ~~offense of personal dignity exploitation of the vulnerable adult if the caretaker intentionally,~~
 2044 ~~knowingly, or recklessly:]~~

2045 ~~[(a) creates, transmits, or displays a photographic or electronic image or recording of~~
2046 ~~the vulnerable adult:]~~
2047 ~~[(i) to which creation, transmission, or display a reasonable person would not consent;~~
2048 ~~and]~~
2049 ~~[(ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or~~
2050 ~~pubic area;]~~
2051 ~~[(B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,~~
2052 ~~genitals, or pubic area; or]~~
2053 ~~[(C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or~~
2054 ~~physical health or safety of the vulnerable adult; or]~~
2055 ~~[(b) causes the vulnerable adult to participate in an act that is highly offensive or~~
2056 ~~demeaning to the vulnerable adult:]~~
2057 ~~[(i) in which a reasonable person would not participate; or]~~
2058 ~~[(ii) that is harmful to the mental or physical health or safety of the vulnerable adult.]~~
2059 ~~[(5) (a) A caretaker does not violate Subsection (4)(a) if the caretaker creates,~~
2060 ~~transmits, or displays the photographic or electronic image or recording:]~~
2061 ~~[(i) with the consent of the vulnerable adult, if the vulnerable adult:]~~
2062 ~~[(A) is mentally and physically able to give voluntary consent to the creation,~~
2063 ~~transmission, or display; and]~~
2064 ~~[(B) gives voluntary consent for the creation, transmission, or display;]~~
2065 ~~[(ii) for a legitimate purpose relating to monitoring or providing care, treatment, or~~
2066 ~~diagnosis; or]~~
2067 ~~[(iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.]~~
2068 ~~[(b) A caretaker does not violate Subsection (4)(b) if:]~~
2069 ~~[(i) the vulnerable adult:]~~
2070 ~~[(A) is mentally and physically able to give voluntary consent to participate in the act;~~
2071 ~~and]~~
2072 ~~[(B) gives voluntary consent to participate in the act; or]~~

2073 ~~[(ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate~~
2074 ~~purpose relating to:]~~

2075 ~~[(A) monitoring or providing care, treatment, or diagnosis; or]~~

2076 ~~[(B) investigating abuse, neglect, or exploitation.]~~

2077 ~~[(6) (a) It is a separate offense under Subsection (4)(a) for each vulnerable adult~~
2078 ~~included in a photographic or electronic image or recording created, transmitted, or displayed~~
2079 ~~in violation of Subsection (4)(a).]~~

2080 ~~[(b) It is a separate offense under Subsection (4)(b) for each vulnerable adult caused to~~
2081 ~~participate in an act in violation of Subsection (4)(b).]~~

2082 ~~[(7) It is not a defense that the vulnerable adult was unaware of.]~~

2083 ~~[(a) the creation, transmission, or display prohibited under Subsection (4)(a); or]~~

2084 ~~[(b) participation in the act, or the nature of participation in the act, under Subsection~~
2085 ~~(4)(b).]~~

2086 ~~[(8) The offense of personal dignity exploitation of a vulnerable adult is:]~~

2087 ~~[(a) if done intentionally or knowingly, a class A misdemeanor; and]~~

2088 ~~[(b) if done recklessly, a class B misdemeanor.]~~

2089 ~~[(9) (a) A person commits the offense of financial exploitation of a vulnerable adult~~
2090 ~~when the person:]~~

2091 ~~[(i) is in a position of trust and confidence, or has a business relationship, with the~~
2092 ~~vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception~~
2093 ~~or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,~~
2094 ~~credit, assets, or other property with the intent to temporarily or permanently deprive the~~
2095 ~~vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of~~
2096 ~~someone other than the vulnerable adult;]~~

2097 ~~[(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and~~
2098 ~~obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or~~
2099 ~~endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to~~
2100 ~~temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the~~

2101 ~~vulnerable adult's property for the benefit of someone other than the vulnerable adult;]~~

2102 ~~[(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the~~
2103 ~~profit or advantage of someone other than the vulnerable adult;]~~

2104 ~~[(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship~~
2105 ~~for the profit or advantage of someone other than the vulnerable adult; or]~~

2106 ~~[(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or~~
2107 ~~furtherance of any criminal activity.]~~

2108 ~~[(b) A person is guilty of the offense of financial exploitation of a vulnerable adult as~~
2109 ~~follows:]~~

2110 ~~[(i) if done intentionally or knowingly and the aggregate value of the resources used or~~
2111 ~~the profit made is or exceeds \$5,000, the offense is a second degree felony;]~~

2112 ~~[(ii) if done intentionally or knowingly and the aggregate value of the resources used or~~
2113 ~~the profit made is less than \$5,000 or cannot be determined, the offense is a third degree~~
2114 ~~felony;]~~

2115 ~~[(iii) if done recklessly, the offense is a class A misdemeanor; or]~~

2116 ~~[(iv) if done with criminal negligence, the offense is a class B misdemeanor.]~~

2117 ~~[(10)]~~ (4) (a) It does not constitute a defense to a prosecution for ~~[any]~~ a violation of
2118 this section that the ~~[accused]~~ actor did not know the age of the ~~[victim]~~ vulnerable adult.

2119 ~~[(11)]~~ (b) An adult is not considered abused, neglected, or a vulnerable adult for the
2120 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
2121 lieu of medical care.

2122 ~~[(12)]~~ (5) If an ~~[individual]~~ actor, including a caretaker, violates this section by
2123 willfully isolating a vulnerable adult, in addition to the penalties under Subsection ~~[(2) or]~~ (3),
2124 the court may require that the ~~[individual]~~ actor:

2125 (a) undergo appropriate counseling as a condition of the sentence; and

2126 (b) pay for the costs of the ordered counseling.

2127 Section 44. Section 76-5-111.2 is enacted to read:

2128 **76-5-111.2. Aggravated abuse of a vulnerable adult -- Penalties.**

2129 (1) (a) As used in this section, "abuse," "caretaker," "isolation," "neglect," "serious
2130 physical injury," and "vulnerable adult" all mean the same as those terms are defined in Section
2131 76-5-111.

2132 (b) Terms defined in Section 76-1-101.5 apply to this section.

2133 (2) An actor, including a caretaker, commits aggravated abuse of a vulnerable adult if
2134 the actor, under a circumstance likely to produce death or serious physical injury:

2135 (a) causes a vulnerable adult to suffer serious physical injury;

2136 (b) having the care or custody of a vulnerable adult, causes or permits the vulnerable
2137 adult's person or health to be injured; or

2138 (c) causes or permits a vulnerable adult to be placed in a situation in which the
2139 vulnerable adult's person or health is endangered.

2140 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or
2141 knowingly.

2142 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

2143 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal
2144 negligence.

2145 (4) (a) It does not constitute a defense to a prosecution for a violation of this section
2146 that the actor did not know the age of the vulnerable adult.

2147 (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason
2148 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
2149 medical care.

2150 (5) If an actor, including a caretaker, violates this section by willfully isolating a
2151 vulnerable adult, in addition to the penalties under Subsection (3), the court may require that
2152 the actor:

2153 (a) undergo appropriate counseling as a condition of the sentence; and

2154 (b) pay for the costs of the ordered counseling.

2155 Section 45. Section **76-5-111.3** is enacted to read:

2156 **76-5-111.3. Personal dignity exploitation of a vulnerable adult -- Penalties.**

2157 (1) (a) As used in this section, "abuse," "caretaker," "exploitation," "neglect," and
2158 "vulnerable adult" all mean the same as those terms are defined in Section 76-5-111.
2159 (b) Terms defined in Section 76-1-101.5 apply to this section.
2160 (2) Except as provided in Subsection (4), an actor commits personal dignity
2161 exploitation of a vulnerable adult if the actor is a caretaker of a vulnerable adult and
2162 intentionally, knowingly, or recklessly:
2163 (a) creates, transmits, or displays a photographic or electronic image or recording of the
2164 vulnerable adult:
2165 (i) to which creation, transmission, or display a reasonable person would not consent;
2166 and
2167 (ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or
2168 pubic area;
2169 (B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,
2170 genitals, or pubic area; or
2171 (C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or
2172 physical health or safety of the vulnerable adult; or
2173 (b) causes the vulnerable adult to participate in an act that is highly offensive or
2174 demeaning to the vulnerable adult:
2175 (i) in which a reasonable person would not participate; or
2176 (ii) that is harmful to the mental or physical health or safety of the vulnerable adult.
2177 (3) (a) (i) A violation of Subsection (2) is a class A misdemeanor if done intentionally
2178 or knowingly.
2179 (ii) A violation of Subsection (2) is a class B misdemeanor if done recklessly.
2180 (b) (i) It is a separate offense under Subsection (2)(a) for each vulnerable adult
2181 included in a photographic or electronic image or recording created, transmitted, or displayed
2182 in violation of Subsection (2)(a).
2183 (ii) It is a separate offense under Subsection (2)(b) for each vulnerable adult caused to
2184 participate in an act in violation of Subsection (2)(b).

2185 (4) (a) A caretaker does not violate Subsection (2)(a) if the caretaker creates, transmits,
2186 or displays the photographic or electronic image or recording:

2187 (i) with the consent of the vulnerable adult, if the vulnerable adult:

2188 (A) is mentally and physically able to give voluntary consent to the creation,
2189 transmission, or display; and

2190 (B) gives voluntary consent for the creation, transmission, or display;

2191 (ii) for a legitimate purpose relating to monitoring or providing care, treatment, or
2192 diagnosis; or

2193 (iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.

2194 (b) A caretaker does not violate Subsection (2)(b) if:

2195 (i) the vulnerable adult:

2196 (A) is mentally and physically able to give voluntary consent to participate in the act;
2197 and

2198 (B) gives voluntary consent to participate in the act; or

2199 (ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate
2200 purpose relating to:

2201 (A) monitoring or providing care, treatment, or diagnosis; or

2202 (B) investigating abuse, neglect, or exploitation.

2203 (5) (a) It is not a defense that the vulnerable adult was unaware of:

2204 (i) the creation, transmission, or display prohibited under Subsection (2)(a); or

2205 (ii) participation in the act, or the nature of participation in the act, under Subsection
2206 (2)(b).

2207 (b) It does not constitute a defense to a prosecution for a violation of this section that
2208 the actor did not know the age of the vulnerable adult.

2209 Section 46. Section **76-5-111.4** is enacted to read:

2210 **76-5-111.4. Financial exploitation of a vulnerable adult -- Penalties.**

2211 (1) (a) As used in this section:

2212 (i) "Abuse" means the same as that term is defined in Section [76-5-111](#).

2213 (ii) "Business relationship" means a relationship between two or more individuals or
2214 entities where there exists an oral or written agreement for the exchange of goods or services.

2215 (iii) "Deception" means:

2216 (A) a misrepresentation or concealment:

2217 (I) of a material fact relating to services rendered, disposition of property, or use of
2218 property intended to benefit a vulnerable adult;

2219 (II) of the terms of a contract or agreement entered into with a vulnerable adult; or

2220 (III) relating to the existing or preexisting condition of any property involved in a
2221 contract or agreement entered into with a vulnerable adult; or

2222 (B) the use or employment of any misrepresentation, false pretense, or false promise in
2223 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

2224 (iv) "Endeavor" means to attempt or try.

2225 (v) "Intimidation" means communication conveyed through verbal or nonverbal
2226 conduct that threatens deprivation of money, food, clothing, medicine, shelter, social
2227 interaction, supervision, health care, or companionship, or that threatens isolation or harm.

2228 (vi) "Isolation" means the same as that term is defined in Section [76-5-111](#).

2229 (vii) "Lacks capacity to consent" means an impairment by reason of mental illness,
2230 developmental disability, organic brain disorder, physical illness or disability, chronic use of
2231 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
2232 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
2233 concerning the vulnerable adult's person or property.

2234 (viii) "Neglect" means the same as that term is defined in Section [76-5-111](#).

2235 (ix) "Undue influence" occurs when a person:

2236 (A) uses influence to take advantage of a vulnerable adult's mental or physical
2237 impairment; or

2238 (B) uses the person's role, relationship, or power:

2239 (I) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
2240 fear of a vulnerable adult; or

2241 (II) to gain control deceptively over the decision making of the vulnerable adult.

2242 (x) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

2243 (b) Terms defined in Section 76-1-101.5 apply to this section.

2244 (2) An actor commits the offense of financial exploitation of a vulnerable adult if the

2245 actor:

2246 (a) is in a position of trust and confidence, or has a business relationship, with the

2247 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception

2248 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,

2249 credit, assets, or other property with the intent to temporarily or permanently deprive the

2250 vulnerable adult of the use, benefit, or possession of the vulnerable adult's property, for the

2251 benefit of someone other than the vulnerable adult;

2252 (b) knows or should know that the vulnerable adult lacks the capacity to consent, and

2253 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or

2254 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to

2255 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the

2256 vulnerable adult's property for the benefit of someone other than the vulnerable adult;

2257 (c) unjustly or improperly uses or manages the resources of a vulnerable adult for the

2258 profit or advantage of someone other than the vulnerable adult;

2259 (d) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship

2260 for the profit or advantage of someone other than the vulnerable adult; or

2261 (e) involves a vulnerable adult who lacks the capacity to consent in the facilitation or

2262 furtherance of any criminal activity.

2263 (3) (a) A violation of Subsection (2) is a second degree felony if done intentionally or

2264 knowingly and the aggregate value of the resources used or the profit made is or exceeds

2265 \$5,000.

2266 (b) A violation of Subsection (2) is a third degree felony if done intentionally or

2267 knowingly and the aggregate value of the resources used or the profit made is less than \$5,000

2268 or cannot be determined.

2269 (c) A violation of Subsection (2) is a class A misdemeanor if done recklessly.

2270 (d) A violation of Subsection (2) is a class B misdemeanor if done with criminal
2271 negligence.

2272 (4) It does not constitute a defense to a prosecution for a violation of this section that
2273 the actor did not know the age of the vulnerable adult.

2274 Section 47. Section **76-5-112** is amended to read:

2275 **76-5-112. Reckless endangerment -- Penalty.**

2276 (1) Terms defined in Section 76-1-101.5 apply to this section.

2277 [~~(1) A person~~] (2) An actor commits reckless endangerment if, under circumstances
2278 not amounting to a felony offense, the [~~person~~] actor recklessly engages in conduct that creates
2279 a substantial risk of death or serious bodily injury to another [~~person~~] individual.

2280 [~~(2) Reckless endangerment~~] (3) A violation of Subsection (2) is a class A
2281 misdemeanor.

2282 Section 48. Section **76-5-112.5** is amended to read:

2283 **76-5-112.5. Endangerment of a child or vulnerable adult.**

2284 (1) (a) As used in this section:

2285 [~~(a)(i)~~] (i) (A) "Chemical substance" means:

2286 [~~(A)~~] (I) a substance intended to be used as a precursor in the manufacture of a
2287 controlled substance;

2288 [~~(B)~~] (II) a substance intended to be used in the manufacture of a controlled substance;

2289 or

2290 [~~(C)~~] (III) any fumes or by-product resulting from the manufacture of a controlled
2291 substance.

2292 [~~(ii)~~] (B) Intent under this Subsection (1)(a)(i) may be demonstrated by:

2293 [~~(A)~~] (I) the use, quantity, or manner of storage of the substance; or

2294 [~~(B)~~] (II) the proximity of the substance to other precursors or to manufacturing
2295 equipment.

2296 [~~(b)~~] (ii) "Child" means an individual who is under 18 years [~~of age~~] old.

2297 ~~[(e)]~~ (iii) "Controlled substance" means the same as that term is defined in Section
 2298 [58-37-2](#).

2299 ~~[(d)]~~ (iv) "Drug paraphernalia" means the same as that term is defined in Section
 2300 [58-37a-3](#).

2301 ~~[(e)]~~ (v) "Exposed to" means that the child or vulnerable adult:
 2302 ~~[(i)]~~ (A) is able to access an unlawfully possessed:
 2303 ~~[(A)]~~ (I) controlled substance; or
 2304 ~~[(B)]~~ (II) chemical substance;
 2305 ~~[(ii)]~~ (B) has the reasonable capacity to access drug paraphernalia; or
 2306 ~~[(iii)]~~ (C) is able to smell an odor produced during, or as a result of, the manufacture or
 2307 production of a controlled substance.

2308 ~~[(f)]~~ (vi) "Prescription" means the same as that term is defined in Section [58-37-2](#).

2309 ~~[(g)]~~ (vii) "Vulnerable adult" means the same as that term is defined in [~~Subsection~~
 2310 ~~76-5-111(1)]~~ Section [76-5-111](#).

2311 ~~[(2) Unless a greater penalty is otherwise provided by law:]~~
 2312 ~~[(a) except as provided in Subsections (2)(b), (c), and (3), an individual is guilty of a~~
 2313 ~~felony of the third degree if the individual]~~

2314 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

2315 (2) An actor commits endangerment of a child or vulnerable adult if the actor
 2316 knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to,
 2317 inhale, ingest, or have contact with a controlled substance, chemical substance, or drug
 2318 paraphernalia[;].

2319 ~~[(b) except as provided in Subsection (2)(c) and (3), an individual is guilty of a felony~~
 2320 ~~of the second degree, if:]~~

2321 (3) (a) A violation of Subsection (2) is a third degree felony.

2322 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree
 2323 felony if:

2324 (i) the [~~individual]~~ actor engages in the conduct described in Subsection (2)[~~(a)~~]; and

2325 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
 2326 vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury~~[-or]~~.
 2327 ~~[(c) an individual is guilty of a felony of the first degree, if:]~~

2328 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a first
 2329 degree felony if:

2330 (i) the ~~[individual]~~ actor engages in the conduct described in Subsection (2)~~[(a)]~~; and

2331 (ii) as a result of the conduct described in Subsection (2)~~[(a)]~~, the child or the
 2332 vulnerable adult dies.

2333 ~~[(3)]~~ (4) (a) Notwithstanding Subsection ~~[(2)]~~ (3), a child may not be subjected to
 2334 delinquency proceedings for a violation of Subsection (2) unless:

2335 ~~[(a)]~~ (i) the child is 15 years old or older; and

2336 ~~[(b)]~~ (ii) the other child who is exposed to or inhales, ingests, or has contact with the
 2337 controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.

2338 ~~[(4)]~~ (b) It is an affirmative defense to a violation of this section that the controlled
 2339 substance:

2340 ~~[(a)]~~ (i) was obtained by lawful prescription or in accordance with Title 26, Chapter
 2341 61a, Utah Medical Cannabis Act; and

2342 ~~[(b)]~~ (ii) is used or possessed by the individual to whom the controlled substance was
 2343 lawfully prescribed or recommended to under Title 26, Chapter 61a, Utah Medical Cannabis
 2344 Act.

2345 (5) The penalties described in this section are separate from, and in addition to, the
 2346 penalties and enhancements described in Title 58, Occupations and Professions.

2347 (6) If an offense committed under this section amounts to an offense subject to a
 2348 greater penalty under another provision of state law, this section does not prohibit prosecution
 2349 and sentencing for the more serious offense.

2350 Section 49. Section **76-5-113** is amended to read:

2351 **76-5-113. Surreptitious administration of certain substances -- Definitions --**
 2352 **Penalties -- Defenses.**

2353 (1) (a) As used in this section:
2354 [(a)] (i) "Administer" means the introduction of a substance into the body by injection,
2355 inhalation, ingestion, or by any other means.
2356 [(b)] (ii) "Alcoholic beverage" [~~has the same meaning as "alcoholic beverage"~~] means
2357 the same as that term is defined in Section 32B-1-102.
2358 [(c)] "~~Bodily injury~~" ~~has the same definition as in Section 76-1-601.~~
2359 [(d)] (iii) "Controlled substance" [~~has the same definition as~~] means the same as that
2360 term is defined in Section 58-37-2.
2361 [(e)] (iv) "Deleterious substance" means a substance which, if administered, would
2362 likely cause bodily injury.
2363 (v) "Health care provider" means the same as that term is defined in Section 26-23a-1.
2364 [(f)] (vi) "Poisonous" means a substance which, if administered, would likely cause
2365 serious bodily injury or death.
2366 [(g)] (vii) "Prescription drug" [~~has the same definition as~~] means the same as that term
2367 is defined in Section 58-17b-102.
2368 [(h)] (viii) "Serious bodily injury" [~~has the same definition as~~] means the same as that
2369 term is defined in Section 19-2-115.
2370 [(i)] (ix) "Substance" means a controlled substance, poisonous substance, or
2371 deleterious substance [~~as defined in this Subsection (1)~~].
2372 (b) Terms defined in Section 76-1-101.5 apply to this section.
2373 (2) [~~In addition to any other offense the actor's conduct may constitute, it is a criminal~~
2374 ~~offense for a person~~] An actor commits surreptitious administration of a certain substance if the
2375 actor, surreptitiously or by means of fraud, deception, or misrepresentation, [to cause another
2376 person] causes an individual to unknowingly consume or receive the administration of:
2377 (a) any poisonous, deleterious, or controlled substance; or
2378 (b) any alcoholic beverage.
2379 (3) A violation of Subsection (2) is:
2380 (a) a second degree felony if the substance is a poisonous substance, regardless of

2381 whether the substance is a controlled substance or a prescription drug;

2382 (b) a third degree felony if the substance is not within the scope of Subsection (3)(a),
2383 and is a controlled substance or a prescription drug; ~~and~~ or

2384 (c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic
2385 beverage.

2386 (4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

2387 (i) provided the appropriate administration of a prescription drug; and

2388 (ii) acted on the reasonable belief that the actor's conduct was in the best interest of the
2389 well-being of the ~~[person]~~ individual to whom the prescription drug was administered.

2390 (b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing
2391 of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days
2392 before the trial.

2393 (ii) The notice shall specifically identify the factual basis for the defense and the names
2394 and addresses of the witnesses the defendant proposes to examine to establish the defense.

2395 (c) (i) The prosecuting attorney shall file and serve the defendant with a notice
2396 containing the names and addresses of the witnesses the prosecutor proposes to examine in
2397 order to contradict or rebut the defendant's claim of an affirmative defense under Subsection
2398 (4)(a).

2399 (ii) This notice shall be filed or served not more than 10 days after receipt of the
2400 defendant's notice under Subsection (4)(b), or at another time as the court may direct.

2401 (d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c)
2402 entitles the opposing party to a continuance to allow for preparation.

2403 (ii) If the court finds that a party's failure to comply is the result of bad faith, it may
2404 impose appropriate sanctions.

2405 (5) (a) This section does not diminish the scope of authorized health care by a health
2406 care provider ~~[as defined in Section 26-23a-1]~~.

2407 (b) Conduct in violation of Subsection (2) may also constitute a separate offense.

2408 Section 50. Section **76-5-114**, which is renumbered from Section 76-5-109.1 is

2409 renumbered and amended to read:

2410 ~~[76-5-109.1].~~ 76-5-114. Commission of domestic violence in the presence of
2411 a child.

2412 (1) (a) As used in this section:

2413 ~~[(a)]~~ (i) "Cohabitant" ~~[has the same meaning as]~~ means the same as that term is defined
2414 in Section 78B-7-102.

2415 (ii) "Criminal homicide offense" means an offense listed in Subsection 76-5-201(2).

2416 ~~[(b)]~~ (iii) "Domestic violence" ~~[has the same meaning as]~~ means the same as that term
2417 is defined in Section 77-36-1.

2418 ~~[(c)]~~ (iv) "In the presence of a child" means:

2419 ~~[(i)]~~ (A) in the physical presence of a child; or

2420 ~~[(ii)]~~ (B) having knowledge that a child is present and may see or hear an act of
2421 domestic violence.

2422 (b) Terms defined in Section 76-1-101.5 apply to this section.

2423 (2) ~~[A person]~~ An actor commits domestic violence in the presence of a child if the
2424 ~~[person]~~ actor:

2425 (a) commits or attempts to commit a criminal homicide~~[, as defined in Section~~
2426 76-5-201;] offense against a cohabitant in the presence of a child; ~~[or]~~

2427 (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous
2428 weapon~~[, as defined in Section 76-1-601;]~~ or other means or force likely to produce death or
2429 serious bodily injury against a cohabitant, in the presence of a child; or

2430 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b),
2431 commits an act of domestic violence in the presence of a child.

2432 (3) (a) ~~[A person who violates]~~ A violation of Subsection (2)(a) or (b) is ~~[guilty of]~~ a
2433 third degree felony.

2434 (b) ~~[A person who violates]~~ A violation of Subsection (2)(c) is ~~[guilty of]~~ a class B
2435 misdemeanor.

2436 (4) (a) A charge under this section is separate and distinct from, and is in addition to, a

2437 charge of domestic violence [~~where~~] in which the victim is the cohabitant.

2438 (b) Either or both charges may be filed by the prosecutor.

2439 (5) [~~A person~~] An actor who commits a violation of this section when more than one
2440 child is present is guilty of one offense of domestic violence in the presence of a child
2441 regarding each child present when the violation occurred.

2442 Section 51. Section **76-5-201** is amended to read:

2443 **76-5-201. Criminal homicide -- Designations of offenses -- Exceptions --**

2444 **Application of consensual altercation defense.**

2445 [~~(1)(a) Except as provided in Subsections (3) and (4), a person commits criminal~~
2446 ~~homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting~~
2447 ~~with a mental state otherwise specified in the statute defining the offense, causes the death of~~
2448 ~~another human being, including an unborn child at any stage of its development.]~~

2449 [~~(b) There shall be no cause of action for criminal homicide for the death of an unborn~~
2450 ~~child caused by an abortion, as defined in Section [76-7-301](#).]~~

2451 [~~(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse~~
2452 ~~homicide, homicide by assault, negligent homicide, or automobile homicide.]~~

2453 (1) (a) As used in this section:

2454 (i) "Abortion" means the same as that term is defined in Section [76-7-301](#).

2455 (ii) "Criminal homicide" means an act causing the death of another human being,
2456 including an unborn child at any stage of the unborn child's development.

2457 (b) The terms defined in Section [76-1-101.5](#) apply to this section.

2458 (2) The following are criminal homicide:

2459 (a) aggravated murder;

2460 (b) murder;

2461 (c) manslaughter;

2462 (d) child abuse homicide;

2463 (e) homicide by assault;

2464 (f) negligent homicide; and

2465 (g) automobile homicide.

2466 ~~[(3) A person]~~ (3) Notwithstanding Subsection (2), an actor is not guilty of criminal

2467 homicide [of an unborn child if] if:

2468 (a) the death of an unborn child is caused by an abortion;

2469 (b) the sole reason for the death of [the] an unborn child is that the [person] actor:

2470 ~~[(a)]~~ (i) refused to consent to:

2471 ~~[(i)]~~ (A) medical treatment; or

2472 ~~[(ii)]~~ (B) a cesarean section; or

2473 ~~[(b)]~~ (ii) failed to follow medical advice[-]; or

2474 ~~[(4) A woman is not guilty of criminal homicide of her own unborn child if the death~~

2475 ~~of her unborn child:]~~

2476 (c) a woman causes the death of her own unborn child, and the death:

2477 ~~[(a)]~~ (i) is caused by a criminally negligent act or reckless act of the woman; and

2478 ~~[(b)]~~ (ii) is not caused by an intentional or knowing act of the woman.

2479 (4) The provisions governing a defense of a consensual altercation as described in

2480 Section [76-5-104](#) apply to this part.

2481 Section 52. Section **76-5-202** is amended to read:

2482 **76-5-202. Aggravated murder -- Penalties -- Affirmative defense and special**

2483 **mitigation -- Separate offense.**

2484 ~~[(1) Criminal homicide constitutes aggravated murder if the actor intentionally or~~

2485 ~~knowingly causes the death of another under any of the following circumstances:]~~

2486 ~~[(a) the homicide was committed by a person who is]~~

2487 (1) (a) As used in this section:

2488 (i) "Correctional officer" means the same as that term is defined in Section [53-13-104](#).

2489 (ii) "Emergency responder" means the same as that term is defined in Section

2490 [53-2b-102](#).

2491 (iii) "Federal officer" means the same as that term is defined in Section [53-13-106](#).

2492 (iv) "Law enforcement officer" means the same as that term is defined in Section

2493 [53-13-103.](#)

2494 (v) "Peace officer" means:

2495 (A) a correctional officer, federal officer, law enforcement officer, or special function
2496 officer; or

2497 (B) any other person who may exercise peace officer authority in accordance with Title
2498 53, Chapter 13, Peace Officer Classifications.

2499 (vi) "Special function officer" means the same as that term is defined in Section
2500 [53-13-105.](#)

2501 (vii) "Target a law enforcement officer" means an act:

2502 (A) involving the unlawful use of force and violence against a law enforcement officer;

2503 (B) that causes serious bodily injury or death; and

2504 (C) that is in furtherance of political or social objectives in order to intimidate or
2505 coerce a civilian population or to influence or affect the conduct of a government or a unit of
2506 government.

2507 (viii) "Weapon of mass destruction" means the same as that term is defined in Section
2508 [76-10-401.](#)

2509 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

2510 (2) (a) An actor commits aggravated murder if the actor intentionally or knowingly
2511 causes the death of another individual under any of the following circumstances:

2512 (i) the actor committed homicide while confined in a jail or other correctional
2513 institution;

2514 [~~(b) the homicide was committed~~] (ii) (A) the actor committed homicide incident to
2515 one act, scheme, course of conduct, or criminal episode during which two or more [persons]
2516 individuals other than the actor were killed[, or during which the actor attempted to kill one or
2517 more persons in addition to the victim who was killed]; or

2518 (B) the actor, during commission of the homicide, attempted to kill one or more other
2519 individuals in addition to the deceased individual;

2520 [~~(c)~~] (iii) the actor knowingly created a great risk of death to [a person] another

2521 individual other than the [~~victim~~] deceased individual and the actor;

2522 [(d)] (iv) the actor committed homicide [~~was committed~~] incident to an act, scheme,
2523 course of conduct, or criminal episode during which the actor committed or attempted to
2524 commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child,
2525 forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child,
2526 aggravated sexual abuse of a child, aggravated child abuse as [~~defined~~] described in Subsection
2527 [~~76-5-109(2)(a)~~] 76-5-109.2(3)(a), or aggravated sexual assault, aggravated arson, arson,
2528 aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

2529 [(e)] (v) the actor committed homicide [~~was committed~~] incident to one act, scheme,
2530 course of conduct, or criminal episode during which the actor committed the crime of abuse or
2531 desecration of a dead human body as [~~defined~~] described in Subsection 76-9-704(2)(e);

2532 [(f)] (vi) the actor committed homicide [~~was committed~~] for the purpose of avoiding or
2533 preventing an arrest of the [~~defendant~~] actor or another individual by a peace officer acting
2534 under color of legal authority or for the purpose of effecting the [~~defendant's or another's~~]
2535 actor's or another individual's escape from lawful custody;

2536 [(g)] (vii) the actor committed homicide [~~was committed~~] for pecuniary gain;

2537 [(h)] (viii) the [~~defendant~~] actor committed, [~~or~~] engaged, or employed another person
2538 to commit the homicide [~~pursuant~~] subject to an agreement or contract for remuneration or the
2539 promise of remuneration for commission of the homicide;

2540 [(i)] (ix) the actor previously committed or was convicted of:

2541 [(i)] (A) aggravated murder under this section;

2542 [(ii)] (B) attempted aggravated murder under this section;

2543 [(iii)] (C) murder, under Section 76-5-203;

2544 [(iv)] (D) attempted murder, under Section 76-5-203; or

2545 [(v)] (E) an offense committed in another jurisdiction which if committed in this state
2546 would be a violation of a crime listed in this Subsection [(1)(i)] (2)(a)(ix);

2547 [(j)] (x) the actor was previously convicted of:

2548 [(i)] (A) aggravated assault, [~~Subsection 76-5-103(2)~~] under Section 76-5-103;

- 2549 [(ii)] (B) mayhem, under Section 76-5-105;
- 2550 [(iii)] (C) kidnapping, under Section 76-5-301;
- 2551 [(iv)] (D) child kidnapping, under Section 76-5-301.1;
- 2552 [(v)] (E) aggravated kidnapping, under Section 76-5-302;
- 2553 [(vi)] (F) rape, under Section 76-5-402;
- 2554 [(vii)] (G) rape of a child, under Section 76-5-402.1;
- 2555 [(viii)] (H) object rape, under Section 76-5-402.2;
- 2556 [(ix)] (I) object rape of a child, under Section 76-5-402.3;
- 2557 [(x)] (J) forcible sodomy, under Section 76-5-403;
- 2558 [(xi)] (K) sodomy on a child, under Section 76-5-403.1;
- 2559 [(xii)] (L) aggravated sexual abuse of a child, under Section ~~[76-5-404.1]~~ 76-5-404.3;
- 2560 [(xiii)] (M) aggravated sexual assault, under Section 76-5-405;
- 2561 [(xiv)] (N) aggravated arson, under Section 76-6-103;
- 2562 [(xv)] (O) aggravated burglary, under Section 76-6-203;
- 2563 [(xvi)] (P) aggravated robbery, under Section 76-6-302;
- 2564 [(xvii)] (Q) felony discharge of a firearm, under Section 76-10-508.1; or
- 2565 [(xviii)] (R) an offense committed in another jurisdiction which if committed in this
- 2566 state would be a violation of a crime listed in this Subsection ~~[(+)(j)]~~ (2)(a)(x);
- 2567 ~~[(k)]~~ (xi) the actor committed homicide ~~[was committed]~~ for the purpose of:
- 2568 [(i)] (A) preventing a witness from testifying;
- 2569 [(ii)] (B) preventing a person from providing evidence or participating in any legal
- 2570 proceedings or official investigation;
- 2571 [(iii)] (C) retaliating against a person for testifying, providing evidence, or participating
- 2572 in any legal proceedings or official investigation; or
- 2573 [(iv)] (D) disrupting or hindering any lawful governmental function or enforcement of
- 2574 laws;
- 2575 ~~[(+)]~~ (xii) the ~~[victim is or has been]~~ deceased individual was a local, state, or federal
- 2576 public official, or a candidate for public office, and the homicide is based on, is caused by, or is

2577 related to that official position, act, capacity, or candidacy;

2578 ~~[(m)]~~ (xiii) the ~~[victim is]~~ deceased individual was on duty in a verified position or the
2579 homicide is based on, is caused by, or is related to the ~~[victim's]~~ deceased individual's position,
2580 and the actor knew, or reasonably should have known, that the ~~[victim]~~ deceased individual
2581 holds or has held the position of:

2582 ~~[(i) a law enforcement officer, correctional officer, special function officer, or any~~
2583 ~~other peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;]~~

2584 (A) a peace officer;

2585 ~~[(ii)]~~ (B) an executive officer, prosecuting officer, jailer, or prison official;

2586 ~~[(iii)]~~ (C) a firefighter, search and rescue personnel, emergency medical personnel,
2587 ambulance personnel, or any other emergency responder ~~[as defined in Section 53-2b-102];~~

2588 ~~[(iv)]~~ (D) a judge or other court official, juror, probation officer, or parole officer; or

2589 ~~[(v)]~~ (E) a security officer contracted to secure, guard, or otherwise protect tangible
2590 personal property, real property, or the life and well-being of human or animal life in the area
2591 of the offense;

2592 ~~[(n)]~~ (xiv) the actor committed homicide ~~[was committed]~~:

2593 ~~[(i)]~~ (A) by means of a destructive device, bomb, explosive, incendiary device, or
2594 similar device which was planted, hidden, or concealed in any place, area, dwelling, building,
2595 or structure, or was mailed or delivered;

2596 ~~[(ii)]~~ (B) by means of any weapon of mass destruction ~~[as defined in Section~~
2597 ~~76-10-401];~~ or

2598 ~~[(iii)]~~ (C) to target a law enforcement officer ~~[as defined in Section 76-5-210];~~

2599 ~~[(o)]~~ (xv) the actor committed homicide ~~[was committed]~~ during the act of unlawfully
2600 assuming control of ~~[any]~~ an aircraft, train, or other public conveyance by use of threats or
2601 force with intent to:

2602 (A) obtain any valuable consideration for the release of the public conveyance or any
2603 passenger, crew member, or any other person aboard~~[-or to];~~

2604 (B) direct the route or movement of the public conveyance; or

2605 (C) otherwise exert control over the public conveyance;

2606 [(p)] (xvi) the actor committed homicide [~~was committed~~] by means of the

2607 administration of a poison or of any lethal substance or of any substance administered in a

2608 lethal amount, dosage, or quantity;

2609 [(q)] (xvii) the [~~victim~~] deceased individual was [~~a person~~] held or otherwise detained

2610 as a shield, hostage, or for ransom;

2611 [(r)] (xviii) the actor committed homicide [~~was committed~~] in an especially heinous,

2612 atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by

2613 physical torture, serious physical abuse, or serious bodily injury of the [~~victim~~] deceased

2614 individual before death;

2615 [(s)] (xix) the actor dismembers, mutilates, or disfigures the [~~victim's~~] deceased

2616 individual's body, whether before or after death, in a manner demonstrating the actor's

2617 depravity of mind; or

2618 [(t)] (xx) the [~~victim~~] deceased individual, at the time of the death of the [~~victim~~]

2619 deceased individual:

2620 [(i)] (A) was younger than 14 years [~~of age~~] old; and

2621 [(ii)] (B) was not an unborn child.

2622 [(2) ~~Criminal homicide constitutes aggravated murder if the~~]

2623 (b) An actor commits aggravated murder if the actor, with reckless indifference to

2624 human life, causes the death of another individual incident to an act, scheme, course of

2625 conduct, or criminal episode during which the actor is a major participant in the commission or

2626 attempted commission of:

2627 [(a)] (i) aggravated child abuse, punishable as a felony of the second degree under

2628 Subsection [~~76-5-109(2)(a)~~] 76-5-109.2(3)(a);

2629 [(b)] (ii) child kidnapping, under Section 76-5-301.1;

2630 [(c)] (iii) rape of a child, under Section 76-5-402.1;

2631 [(d)] (iv) object rape of a child, under Section 76-5-402.3;

2632 [(e)] (v) sodomy on a child, under Section 76-5-403.1; or

2633 ~~[(f)]~~ (vi) sexual abuse or aggravated sexual abuse of a child, under Section 76-5-404.1.

2634 (3) (a) If a notice of intent to seek the death penalty has been filed, ~~[aggravated murder]~~
2635 a violation of Subsection (2) is a capital felony.

2636 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
2637 is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

2638 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
2639 of intent to seek the death penalty.

2640 (ii) The notice shall be served on the defendant or defense counsel and filed with the
2641 court.

2642 ~~[(f)]~~ (iii) Notice of intent to seek the death penalty may be served and filed more than
2643 60 days after the arraignment upon written stipulation of the parties or upon a finding by the
2644 court of good cause.

2645 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
2646 noncapital first degree felony aggravated murder during the period in which the prosecutor may
2647 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

2648 (e) If the defendant was younger than 18 years ~~[of age]~~ old at the time the offense was
2649 committed, aggravated murder is a noncapital first degree felony punishable as provided in
2650 Section 76-3-207.7.

2651 (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of
2652 aggravated murder, or alternatively, attempted aggravated murder, as described in this section,
2653 are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is
2654 established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the
2655 court shall enter a judgment of conviction as follows:

2656 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall
2657 enter a judgment of conviction for murder; or

2658 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the
2659 court shall enter a judgment of conviction for attempted murder.

2660 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted

2661 aggravated murder that the ~~[defendant]~~ actor caused the death of another or attempted to cause
 2662 the death of another under a reasonable belief that the circumstances provided a legal
 2663 justification or excuse for the conduct although the conduct was not legally justifiable or
 2664 excusable under the existing circumstances.

2665 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
 2666 the viewpoint of a reasonable person under the then existing circumstances.

2667 ~~[(c) This affirmative defense reduces charges only as follows:]~~

2668 ~~[(i) aggravated murder to murder; and]~~

2669 ~~[(ii) attempted aggravated murder to attempted murder.]~~

2670 (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of
 2671 aggravated murder, or alternatively, attempted aggravated murder, as described in this section,
 2672 are proved beyond a reasonable doubt, and also finds the affirmative defense described in this
 2673 Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of
 2674 conviction as follows:

2675 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall
 2676 enter a judgment of conviction for murder; or

2677 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the
 2678 court shall enter a judgment of conviction for attempted murder.

2679 (5) (a) Any aggravating circumstance described in Subsection ~~[(1) or]~~ (2) that
 2680 constitutes a separate offense does not merge with the crime of aggravated murder.

2681 (b) ~~[A person]~~ An actor who is convicted of aggravated murder, based on an
 2682 aggravating circumstance described in Subsection ~~[(1) or]~~ (2) that constitutes a separate
 2683 offense, may also be convicted of, and punished for, the separate offense.

2684 Section 53. Section **76-5-203** is amended to read:

2685 **76-5-203. Murder -- Penalties-- Affirmative defense and special mitigation --**

2686 **Separate offenses.**

2687 (1) (a) As used in this section, "predicate offense" means:

2688 ~~[(a)]~~ (i) a clandestine drug lab violation under Section [58-37d-4](#) or [58-37d-5](#);

2689 [(b)] (ii) aggravated child abuse, under Subsection [~~76-5-109(2)(a)~~] 76-5-109.2(3)(a),
2690 when the [~~victim~~] abused individual is younger than 18 years [~~of age~~] old;

2691 [(c)] (iii) kidnapping under Section 76-5-301;

2692 [(d)] (iv) child kidnapping under Section 76-5-301.1;

2693 [(e)] (v) aggravated kidnapping under Section 76-5-302;

2694 (vi) rape under Section 76-5-402;

2695 [(f)] (vii) rape of a child under Section 76-5-402.1;

2696 (viii) object rape under Section 76-5-402.2;

2697 [(g)] (ix) object rape of a child under Section 76-5-402.3;

2698 (x) forcible sodomy under Section 76-5-403;

2699 [(h)] (xi) sodomy upon a child under Section 76-5-403.1;

2700 [(i)] (xii) forcible sexual abuse under Section 76-5-404;

2701 [(j)] (xiii) sexual abuse of a child [~~or aggravated sexual abuse of a child~~] under Section
2702 76-5-404.1;

2703 [(k) ~~rape under Section 76-5-402~~];

2704 [(l) ~~object rape under Section 76-5-402.2~~];

2705 [(m) ~~forcible sodomy under Section 76-5-403~~];

2706 (xiv) aggravated sexual abuse of a child under Section 76-5-404.3;

2707 [(n)] (xv) aggravated sexual assault under Section 76-5-405;

2708 [(o)] (xvi) arson under Section 76-6-102;

2709 [(p)] (xvii) aggravated arson under Section 76-6-103;

2710 [(q)] (xviii) burglary under Section 76-6-202;

2711 [(r)] (xix) aggravated burglary under Section 76-6-203;

2712 [(s)] (xx) robbery under Section 76-6-301;

2713 [(t)] (xxi) aggravated robbery under Section 76-6-302;

2714 [(u)] (xxii) escape or aggravated escape under Section 76-8-309; or

2715 [(v)] (xxiii) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge
2716 of a firearm or dangerous weapon.

- 2717 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 2718 (2) ~~[Criminal homicide constitutes]~~ An actor commits murder if:
- 2719 (a) the actor intentionally or knowingly causes the death of another individual;
- 2720 (b) intending to cause serious bodily injury to another individual, the actor commits an
- 2721 act clearly dangerous to human life that causes the death of ~~[another]~~ the other individual;
- 2722 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 2723 actor knowingly engages in conduct ~~[which]~~ that creates a grave risk of death to another
- 2724 individual and thereby causes the death of ~~[another]~~ the other individual;
- 2725 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 2726 flight from the commission or attempted commission of any predicate offense, or is a party to
- 2727 the predicate offense;
- 2728 (ii) ~~[a person]~~ an individual other than a party ~~[as defined]~~ described in Section
- 2729 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight
- 2730 from the commission or attempted commission of any predicate offense; and
- 2731 (iii) the actor acted with the intent required as an element of the predicate offense;
- 2732 (e) the actor recklessly causes the death of a peace officer or military service member
- 2733 in uniform while in the commission or attempted commission of:
- 2734 (i) an assault against a peace officer under Section 76-5-102.4;
- 2735 (ii) interference with a peace officer while making a lawful arrest under Section
- 2736 76-8-305 if the actor uses force against ~~[a]~~ the peace officer; or
- 2737 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 2738 or
- 2739 (f) the actor commits a homicide ~~[which]~~ that would be aggravated murder, but the
- 2740 offense is reduced ~~[pursuant to]~~ in accordance with Subsection 76-5-202(4)~~[-or]~~.
- 2741 ~~[(g) the actor commits aggravated murder, but special mitigation is established under~~
- 2742 ~~Section 76-5-205.5.]~~
- 2743 (3) (a) (i) ~~[Murder]~~ A violation of Subsection (2) is a first degree felony.
- 2744 ~~[(b)]~~ (ii) ~~[A person]~~ A defendant who is convicted of murder shall be sentenced to

2745 imprisonment for an indeterminate term of not less than 15 years and which may be for life.

2746 (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,
2747 or alternatively, attempted murder, as described in this section are proved beyond a reasonable
2748 doubt, and also finds that the existence of special mitigation is established by a preponderance
2749 of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of
2750 conviction as follows:

2751 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
2752 judgment of conviction for manslaughter; or

2753 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall,
2754 notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment of
2755 conviction for attempted manslaughter.

2756 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
2757 defendant caused the death of another individual or attempted to cause the death of another
2758 individual under a reasonable belief that the circumstances provided a legal justification or
2759 excuse for the conduct although the conduct was not legally justifiable or excusable under the
2760 existing circumstances.

2761 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
2762 the viewpoint of a reasonable person under the then existing circumstances.

2763 [~~(c) This affirmative defense reduces charges only from:~~]

2764 [~~(i) murder to manslaughter, and~~]

2765 [~~(ii) attempted murder to attempted manslaughter.~~]

2766 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,
2767 or alternatively, attempted murder, as described in this section are proved beyond a reasonable
2768 doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven
2769 beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:

2770 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a
2771 judgment of conviction for manslaughter; or

2772 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall

2773 enter a judgment of conviction for attempted manslaughter.

2774 (5) (a) Any predicate offense [~~described in Subsection (1)~~] that constitutes a separate
2775 offense does not merge with the crime of murder.

2776 (b) [~~A person~~] An actor who is convicted of murder, based on a predicate offense
2777 [~~described in Subsection (1)~~] that constitutes a separate offense, may also be convicted of, and
2778 punished for, the separate offense.

2779 Section 54. Section **76-5-205** is amended to read:

2780 **76-5-205. Manslaughter -- Penalties.**

2781 (1) (a) As used in this section:

2782 [~~(a)~~] (i) (A) "Aid" means the act of providing the physical means.

2783 [(ii)] (B) "Aid" does not include the withholding or withdrawal of life sustaining
2784 treatment procedures to the extent allowed under Title 75, Chapter 2a, Advance Health Care
2785 Directive Act, or any other laws of this state.

2786 [(b)] (ii) "Practitioner" means an individual currently licensed, registered, or otherwise
2787 authorized by law to administer, dispense, distribute, or prescribe medications or procedures in
2788 the course of professional practice.

2789 [(c)] (iii) "Provides" means to administer, prescribe, distribute, or dispense.

2790 (b) Terms defined in Section 76-1-101.5 apply to this section.

2791 (2) Except as provided in Subsection (5), [~~criminal homicide constitutes manslaughter~~
2792 ~~if the actor~~] an actor commits manslaughter if the actor:

2793 (a) recklessly causes the death of another individual;

2794 (b) intentionally, and with knowledge that another individual intends to commit suicide
2795 or attempt to commit suicide, aids the [~~other~~] individual to commit suicide; or

2796 (c) commits a homicide which would be murder, but the offense is reduced [~~pursuant~~
2797 ~~to~~] in accordance with Subsection 76-5-203(4)[~~5~~ or].

2798 [~~(d) commits murder, but special mitigation is established under Section 76-5-205.5.~~]

2799 (3) [~~Manslaughter~~] A violation of Subsection (2) is a felony of the second degree.

2800 (4) (a) In addition to the penalty described under this section or any other section, [~~an~~

2801 ~~individual~~ a defendant who is convicted of violating this section shall have the [~~individual's~~
2802 defendant's driver license revoked under Section 53-3-220 if the death of another individual
2803 results from driving a motor vehicle.

2804 (b) The court shall forward the report of the conviction resulting from driving a motor
2805 vehicle to the Driver License Division in accordance with Section 53-3-218.

2806 (5) (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides
2807 medication or a procedure to treat an individual's illness or relieve an individual's pain or
2808 discomfort, regardless of whether the medication or procedure may hasten or increase the risk
2809 of death to the individual to whom the practitioner provides the medication or procedure[;
2810 ~~unless~~].

2811 (b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the
2812 practitioner intentionally and knowingly provides the medication or procedure to aid the
2813 individual to commit suicide or attempt to commit suicide.

2814 Section 55. Section 76-5-205.5 is amended to read:

2815 **76-5-205.5. Special mitigation for mental illness or provocation -- Burden of**
2816 **proof -- Charge reduction.**

2817 (1) (a) As used in this section:

2818 [~~(a)~~] (i) (A) "Extreme emotional distress" means an overwhelming reaction of anger,
2819 shock, or grief that:

2820 [~~(A)~~] (I) causes the defendant to be incapable of reflection and restraint; and

2821 [~~(B)~~] (II) would cause an objectively reasonable person to be incapable of reflection
2822 and restraint.

2823 [~~(i)~~] (B) "Extreme emotional distress" does not include:

2824 [~~(A)~~] (I) a condition resulting from mental illness; or

2825 [~~(B)~~] (II) distress that is substantially caused by the defendant's own conduct.

2826 [~~(b)~~] (ii) "Mental illness" means the same as that term is defined in Section 76-2-305.

2827 (b) The terms defined in Section 76-1-101.5 apply to this section.

2828 (2) Special mitigation exists when a defendant causes the death of another individual or

2829 attempts to cause the death of another individual:

2830 (a) (i) under circumstances that are not legally justified, but the defendant acts under a
2831 delusion attributable to a mental illness;

2832 (ii) the nature of the delusion is such that, if the facts existed as the defendant believed
2833 them to be in the delusional state, those facts would provide a legal justification for the
2834 defendant's conduct; and

2835 (iii) the defendant's actions, in light of the delusion, are reasonable from the objective
2836 viewpoint of a reasonable person; or

2837 (b) except as provided in Subsection (4), under the influence of extreme emotional
2838 distress that is predominantly caused by the victim's highly provoking act immediately
2839 preceding the defendant's actions.

2840 (3) A defendant who is under the influence of voluntarily consumed, injected, or
2841 ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense
2842 may not claim mitigation of the offense under Subsection (2)(a) on the basis of mental illness if
2843 the alcohol or substance causes, triggers, or substantially contributes to the defendant's mental
2844 illness.

2845 (4) A defendant may not claim special mitigation under Subsection (2)(b) if:

2846 (a) the time period after the victim's highly provoking act and before the defendant's
2847 actions was long enough for an objectively reasonable person to have recovered from the
2848 extreme emotional distress;

2849 (b) the defendant responded to the victim's highly provoking act by inflicting serious or
2850 substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the
2851 victim, regardless of whether the victim was conscious during the infliction of serious or
2852 substantial bodily injury or torture; or

2853 (c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of
2854 words alone.

2855 ~~[(5) (a) If the trier of fact finds that the elements of an offense described in Subsection~~
2856 ~~(5)(b) are proven beyond a reasonable doubt, and also finds that the existence of special~~

2857 mitigation under this section is established by a preponderance of the evidence, the trier of fact
2858 shall return a verdict on the reduced charge as provided in Subsection (5)(b).]

2859 [(b) If under Subsection (5)(a) the offense is:]

2860 [(i) aggravated murder, the defendant shall instead be found guilty of murder;]

2861 [(ii) attempted aggravated murder, the defendant shall instead be found guilty of
2862 attempted murder;]

2863 [(iii) murder, the defendant shall instead be found guilty of manslaughter, or]

2864 [(iv) attempted murder, the defendant shall instead be found guilty of attempted
2865 manslaughter.]

2866 [(c) If the trier of fact finds that special mitigation is not established under this section,
2867 the trier of fact shall convict the defendant of the offense for which the prosecution proves all
2868 the elements beyond a reasonable doubt.]

2869 [(6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish
2870 the existence of the special mitigation under this section.]

2871 [(b) If the jury finds special mitigation by a unanimous vote, the jury shall return a
2872 verdict on the reduced charge as provided in Subsection (5).]

2873 (5) If the trier of fact finds that the elements of aggravated murder, attempted
2874 aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and
2875 also finds that the existence of special mitigation under this section is established by a
2876 preponderance of the evidence, the court shall enter a judgment of conviction in accordance
2877 with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii),
2878 respectively.

2879 (6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact
2880 shall return a special verdict at the same time as the general verdict, indicating whether it finds
2881 special mitigation.

2882 (7) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to find
2883 special mitigation under this section.

2884 (b) If the jury unanimously finds that the elements of an offense described in

2885 Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a
2886 unanimous vote, the jury shall return a general verdict finding the defendant guilty of the
2887 charged crime and a special verdict indicating special mitigation.

2888 (c) If the jury unanimously finds that the elements of an offense described in
2889 Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that
2890 special mitigation is not established, or if the jury is unable to unanimously agree that special
2891 mitigation is established, the jury shall convict the defendant of the greater offense for which
2892 the prosecution proves all the elements beyond a reasonable doubt.

2893 ~~[(7) (a) If the issue of special mitigation is submitted to the trier of fact, the trier of fact~~
2894 ~~shall return a special verdict indicating whether the existence of special mitigation is found.]~~

2895 ~~[(b) The trier of fact shall return the special verdict at the same time as the general~~
2896 ~~verdict, to indicate the basis for the general verdict.]~~

2897 ~~[(8) Special mitigation under this section does not, in any case, reduce the level of an~~
2898 ~~offense by more than one degree from that offense, the elements of which the evidence proves~~
2899 ~~beyond a reasonable doubt.]~~

2900 Section 56. Section **76-5-206** is amended to read:

2901 **76-5-206. Negligent homicide -- Penalties.**

2902 (1) Definitions of terms in Section [76-1-101.5](#) apply to this section.

2903 ~~[(1) Criminal homicide constitutes negligent homicide]~~ (2) An actor commits
2904 negligent homicide if the actor, acting with criminal negligence, causes the death of another
2905 individual.

2906 ~~[(2) Negligent homicide]~~ (3) A violation of Subsection (2) is a class A misdemeanor.

2907 ~~[(3)]~~ (4) (a) In addition to the penalty provided under this section or any other section,
2908 ~~[a person]~~ a defendant who is convicted of violating this section shall have the ~~[person's]~~
2909 defendant's driver license revoked under Section [53-3-220](#) if the death of another ~~[person]~~
2910 individual results from driving a motor vehicle.

2911 (b) The court shall forward the report of the conviction to the Driver License Division
2912 in accordance with Section [53-3-218](#).

2913 Section 57. Section **76-5-207** is amended to read:

2914 **76-5-207. Automobile homicide -- Penalties -- Evidence.**

2915 (1) (a) As used in this section:

2916 (i) "Criminally negligent" means the same as that term is described in Subsection
2917 76-2-103(4).

2918 ~~[(a)]~~ (ii) "Drug" or "drugs" means:

2919 ~~[(i)]~~ (A) a controlled substance as defined in Section 58-37-2;

2920 ~~[(ii)]~~ (B) a drug as defined in Section 58-17b-102; or

2921 ~~[(iii)]~~ (C) any substance that, when knowingly, intentionally, or recklessly taken into
2922 the human body, can impair the ability of ~~[a person]~~ an individual to safely operate a motor
2923 vehicle.

2924 ~~[(b)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any
2925 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

2926 ~~[(2)(a) Criminal homicide is automobile homicide, a third degree felony, if the person]~~

2927 (iv) "Negligent" means simple negligence, the failure to exercise that degree of care
2928 that reasonable and prudent persons exercise under like or similar circumstances.

2929 (b) Terms defined in Section 76-1-101.5 apply to this section.

2930 (2) An actor commits automobile homicide if the actor:

2931 (a) operates a motor vehicle in a negligent or criminally negligent manner causing the
2932 death of another individual; and[:]

2933 (b) (i) has sufficient alcohol in ~~[his]~~ the actor's body that a subsequent chemical test
2934 shows that the ~~[person]~~ actor has a blood or breath alcohol concentration of .05 grams or
2935 greater at the time of the test;

2936 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
2937 and any drug to a degree that renders the ~~[person]~~ actor incapable of safely operating a vehicle;

2938 or

2939 (iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of
2940 operation.

2941 ~~[(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is~~
2942 ~~subsequent to a conviction as defined in Subsection 41-6a-501(2).]~~

2943 ~~[(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to~~
2944 ~~exercise that degree of care that reasonable and prudent persons exercise under like or similar~~
2945 ~~circumstances.]~~

2946 ~~[(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the~~
2947 ~~person operates a motor vehicle in a criminally negligent manner causing the death of another~~
2948 ~~and:]~~

2949 ~~[(i) has sufficient alcohol in his body that a subsequent chemical test shows that the~~
2950 ~~person has a blood or breath alcohol concentration of .05 grams or greater at the time of the~~
2951 ~~test;]~~

2952 ~~[(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol~~
2953 ~~and any drug to a degree that renders the person incapable of safely operating a vehicle; or]~~

2954 ~~[(iii) has a blood or breath alcohol concentration of .05 grams or greater at the time of~~
2955 ~~operation.]~~

2956 ~~[(b) As used in this Subsection (3), "criminally negligent" means criminal negligence~~
2957 ~~as defined by Subsection 76-2-103(4).]~~

2958 (3) (a) (i) A violation of Subsection (2) is a third degree felony if the actor operated a
2959 motor vehicle in a negligent manner.

2960 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second
2961 degree felony if the actor operated the motor vehicle in a criminally negligent manner.

2962 (iii) Notwithstanding Subsection (3)(a)(i) or (ii), a violation of Subsection (2) is a
2963 second degree felony if:

2964 (A) the actor operated a motor vehicle in a negligent manner; and

2965 (B) conviction for the violation is subsequent to a conviction as defined in Subsection
2966 41-6a-501(2)(a).

2967 (b) An actor is guilty of a separate offense for each individual other than the actor
2968 suffering bodily injury or serious bodily injury, whether or not the injuries arise from the same

2969 episode of driving, as a result of the actor's violation of Section 41-6a-502 or death as a result
2970 of the actor's violation of this section.

2971 (4) The fact that an actor charged with violating this section is or has been legally
2972 entitled to use alcohol or a drug is not a defense.

2973 ~~[(4)]~~ (5) (a) The standards for chemical breath analysis as provided by Section
2974 41-6a-515 and the provisions for the admissibility of chemical test results as provided by
2975 Section 41-6a-516 apply to determination and proof of blood alcohol content under this
2976 section.

2977 ~~[(5)]~~ (b) Calculations of blood or breath alcohol concentration under this section shall
2978 be made in accordance with Subsection 41-6a-502(1).

2979 ~~[(6) The fact that a person charged with violating this section is or has been legally~~
2980 ~~entitled to use alcohol or a drug is not a defense.]~~

2981 ~~[(7)]~~ (6) Evidence of a defendant's blood or breath alcohol content or drug content is
2982 admissible except when prohibited by Rules of Evidence or the constitution.

2983 ~~[(8) A person is guilty of a separate offense for each victim suffering bodily injury or~~
2984 ~~serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a~~
2985 ~~result of the person's violation of this section whether or not the injuries arise from the same~~
2986 ~~episode of driving.]~~

2987 Section 58. Section 76-5-207.5 is amended to read:

2988 **76-5-207.5. Automobile homicide involving a handheld wireless communication**
2989 **device while driving.**

2990 (1) (a) As used in this section:

2991 ~~[(a)]~~ (i) "Criminally negligent" means ~~[criminal negligence as defined by]~~ the same as
2992 that term is described in Subsection 76-2-103(4).

2993 ~~[(b)]~~ (ii) "Handheld wireless communication device" ~~[has the same meaning as]~~ means
2994 the same as that term is defined in Section 41-6a-1716.

2995 ~~[(c)]~~ (iii) "Motor vehicle" means any self-propelled vehicle and includes any
2996 automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

2997 ~~[(d)]~~ (iv) "Negligent" means simple negligence, the failure to exercise that degree of
 2998 care that reasonable and prudent persons exercise under like or similar circumstances.

2999 ~~[(2) Criminal homicide is automobile homicide, a third degree felony, if the person]~~

3000 (b) Terms defined in Section 76-1-101.5 apply to this section.

3001 (2) An actor commits automobile homicide if the actor:

3002 (a) operates a moving motor vehicle:

3003 (i) (A) in a negligent manner[.]; or

3004 (B) in a criminally negligent manner; and

3005 ~~[(a)]~~ (ii) while using a handheld wireless communication device in violation of Section

3006 41-6a-1716; and

3007 (b) [causing] causes the death of another [person] individual.

3008 ~~[(3) Criminal homicide is automobile homicide, a second degree felony, if the person~~
 3009 ~~operates a moving motor vehicle in a criminally negligent manner:]~~

3010 ~~[(a) while using a handheld wireless communication device in violation of Section~~

3011 ~~41-6a-1716; and]~~

3012 ~~[(b) causing the death of another person.]~~

3013 (3) (a) A violation of Subsection (2)(a)(i)(A) is a third degree felony.

3014 (b) A violation of Subsection (2)(a)(i)(B) is a second degree felony.

3015 Section 59. Section **76-5-208** is amended to read:

3016 **76-5-208. Child abuse homicide -- Penalties.**

3017 ~~[(1) Criminal homicide constitutes child abuse homicide if, under circumstances not~~
 3018 ~~amounting to aggravated murder, as described in Section 76-5-202;]~~

3019 (1) (a) As used in this section, "child abuse" means an offense described in Sections

3020 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114.

3021 (b) Terms defined in Section 76-1-101.5 apply to this section.

3022 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202,
 3023 an actor commits child abuse homicide if:

3024 (a) (i) the actor causes the death of [a person under] another individual who is younger

3025 than 18 years [~~of age~~] old; and

3026 (ii) the individual's death results from child abuse [~~as defined in Subsection~~

3027 ~~76-5-109(1)~~]; and

3028 [~~(a) if~~] (b) (i) the child abuse is done recklessly under Subsection [~~76-5-109(2)(b)~~

3029 ~~76-5-109.2(3)(b)~~];

3030 [~~(b) if~~] (ii) the child abuse is done with criminal negligence under Subsection

3031 [~~76-5-109(2)(c)~~] 76-5-109.2(3)(c); or

3032 [~~(c) if~~] (iii) under circumstances not amounting to the type of child abuse homicide

3033 described in Subsection [~~(1)(a)~~] (2)(b)(i), the child abuse is done intentionally, knowingly,

3034 recklessly, or with criminal negligence, under Subsection ~~76-5-109(3)(a), (b), or (c)~~.

3035 [~~(2) Child abuse homicide as described in~~] (3) (a) A violation of Subsection [~~(1)(a)~~]

3036 (2)(b)(i) is a first degree felony.

3037 [~~(3) Child abuse homicide as described in Subsections (1)(b) and (c)~~]

3038 (b) A violation of Subsection (2)(b)(ii) or (iii) is a second degree felony.

3039 Section 60. Section **76-5-209** is amended to read:

3040 **76-5-209. Homicide by assault -- Penalty.**

3041 (1) Terms defined in Section 76-1-101.5 apply to this section.

3042 [~~(1) A person~~] (2) An actor commits homicide by assault if, under circumstances not

3043 amounting to aggravated murder, murder, or manslaughter [~~, a person~~]:

3044 (a) the actor causes the death of another individual; and

3045 (b) the actor causes the other individual's death while intentionally or knowingly

3046 attempting, with unlawful force or violence, to do bodily injury to [~~another~~] the other

3047 individual.

3048 [~~(2)~~] (3) Homicide by assault is a third degree felony.

3049 Section 61. Section **76-5-301** is amended to read:

3050 **76-5-301. Kidnapping.**

3051 (1) (a) As used in this section:

3052 (i) "Against the will of an individual" includes without the consent of the legal

3053 guardian, caretaker, or custodian of an individual who is a dependent adult.

3054 (ii) "Dependent adult" means the same as that term is defined in Section 76-5-111.

3055 (iii) "Minor" means an individual who is 14 years old or older but younger than 18
 3056 years old.

3057 (b) Terms defined in Section 76-1-101.5 apply to this section.

3058 ~~[(+)]~~ (2) An actor commits kidnapping if the actor intentionally or knowingly, without
 3059 authority of law, and against the will of [the victim] an individual:

3060 (a) detains or restrains the [victim] individual for any substantial period of time;

3061 (b) detains or restrains the [victim] individual in circumstances exposing the [victim]
 3062 individual to risk of bodily injury;

3063 (c) holds the [victim] individual in involuntary servitude;

3064 (d) detains or restrains a minor without the consent of the minor's parent or legal
 3065 guardian or the consent of a person acting in loco parentis[~~, if the minor is 14 years of age or~~
 3066 ~~older but younger than 18 years of age]; or~~

3067 (e) moves the [victim] individual any substantial distance or across a state line.

3068 ~~[(2) As used in this section, acting "against the will of the victim" includes acting~~
 3069 ~~without the consent of the legal guardian or custodian of a victim who is a mentally~~
 3070 ~~incompetent person.]~~

3071 ~~(3) [Kidnapping]~~ A violation of Subsection (2) is a second degree felony.

3072 Section 62. Section **76-5-301.1** is amended to read:

3073 **76-5-301.1. Child kidnapping.**

3074 (1) (a) As used in this section, "child" means an individual under 14 years old.

3075 (b) Terms defined in Section 76-1-101.5 apply to this section.

3076 ~~[(+)]~~ (2) An actor commits child kidnapping if the actor intentionally or knowingly,
 3077 without authority of law, and by any means and in any manner, seizes, confines, detains, or
 3078 transports a child [under the age of 14] without the consent of the [victim's] child's parent or
 3079 guardian, or the consent of a person acting in loco parentis.

3080 ~~[(2) Violation of Section 76-5-303 is not a violation of this section.]~~

3081 (3) [~~Child kidnapping~~] A violation of Subsection (2) is a first degree felony
3082 [~~punishable by a term of imprisonment of:~~].

3083 (4) An actor convicted of a violation of this section shall be sentenced to imprisonment
3084 of:

3085 (a) except as provided in Subsection [~~(3)~~] (4)(b), [~~(3)~~] (4)(c), or [~~(4)~~] (5), not less than
3086 15 years and which may be for life;

3087 (b) except as provided in Subsection [~~(3)~~] (4)(c) or [~~(4)~~] (5), life without parole, if the
3088 trier of fact finds that during the course of the commission of the child kidnapping the
3089 [~~defendant~~] actor caused serious bodily injury to another; or

3090 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3091 child kidnapping the [~~defendant~~] actor was previously convicted of a grievous sexual offense.

3092 [~~(4)~~] (5) If, when imposing a sentence under Subsection [~~(3)~~] (4)(a) or (b), a court finds
3093 that a lesser term than the term described in Subsection [~~(3)~~] (4)(a) or (b) is in the interests of
3094 justice and states the reasons for this finding on the record, the court may impose a term of
3095 imprisonment of not less than:

3096 (a) for purposes of Subsection [~~(3)~~] (4)(b), 15 years and which may be for life; or
3097 (b) for purposes of Subsection [~~(3)~~] (4)(a) or (b):

3098 (i) 10 years and which may be for life; or
3099 (ii) six years and which may be for life.

3100 [~~(5)~~] (6) The provisions of Subsection [~~(4)~~] (5) do not apply when a person is
3101 sentenced under Subsection [~~(3)~~] (4)(c).

3102 [~~(6)~~] (7) Subsections [~~(3)~~] (4)(b) and [~~(3)~~] (4)(c) do not apply if the defendant was
3103 younger than 18 years [~~of age~~] old at the time of the offense.

3104 [~~(7)~~] (8) Imprisonment under this section is mandatory in accordance with Section
3105 [76-3-406](#).

3106 (9) A violation of Section [76-5-303](#) is not a violation of this section.
3107 Section 63. Section **76-5-302** is amended to read:
3108 **76-5-302. Aggravated kidnapping.**

3109 (1) (a) As used in this section, "in the course of committing unlawful detention or
3110 kidnapping" means in the course of committing, attempting to commit, or in the immediate
3111 flight after the attempt or commission of a violation of:

- 3112 (i) Section 76-5-301, kidnapping; or
- 3113 (ii) Section 76-5-304, unlawful detention.

3114 (b) Terms defined in Section 76-1-101.5 apply to this section.

3115 [(+)] (2) An actor commits aggravated kidnapping if the actor, in the course of
3116 committing unlawful detention or kidnapping:

3117 (a) uses or threatens to use a dangerous weapon [~~as defined in Section 76-1-601~~]; or

3118 (b) acts with the intent to:

3119 (i) [~~to~~] hold the victim for ransom or reward, [~~or~~] as a shield or hostage, or to compel a
3120 third person to engage in particular conduct or to forbear from engaging in particular conduct;

3121 (ii) [~~to~~] facilitate the commission, attempted commission, or flight after commission or
3122 attempted commission of a felony;

3123 (iii) [~~to~~] hinder or delay the discovery of or reporting of a felony;

3124 (iv) [~~to~~] inflict bodily injury on or to terrorize the victim or another individual;

3125 (v) [~~to~~] interfere with the performance of any governmental or political function; or

3126 (vi) [~~to~~] commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual
3127 Offenses.

3128 [~~(2) As used in this section, "in the course of committing unlawful detention or~~
3129 ~~kidnapping" means in the course of committing, attempting to commit, or in the immediate~~
3130 ~~flight after the attempt or commission of a violation of:]~~

3131 [~~(a) Section 76-5-301, kidnapping; or]~~

3132 [~~(b) Section 76-5-304, unlawful detention.]~~

3133 [~~(3) Aggravated kidnapping]~~ (3) (a) A violation of Subsection (2) in the course of
3134 committing unlawful detention is a third degree felony.

3135 [~~(4) Aggravated kidnapping]~~ (b) A violation of Subsection (2) in the course of
3136 committing kidnapping is a first degree felony [~~punishable by a term of imprisonment of:]~~.

3137 (4) An actor convicted of a violation of Subsection (3)(b) shall be sentenced to
 3138 imprisonment of:

3139 (a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and
 3140 which may be for life;

3141 (b) except as provided in Subsection (4)(c) or (5), life without parole, if the trier of fact
 3142 finds that during the course of the commission of the aggravated kidnapping the defendant
 3143 caused serious bodily injury to the victim or another individual; or

3144 (c) life without parole, if the trier of fact finds that at the time of the commission of the
 3145 aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

3146 (5) If, when imposing a sentence under Subsection (4)(a) or (b), a court finds that a
 3147 lesser term than the term described in Subsection (4)(a) or (b) is in the interests of justice and
 3148 states the reasons for this finding on the record, the court may impose a term of imprisonment
 3149 of not less than:

3150 (a) for purposes of Subsection (4)(b), 15 years and which may be for life; or

3151 (b) for purposes of Subsection (4)(a) or (b):

3152 (i) 10 years and which may be for life; or

3153 (ii) six years and which may be for life.

3154 (6) The provisions of Subsection (5) do not apply when a ~~[person]~~ defendant is
 3155 sentenced under Subsection (4)(c).

3156 (7) Subsections (4)(b) and (c) do not apply if the ~~[defendant]~~ actor was younger than 18
 3157 years ~~[of age]~~ old at the time of the offense.

3158 (8) Imprisonment under Subsection (4) is mandatory in accordance with Section
 3159 [76-3-406](#).

3160 Section 64. Section **76-5-303** is amended to read:

3161 **76-5-303. Custodial interference.**

3162 (1) (a) As used in this section:

3163 ~~[(a)]~~ (i) "Child" means ~~[a person]~~ an individual under ~~[the age of]~~ 18 years old.

3164 ~~[(b)]~~ (ii) "Custody" means court-ordered physical custody entered by a court of

3165 competent jurisdiction.

3166 ~~[(e)]~~ (iii) "Visitation" means court-ordered parent-time or visitation entered by a court
3167 of competent jurisdiction.

3168 (b) Terms defined in Section 76-1-101.5 apply to this section.

3169 (2) (a) ~~[A person]~~ An actor who is entitled to custody of a child ~~[is guilty of]~~ commits
3170 custodial interference if, during a period of time when another ~~[person]~~ individual is entitled to
3171 visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds the child
3172 from the ~~[person]~~ individual entitled to visitation of the child, with the intent to interfere with
3173 the visitation of the child.

3174 (b) ~~[A person]~~ An actor who is entitled to visitation of a child ~~[is guilty of]~~ commits
3175 custodial interference if, during a period of time when the ~~[person]~~ individual is not entitled to
3176 visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds the child
3177 from ~~[a person]~~ an individual who is entitled to custody of the child, with the intent to interfere
3178 with the custody of the child.

3179 (3) (a) ~~[Except as provided in Subsection (4) or (5), custodial interference]~~ A violation
3180 of Subsection (2) is a class B misdemeanor.

3181 ~~[(4) Except as provided in Subsection (5), the actor described in Subsection (2) is~~
3182 ~~guilty of]~~

3183 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A
3184 misdemeanor if the actor:

3185 ~~[(a)]~~ (i) commits custodial interference; and

3186 ~~[(b)]~~ (ii) has been convicted of custodial interference at least twice in the two-year
3187 period immediately preceding the day on which the commission of custodial interference
3188 described in Subsection ~~[(4)(a)]~~ (3)(b)(i) occurs.

3189 ~~[(5) Custodial interference]~~ (c) Notwithstanding Subsection (3)(a) or (b), a violation of
3190 Subsection (2) is a felony of the third degree if, during the course of the custodial interference,
3191 the actor ~~[described in Subsection (2)]~~ removes, causes the removal, or directs the removal of
3192 the child from the state.

3193 ~~[(6)]~~ (4) In addition to the affirmative defenses described in Section 76-5-305, it is an
3194 affirmative defense to the crime of custodial interference that:

3195 (a) the action is consented to by the ~~[person]~~ individual whose custody or visitation of
3196 the child was interfered with; or

3197 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a
3198 child from abuse, including sexual abuse; and

3199 (ii) before engaging in the action, the ~~[person]~~ actor reports the ~~[person's]~~ actor's
3200 intention to engage in the action, and the basis for the belief described in Subsection ~~[(6)]~~
3201 (4)(b)(i), to the Division of Child and Family Services or law enforcement.

3202 Section 65. Section 76-5-303.5 is amended to read:

3203 **76-5-303.5. Notification of conviction of custodial interference.**

3204 (1) As used in this section:

3205 (a) (i) "Convicted" means ~~[that a person has received a conviction.]~~ a conviction by
3206 plea or verdict or adjudication in juvenile court of a crime or offense.

3207 (ii) "Convicted" includes:

3208 (A) a plea of guilty or guilty and mentally ill;

3209 (B) a plea of no contest; and

3210 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas
3211 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in
3212 accordance with the plea in abeyance agreement.

3213 ~~[(b) "Conviction" is as defined in Section 53-3-102:]~~

3214 (b) Terms defined in Section 76-1-101.5 apply to this section.

3215 (2) If ~~[a person]~~ an individual is convicted of custodial interference under Section
3216 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the
3217 conviction, and whether the conviction is for:

3218 (a) a class B misdemeanor, under Subsection 76-5-303(3)(a);

3219 (b) a class A misdemeanor, under Subsection 76-5-303~~[(4)]~~(3)(b); or

3220 (c) a felony, under Subsection 76-5-303~~[(5)]~~(3)(c).

3221 Section 66. Section **76-5-304** is amended to read:

3222 **76-5-304. Unlawful detention and unlawful detention of a minor.**

3223 (1) (a) As used in this section:

3224 (i) Acting "against the will of an individual" includes acting without the consent of the

3225 legal guardian, caretaker, or custodian of an individual who is:

3226 (A) a dependent adult; or

3227 (B) a minor who is 14 or 15 years old.

3228 (ii) "Dependent adult" means the same as that term is defined in Section [76-5-111](#).

3229 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

3230 ~~[(1)]~~ (2) (a) An actor commits unlawful detention if the actor intentionally or

3231 knowingly, without authority of law, and against the will of ~~[the victim]~~ an individual, detains

3232 or restrains the ~~[victim under circumstances not constituting a violation of:]~~ individual.

3233 ~~[(a) kidnapping, Section [76-5-301](#); or]~~

3234 ~~[(b) child kidnapping, Section [76-5-301.1](#).]~~

3235 ~~[(2)]~~ (b) An actor commits unlawful detention of a minor if the actor is at least four or

3236 more years older than the minor, and intentionally or knowingly, without authority of law, and

3237 against the will of the ~~[victim]~~ minor, coerces or exerts influence over the ~~[victim]~~ minor with

3238 the intent to cause the ~~[victim]~~ minor to remain with the actor for an unreasonable period of

3239 time under the circumstances~~[, and:].~~

3240 ~~[(a) the act is under circumstances not constituting a violation of:]~~

3241 ~~[(i) kidnapping, Section [76-5-301](#); or]~~

3242 ~~[(ii) child kidnapping, Section [76-5-301.1](#); and]~~

3243 ~~[(b) the actor is at least four or more years older than the victim.]~~

3244 ~~[(3) As used in this section, acting "against the will of the victim" includes acting~~

3245 ~~without the consent of the legal guardian or custodian of a victim who is:]~~

3246 ~~[(a) a mentally incompetent person; or]~~

3247 ~~[(b) a minor who is 14 or 15 years of age.]~~

3248 ~~[(4) Unlawful detention]~~ (3) A violation of Subsection (2) is a class B misdemeanor.

3249 (4) If the conduct of the actor amounts to a violation under one of the following, the
3250 actor shall be charged with the violation and not under Subsection (2)(a) or (2)(b):

3251 (a) kidnapping, as described in Section 76-5-301; or

3252 (b) child kidnapping, as described in Section 76-5-301.1.

3253 Section 67. Section **76-5-305** is amended to read:

3254 **76-5-305. Defenses.**

3255 (1) It is a defense under this part that:

3256 (a) the actor was acting under a reasonable belief that:

3257 (i) the conduct was necessary to protect any ~~[person]~~ individual from imminent bodily
3258 injury or death; or

3259 (ii) the detention or restraint was authorized by law; or

3260 (b) the alleged victim is younger than 18 years ~~[of age]~~ old or is ~~[mentally~~

3261 ~~incompetent]~~ a dependent adult, as defined in Section 76-5-111, and the actor was acting under

3262 a reasonable belief that the custodian, guardian, caretaker, legal guardian, custodial parent, or

3263 person acting in loco parentis to the victim would, if present, have consented to the actor's

3264 conduct.

3265 (2) Subsection (1)(b) may not be used as a defense to conduct described in Section

3266 76-5-308.5.

3267 Section 68. Section **76-5-307** is amended to read:

3268 **76-5-307. Definitions.**

3269 As used in Sections 76-5-308 through ~~[76-5-310]~~ 76-5-310.1 of this part:

3270 (1) "Child" means ~~[a person]~~ an individual younger than 18 years ~~[of age]~~ old.

3271 (2) "Commercial purpose" includes direct or indirect participation in or facilitation of
3272 the transportation of one or more ~~[persons]~~ individuals for the purpose of:

3273 (a) charging or obtaining a fee for the transportation; or

3274 (b) obtaining, exchanging, or receiving any thing or item of value or an attempt to

3275 conduct any of these activities.

3276 (3) "Facilitation" regarding transportation under Subsection (2) includes providing:

3277 (a) travel arrangement services;
 3278 (b) payment for the costs of travel; or
 3279 (c) property that would advance an act of transportation, including a vehicle or other
 3280 means of transportation, a weapon, false identification, and making lodging available,
 3281 including by rent, lease, or sale.

3282 (4) "Family member" means ~~[a person's]~~ an individual's parent, grandparent, sibling, or
 3283 any other ~~[person]~~ individual related to the ~~[person]~~ individual by consanguinity or affinity to
 3284 the second degree.

3285 Section 69. Section **76-5-308** is amended to read:

3286 **76-5-308. Human trafficking for labor.**

3287 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3288 ~~[(+)]~~ (2) An actor commits human trafficking for labor ~~[or sexual exploitation]~~ if the
 3289 actor recruits, harbors, transports, obtains, patronizes, or solicits ~~[a person]~~ an individual for
 3290 labor through the use of force, fraud, or coercion, which may include:

3291 (a) threatening serious harm to, or physical restraint against, that ~~[person]~~ individual or
 3292 ~~[a third person]~~ another individual;

3293 (b) destroying, concealing, removing, confiscating, or possessing any passport,
 3294 immigration document, or other government-issued identification document;

3295 (c) abusing or threatening abuse of the law or legal process against the ~~[person or a~~
 3296 ~~third person]~~ individual or another individual;

3297 (d) using a condition of ~~[a person]~~ an individual being a debtor due to a pledge of the
 3298 ~~[debtor's]~~ individual's personal services or the personal services of ~~[a person]~~ an individual
 3299 under the control of the debtor as a security for debt where the reasonable value of the services
 3300 is not applied toward the liquidation of the debt or the length and nature of those services are
 3301 not respectively limited and defined;

3302 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
 3303 cause ~~[a person]~~ an individual to believe that if the ~~[person]~~ individual did not enter into or
 3304 continue in a condition of servitude, ~~[that person or a third person]~~ the individual or another

3305 individual would suffer serious harm or physical restraint, or would be threatened with abuse of
3306 legal process; or

3307 (f) creating or exploiting a relationship where the ~~[person]~~ individual is dependent ~~[on]~~
3308 upon the actor.

3309 (3) A violation of Subsection (2) is a second degree felony.

3310 ~~[(2)(a)]~~ (4) Human trafficking for labor includes any labor obtained through force,
3311 fraud, or coercion as described in Subsection ~~[(1)]~~ (2).

3312 (5) This offense is a separate offense from any other crime committed in relationship to
3313 the commission of this offense.

3314 ~~[(b) Human trafficking for sexual exploitation includes all forms of commercial sexual~~
3315 ~~activity, which may include the following conduct when the person acts under force, fraud, or~~
3316 ~~coercion as described in Subsection (1):]~~

3317 ~~[(i) sexually explicit performance;]~~

3318 ~~[(ii) prostitution;]~~

3319 ~~[(iii) participation in the production of pornography;]~~

3320 ~~[(iv) performance in strip clubs; and]~~

3321 ~~[(v) exotic dancing or display.]~~

3322 ~~[(3) A person commits human smuggling by transporting or procuring the~~
3323 ~~transportation for one or more persons for a commercial purpose, knowing or having reason to~~
3324 ~~know that the person or persons transported or to be transported are not:]~~

3325 ~~[(a) citizens of the United States;]~~

3326 ~~[(b) permanent resident aliens; or]~~

3327 ~~[(c) otherwise lawfully in this state or entitled to be in this state.]~~

3328 Section 70. Section **76-5-308.1** is enacted to read:

3329 **76-5-308.1. Human trafficking for sexual exploitation.**

3330 (1) Terms defined in Sections [76-1-101.5](#) and [76-5-307](#) apply to this section.

3331 (2) An actor commits human trafficking for sexual exploitation if the actor recruits,
3332 harbors, transports, obtains, patronizes, or solicits an individual for sexual exploitation through

3333 the use of force, fraud, or coercion, which may include:

3334 (a) threatening serious harm to, or physical restraint against, that individual or another
3335 individual;

3336 (b) destroying, concealing, removing, confiscating, or possessing any passport,
3337 immigration document, or other government-issued identification document;

3338 (c) abusing or threatening abuse of the law or legal process against the individual or
3339 another individual;

3340 (d) using a condition of an individual being a debtor due to a pledge of the individual's
3341 personal services or the personal services of an individual under the control of the debtor as a
3342 security for debt where the reasonable value of the services is not applied toward the
3343 liquidation of the debt or the length and nature of those services are not respectively limited
3344 and defined;

3345 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
3346 cause an individual to believe that if the individual did not enter into or continue in a condition
3347 of servitude, the individual or another individual would suffer serious harm or physical
3348 restraint, or would be threatened with abuse of legal process; or

3349 (f) creating or exploiting a relationship where the individual is dependent upon the
3350 actor.

3351 (3) A violation of Subsection (2) is a second degree felony.

3352 (4) Human trafficking for sexual exploitation includes all forms of commercial sexual
3353 activity, which may include the following conduct when the person acts under force, fraud, or
3354 coercion as described in Subsection (1):

3355 (a) sexually explicit performance;

3356 (b) prostitution;

3357 (c) participation in the production of pornography;

3358 (d) performance in strip clubs; and

3359 (e) exotic dancing or display.

3360 (5) This offense is a separate offense from any other crime committed in relationship to

3361 the commission of this offense.

3362 Section 71. Section **76-5-308.3** is enacted to read:

3363 **76-5-308.3. Human smuggling -- Penalty.**

3364 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3365 (2) An actor commits human smuggling if the actor transports or procures the
3366 transportation for one or more individuals for a commercial purpose, knowing or having reason
3367 to know that the individual or individuals transported or to be transported are not:

3368 (a) citizens of the United States;

3369 (b) permanent resident aliens; or

3370 (c) otherwise lawfully in this state or entitled to be in this state.

3371 (3) A violation of Subsection (2) is a second degree felony.

3372 (4) This offense is a separate offense from any other crime committed in relationship to
3373 the commission of this offense.

3374 Section 72. Section **76-5-308.5** is amended to read:

3375 **76-5-308.5. Human trafficking of a child -- Penalties.**

3376 ~~[(1) "Commercial]~~ (1) (a) As used in this section, "commercial sexual activity with a
3377 child" means any sexual act with a child, [on account of] for which anything of value is given
3378 to or received by any person.

3379 (b) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3380 (2) An actor commits human trafficking of a child if the actor recruits, harbors,
3381 transports, obtains, patronizes, or solicits a child for sexual exploitation or forced labor.

3382 (3) A violation of Subsection (2) is a first degree felony.

3383 ~~[(3)]~~ (4) (a) Human trafficking of a child for labor includes any labor obtained through
3384 force, fraud, [and] or coercion as described in Section 76-5-308.

3385 (b) Human trafficking of a child for sexual exploitation includes all forms of
3386 commercial sexual activity with a child, including sexually explicit performance, prostitution,
3387 participation in the production of pornography, performance in a strip club, and exotic dancing
3388 or display as described in Section 76-5-308.1.

3389 ~~[(4) Human trafficking of a child in violation of this section is a first degree felony.]~~

3390 (5) This offense is a separate offense from any other crime committed in relationship to
3391 the commission of this offense.

3392 Section 73. Section **76-5-309** is amended to read:

3393 **76-5-309. Benefitting from trafficking and human smuggling -- Penalties.**

3394 ~~[(1) Human trafficking for labor and human trafficking for sexual exploitation are each~~
3395 ~~a second degree felony, except under Section 76-5-310.]~~

3396 ~~[(2) Human smuggling under Section 76-5-308 of one or more persons is a second~~
3397 ~~degree felony, except under Section 76-5-310.]~~

3398 ~~[(3) Human trafficking for labor or for sexual exploitation, human trafficking of a~~
3399 ~~child, and human smuggling are each a separate offense from any other crime committed in~~
3400 ~~relationship to the commission of either of these offenses.]~~

3401 ~~[(4) Under circumstances not amounting to aggravated sexual abuse of a child, a~~
3402 ~~violation of Subsection 76-5-404.1(4)(h), a person who]~~

3403 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3404 (2) An actor is a party to the offense if the actor benefits, receives, or exchanges
3405 anything of value from knowing participation in:

3406 (a) human trafficking for labor [~~or for sexual exploitation~~] in violation of Section
3407 76-5-308 [~~is guilty of a second degree felony~~];

3408 (b) human smuggling [~~is guilty of a third degree felony; and~~] in violation of Section
3409 76-5-308.3;

3410 (c) human trafficking of a child [~~is guilty of a first degree felony~~]; in violation of
3411 Section 76-5-308.5; and

3412 (d) human trafficking for sexual exploitation in violation of Section 76-5-308.1.

3413 (3) (a) A violation of Subsection (2)(a) or (2)(d) is a second degree felony.

3414 (b) A violation of Subsection (2)(b) is a third degree felony.

3415 (c) A violation of Subsection (2)(c) is a first degree felony.

3416 ~~[(5)] (4) [A person] An actor commits a separate offense of human trafficking, human~~

3417 trafficking of a child, or human smuggling for each ~~[person]~~ individual who is smuggled or
 3418 trafficked under Section 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, ~~[or]~~ 76-5-310, or
 3419 76-5-310.1.

3420 Section 74. Section **76-5-310** is amended to read:

3421 **76-5-310. Aggravated human trafficking -- Penalties.**

3422 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3423 ~~[(+)]~~ (2) An actor commits aggravated human trafficking for labor or sexual
 3424 exploitation ~~[or aggravated human smuggling]~~ if, in the course of committing an offense under
 3425 Section 76-5-308 or 76-5-308.1, the offense:

3426 (a) results in the death of ~~[the]~~ a trafficked ~~[or smuggled person]~~ individual;

3427 (b) results in serious bodily injury of ~~[the]~~ a trafficked ~~[or smuggled person]~~ individual;

3428 (c) involves:

3429 (i) rape under Section 76-5-402;

3430 (ii) rape of a child under Section 76-5-402.1;

3431 (iii) object rape under Section 76-5-402.2;

3432 (iv) object rape of a child under Section 76-5-402.3;

3433 (v) forcible sodomy under Section 76-5-403;

3434 (vi) sodomy on a child under Section 76-5-403.1;

3435 (vii) aggravated sexual abuse of a child under Section ~~[76-5-404.1]~~ 76-5-404.3; or

3436 (viii) aggravated sexual assault under Section 76-5-405;

3437 (d) involves the trafficking of 10 or more ~~[victims]~~ individuals; or

3438 (e) involves ~~[a victim]~~ an individual trafficked for longer than 30 consecutive days.

3439 ~~[(2) An actor commits aggravated human smuggling if the actor commits human~~
 3440 ~~smuggling under Section 76-5-308 and any human being whom the person engages in~~
 3441 ~~smuggling is:]~~

3442 ~~[(a) a child; and]~~

3443 ~~[(b) not accompanied by a family member who is 18 years of age or older.]~~

3444 (3) ~~[(a) Aggravated human trafficking]~~ A violation of Subsection (2) is a first degree

3445 felony.

3446 [~~(b) Aggravated human smuggling is a first degree felony.~~]

3447 [~~(c)~~] (4) Aggravated human trafficking [~~and aggravated human smuggling are each~~] is
3448 a separate offense from any other crime committed in relationship to the commission of [~~either~~
3449 ~~of these offenses~~] the offense.

3450 Section 75. Section **76-5-310.1** is enacted to read:

3451 **76-5-310.1. Aggravated human smuggling -- Penalties.**

3452 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

3453 (2) An actor commits aggravated human smuggling if, in the course of committing an
3454 offense under Section 76-5-308.3, the offense:

3455 (a) results in the death of a smuggled individual;

3456 (b) results in serious bodily injury to a smuggled individual;

3457 (c) involves the smuggling of a child and the child is not accompanied by a family
3458 member who is 18 years old or older;

3459 (d) involves:

3460 (i) rape under Section 76-5-402;

3461 (ii) rape of a child under Section 76-5-402.1;

3462 (iii) object rape under Section 76-5-402.2;

3463 (iv) object rape of a child under Section 76-5-402.3;

3464 (v) forcible sodomy under Section 76-5-403;

3465 (vi) sodomy on a child under Section 76-5-403.1;

3466 (vii) aggravated sexual abuse of a child under Section 76-5-404.1; or

3467 (viii) aggravated sexual assault under Section 76-5-405; or

3468 (e) involves the smuggling of 10 or more individuals.

3469 (3) A violation of Subsection (2) is a first degree felony.

3470 (4) Aggravated human smuggling is a separate offense from any other crime committed
3471 in relationship to the offense.

3472 Section 76. Section **76-5-311** is amended to read:

3473 **76-5-311. Human trafficking of a vulnerable adult -- Penalties.**

3474 (1) (a) As used in this section:

3475 ~~[(a)]~~ (i) "Commercial sexual activity with a vulnerable adult" means any sexual act
 3476 with a vulnerable adult for which anything of value is given to or received by any individual.

3477 ~~[(b)]~~ (ii) "Vulnerable adult" means the same as that term is defined in Subsection
 3478 [76-5-111](#)(1).

3479 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

3480 (2) An actor commits human trafficking of a vulnerable adult if the actor:

3481 (a) recruits, harbors, transports, or obtains a vulnerable adult for sexual exploitation or
 3482 forced labor; or

3483 (b) patronizes or solicits a vulnerable adult for sexual exploitation or forced labor when
 3484 the actor knew or should have known of the victim's vulnerability.

3485 (3) A violation of Subsection (2) is a first degree felony.

3486 ~~[(3)]~~ (4) (a) Human trafficking of a vulnerable adult for labor includes any labor
 3487 obtained through force, fraud, or coercion as described in Section [76-5-308](#).

3488 (b) Human trafficking of a vulnerable adult for sexual exploitation includes all forms
 3489 of commercial sexual activity with a vulnerable adult involving:

3490 (i) sexually explicit performances;

3491 (ii) prostitution;

3492 (iii) participation in the production of pornography;

3493 (iv) performance in a strip club; or

3494 (v) exotic dancing or display.

3495 ~~[(4) Human trafficking of a vulnerable adult in violation of this section is a first degree
 3496 felony.]~~

3497 Section 77. Section **76-5-401** is amended to read:

3498 **76-5-401. Unlawful sexual activity with a minor -- Penalties -- Evidence of age**
 3499 **raised by defendant -- Limitations.**

3500 (1) (a) ~~[For purposes of]~~ As used in this section ~~["minor" is a person],~~ "minor" means

3501 an individual who is 14 years ~~[of age]~~ old or older, but younger than 16 years ~~[of age]~~ old, at
3502 the time the sexual activity described in ~~[this section]~~ Subsection (2) occurred.

3503 (b) Terms defined in Section 76-1-101.5 apply to this section.

3504 (2) (a) [A person] Under circumstances not amounting to an offense listed in
3505 Subsection (4), an actor 18 years old or older commits unlawful sexual activity with a minor
3506 if[, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in
3507 violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or
3508 aggravated sexual assault, in violation of Section 76-5-405;] the actor:

3509 ~~[(a)]~~ (i) has sexual intercourse with the minor;

3510 ~~[(b)]~~ (ii) engages in any sexual act with the minor involving the genitals of ~~[one~~
3511 ~~person]~~ an individual and the mouth or anus of another ~~[person, regardless of the sex of either~~
3512 ~~participant]~~ individual; or

3513 ~~[(c)]~~ (iii) causes the penetration, however slight, of the genital or anal opening of the
3514 minor by ~~[any]~~ a foreign object, substance, instrument, or device, including a part of the human
3515 body, with the intent to cause substantial emotional or bodily pain to any ~~[person]~~ individual or
3516 with the intent to arouse or gratify the sexual desire of any ~~[person, regardless of the sex of any~~
3517 ~~participant]~~ individual.

3518 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
3519 violation of Subsection (2)(a)(ii).

3520 (3) (a) [Except under Subsection (3)(b) or (c), a] A violation of Subsection (2) is a
3521 third degree felony.

3522 (b) (i) [Hf] Notwithstanding Subsection (3)(a) or (c), if the defendant establishes by a
3523 preponderance of the evidence the mitigating factor that the defendant is less than four years
3524 older than the minor at the time the sexual activity occurred, the offense is a class B
3525 misdemeanor.

3526 (ii) An offense under ~~[this]~~ Subsection (3)(b)(i) is not subject to registration under
3527 Subsection 77-41-102(17)(a)(vii).

3528 (c) (i) [Hf] Notwithstanding Subsection (3)(a), if the defendant establishes by a

3529 preponderance of the evidence the mitigating factor that the defendant was younger than 21
3530 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.

3531 (ii) An offense under [this] Subsection (3)(c)(i) is not subject to registration under
3532 Subsection 77-41-102(17)(a)(vii).

3533 (4) The offenses referred to in Subsection (2)(a) are:

3534 (a) rape, in violation of Section 76-5-402;

3535 (b) object rape, in violation of Section 76-5-402.2;

3536 (c) forcible sodomy, in violation of Section 76-5-403;

3537 (d) aggravated sexual assault, in violation of Section 76-5-405; or

3538 (e) an attempt to commit an offense listed in Subsections (4)(a) through (4)(d).

3539 Section 78. Section **76-5-401.1** is amended to read:

3540 **76-5-401.1. Sexual abuse of a minor -- Penalties -- Limitations.**

3541 ~~[(1) For purposes of this section "minor" is]~~

3542 (1) (a) As used in this section:

3543 (i) "Indecent liberties" means:

3544 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or
3545 female breast;

3546 (B) causing any part of an individual's body to touch the actor's or another's genitals,
3547 pubic area, anus, buttocks, or female breast;

3548 (C) simulating or pretending to engage in sexual intercourse with another individual,
3549 including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or

3550 (D) causing an individual to simulate or pretend to engage in sexual intercourse with
3551 the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal
3552 intercourse.

3553 (ii) "Minor" means an individual who is 14 years [of age] old or older, but younger
3554 than 16 years [of age] old, at the time the sexual activity described in [this section] Subsection
3555 (2) occurred.

3556 (b) Terms defined in Section 76-1-101.5 apply to this section.

3557 (2) (a) [An individual] Under circumstances not amounting to an offense listed in
3558 Subsection (4), an actor commits sexual abuse of a minor if the [individual] actor:
3559 (i) is four years or more older than the minor; and[, under circumstances not amounting
3560 to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2,
3561 forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of
3562 Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an
3563 attempt to commit any of those offenses, the individual]
3564 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or
3565 with the intent to arouse or gratify the sexual desire of any individual:
3566 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor[~~;~~or];
3567 (B) touches the breast of a female minor[~~;~~]; or
3568 (C) otherwise takes indecent liberties with the minor[~~, with the intent to cause~~
3569 substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the
3570 sexual desire of any individual regardless of the sex of any participant.].
3571 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
3572 relevant element of a violation of Subsection (2)(a).
3573 (3) A violation of ~~[this section is]~~ Subsection (2)(a) is:
3574 (a) a class A misdemeanor; and
3575 (b) [is] not subject to registration under Subsection 77-41-102(17)(a)(viii) on a first
3576 offense if the offender was younger than 21 years [of age] old at the time of the offense.
3577 (4) The offenses referred to in Subsection (2)(a) are:
3578 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
3579 (b) rape, in violation of Section 76-5-402;
3580 (c) object rape, in violation of Section 76-5-402.2;
3581 (d) forcible sodomy, in violation of Section 76-5-403;
3582 (e) aggravated sexual assault, in violation of Section 76-5-405; or
3583 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
3584 Section 79. Section **76-5-401.2** is amended to read:

3585 **76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**

3586 **Limitations.**

3587 (1) (a) As used in this section~~[-"minor"]~~:

3588 (i) "Indecent liberties" means the same as that term is defined in Section [76-5-401.1](#).

3589 (ii) "Minor" means an individual who is 16 years ~~[of age]~~ old or older, but younger
3590 than 18 years ~~[of age]~~ old, at the time the sexual conduct described in Subsection (2) occurred.

3591 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

3592 (2) (a) ~~[An individual]~~ Under circumstances not amounting to an offense listed in

3593 Subsection (4), an actor commits unlawful sexual conduct with a minor if~~[-under~~

3594 ~~circumstances not amounting to an offense listed under Subsection (3), an individual who is]~~
3595 the actor:

3596 (i) (A) is seven or more years older but less than 10 years older than the minor at the
3597 time of the sexual conduct;

3598 (B) engages in any conduct listed in Subsection (2)(b)~~[-and the individual]~~; and

3599 (C) knew or reasonably should have known the age of the minor; or

3600 (ii) (A) is 10 or more years older than the minor at the time of the sexual conduct; and

3601 (B) engages in any conduct listed in Subsection (2)(b).

3602 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the ~~[individual]~~

3603 actor:

3604 (i) has sexual intercourse with the minor;

3605 (ii) engages in any sexual act with the minor involving the genitals of one individual
3606 and the mouth or anus of another individual~~[-regardless of the sex of either participant]~~;

3607 (iii) (A) causes the penetration, however slight, of the genital or anal opening of the
3608 minor by any foreign object, substance, instrument, or device, including a part of the human
3609 body~~[-]; and~~

3610 (B) causes the penetration with the intent to cause substantial emotional or bodily pain

3611 to any individual or with the intent to arouse or gratify the sexual desire of any individual~~[-~~

3612 ~~regardless of the sex of any participant]~~; or

3613 (iv) with the intent to cause substantial emotional or bodily pain to any individual or
3614 with the intent to arouse or gratify the sexual desire of any individual:

3615 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor~~[, or];~~

3616 (B) touches the breast of a female minor~~;~~; or

3617 (C) otherwise takes indecent liberties with the minor~~[, with the intent to cause~~
3618 ~~substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the~~
3619 ~~sexual desire of any individual regardless of the sex of any participant].~~

3620 [~~3~~] The offenses referred to in Subsection (2) are:]

3621 [(a) (i) rape, in violation of Section ~~76-5-402;~~]

3622 [(ii) object rape, in violation of Section ~~76-5-402.2;~~]

3623 [(iii) forcible sodomy, in violation of Section ~~76-5-403;~~]

3624 [(iv) forcible sexual abuse, in violation of Section ~~76-5-404;~~ or]

3625 [(v) aggravated sexual assault, in violation of Section ~~76-5-405;~~ or]

3626 [(b) an attempt to commit any offense under Subsection (3)(a).]

3627 (c) (i) Any touching, even if accomplished through clothing, is sufficient to constitute
3628 the relevant element of a violation of Subsection (2)(a).

3629 (ii) Any penetration, however slight, is sufficient to constitute the relevant element
3630 under Subsection (2)(b)(i).

3631 (iii) Any touching, however slight, is sufficient to constitute the relevant element under
3632 Subsection (2)(b)(ii).

3633 [~~4~~] (3) (a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

3634 [~~5~~] (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.

3635 (4) The offenses referred to in Subsection (2)(a) are:

3636 (a) rape, in violation of Section ~~76-5-402;~~

3637 (b) object rape, in violation of Section ~~76-5-402.2;~~

3638 (c) forcible sodomy, in violation of Section ~~76-5-403;~~

3639 (d) forcible sexual abuse, in violation of Section ~~76-5-404;~~

3640 (e) aggravated sexual assault, in violation of Section ~~76-5-405;~~ or

3641 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

3642 Section 80. Section **76-5-401.3** is amended to read:

3643 **76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.**

3644 (1) (a) As used in this section~~[(a) "Adolescent"]~~, "adolescent" means an individual in
 3645 the transitional phase of human physical and psychological growth and development between
 3646 childhood and adulthood who is 12 years old or older, but ~~[under]~~ younger than 18 years old.

3647 ~~[(b) "Unlawful adolescent sexual activity" means sexual activity between adolescents~~
 3648 ~~under circumstances not amounting to:]~~

3649 ~~[(i) rape, in violation of Section 76-5-402;~~

3650 ~~[(ii) rape of a child, in violation of Section 76-5-402.1;~~

3651 ~~[(iii) object rape, in violation of Section 76-5-402.2;~~

3652 ~~[(iv) object rape of a child, in violation of Section 76-5-402.3;~~

3653 ~~[(v) forcible sodomy, in violation of Section 76-5-403;~~

3654 ~~[(vi) sodomy on a child, in violation of Section 76-5-403.1;~~

3655 ~~[(vii) sexual abuse of a child, in violation of Section 76-5-404;~~

3656 ~~[(viii) aggravated sexual assault, in violation of Section 76-5-405; or]~~

3657 ~~[(ix) incest, in violation of Section 76-7-102;~~

3658 ~~[(2) Unlawful adolescent sexual activity is punishable as a:]~~

3659 (b) Terms defined in Section 76-1-101.5 apply to this section.

3660 (2) Under circumstances not amounting to an offense listed in Subsection (4), an actor
 3661 commits unlawful sexual activity if the actor:

3662 (a) is an adolescent; and

3663 (b) has sexual activity with another adolescent.

3664 (3) A violation of Subsection (2) is a:

3665 (a) third degree felony if an [adolescent] actor who is 17 years old engages in unlawful
 3666 adolescent sexual activity with an adolescent who is 12 or 13 years old;

3667 (b) third degree felony if an [adolescent] actor who is 16 years old engages in unlawful
 3668 adolescent sexual activity with an adolescent who is 12 years old;

3669 (c) class A misdemeanor if an ~~[adolescent]~~ actor who is 16 years old engages in
3670 unlawful adolescent sexual activity with an adolescent who is 13 years old;

3671 (d) class A misdemeanor if an ~~[adolescent]~~ actor who is 14 or 15 years old engages in
3672 unlawful adolescent sexual activity with an adolescent who is 12 years old;

3673 (e) class B misdemeanor if an ~~[adolescent]~~ actor who is 17 years old engages in
3674 unlawful adolescent sexual activity with an adolescent who is 14 years old;

3675 (f) class B misdemeanor if an ~~[adolescent]~~ actor who is 15 years old engages in
3676 unlawful adolescent sexual activity with an adolescent who is 13 years old;

3677 (g) class C misdemeanor if an ~~[adolescent]~~ actor who is 12 or 13 years old engages in
3678 unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and

3679 (h) class C misdemeanor if an ~~[adolescent]~~ actor who is 14 years old engages in
3680 unlawful adolescent sexual activity with an adolescent who is 13 years old.

3681 (4) The offenses referred to in Subsection (2) are:

3682 (a) rape, in violation of Section [76-5-402](#);

3683 (b) rape of a child, in violation of Section [76-5-402.1](#);

3684 (c) object rape, in violation of Section [76-5-402.2](#);

3685 (d) object rape of a child, in violation of Section [76-5-402.3](#);

3686 (e) forcible sodomy, in violation of Section [76-5-403](#);

3687 (f) sodomy on a child, in violation of Section [76-5-403.1](#);

3688 (g) sexual abuse of a child, in violation of Section [76-5-404](#);

3689 (h) aggravated sexual assault, in violation of Section [76-5-405](#);

3690 (i) incest, in violation of Section [76-7-102](#); or

3691 (j) an attempt to commit any offense listed in Subsections (4)(a) through (4)(i).

3692 ~~[(3)]~~ (5) An offense under this section is not eligible for a nonjudicial adjustment under
3693 Section [80-6-304](#) or a referral to a youth court under Section [80-6-902](#).

3694 ~~[(4)]~~ (6) Except for an offense that is transferred to a district court by the juvenile court
3695 in accordance with Section [80-6-504](#), the district court may enter any sentence or combination
3696 of sentences that would have been available in juvenile court but for the delayed reporting or

3697 delayed filing of the information in the district court.

3698 ~~[(5)]~~ (7) An offense under this section is not subject to registration under Subsection
3699 ~~77-41-102~~(17).

3700 Section 81. Section ~~76-5-402~~ is amended to read:

3701 **76-5-402. Rape -- Penalties.**

3702 (1) Terms defined in Section ~~76-1-101.5~~ apply to this section.

3703 ~~[(1) A person]~~ (2) (a) An actor commits rape ~~[when]~~ if the actor has sexual intercourse
3704 with another ~~[person]~~ individual without ~~[the victim's]~~ the individual's consent.

3705 (b) Any sexual penetration, however slight, is sufficient to constitute the relevant
3706 element of a violation of Subsection (2)(a).

3707 ~~[(2)]~~ (c) This section applies whether or not the actor is married to the ~~[victim]~~
3708 individual.

3709 (3) ~~[Rape]~~ A violation of Subsection (2) is a felony of the first degree, punishable by a
3710 term of imprisonment of:

3711 (a) except as provided in Subsection (3)(b) or (c), not less than five years and which
3712 may be for life;

3713 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,
3714 if the trier of fact finds that:

3715 (i) during the course of the commission of the rape the defendant caused serious bodily
3716 injury to ~~[another]~~ the victim; or

3717 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
3718 ~~[of age]~~ old and was previously convicted of a grievous sexual offense; or

3719 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3720 rape the defendant was previously convicted of a grievous sexual offense.

3721 (4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser
3722 term than the term described in Subsection (3)(b) is in the interests of justice and states the
3723 reasons for this finding on the record, the court may impose a term of imprisonment of not less
3724 than:

3725 (a) 10 years and which may be for life; or

3726 (b) six years and which may be for life.

3727 (5) The provisions of Subsection (4) do not apply when a ~~[person]~~ defendant is
3728 sentenced under Subsection (3)(a) or (c).

3729 (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance
3730 with Section 76-3-406.

3731 Section 82. Section ~~76-5-402.1~~ is amended to read:

3732 **76-5-402.1. Rape of a child -- Penalties.**

3733 (1) Terms defined in Section ~~76-1-101.5~~ apply to this section.

3734 ~~[(1) A person]~~ (2) (a) An actor commits rape of a child [when the person] if the actor
3735 has sexual intercourse with [a child] an individual who is [under the age of 14.] younger than
3736 14 years old.

3737 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
3738 violation of Subsection (2)(a).

3739 ~~[(2) Rape of a child]~~ (3) A violation of Subsection (2) is a first degree felony
3740 punishable by a term of imprisonment of:

3741 (a) except as provided in Subsections ~~[(2)]~~ (3)(b) and ~~[(4)]~~ (5), not less than 25 years
3742 and which may be for life; or

3743 (b) life without parole, if the trier of fact finds that:

3744 (i) during the course of the commission of the rape of a child, the defendant caused
3745 serious bodily injury to ~~[another]~~ the victim; or

3746 (ii) at the time of the commission of the rape of a child the defendant was previously
3747 convicted of a grievous sexual offense.

3748 ~~[(3)]~~ (4) Subsection ~~[(2)]~~ (3)(b) does not apply if the defendant was younger than 18
3749 years [of age] old at the time of the offense.

3750 ~~[(4)]~~ (5) (a) When imposing a sentence under [Subsection (2)] Subsections (3)(a) and
3751 ~~[(4)]~~ (5)(b), a court may impose a term of imprisonment under Subsection ~~[(4)]~~ (5)(b) if:

3752 (i) it is a first time offense for the defendant under this section;

3753 (ii) the defendant was younger than 21 years ~~[of age]~~ old at the time of the offense; and

3754 (iii) the court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a)

3755 is in the interests of justice under the facts and circumstances of the case, including the age of
3756 the victim, and states the reasons for this finding on the record.

3757 (b) If the conditions of Subsection ~~[(4)]~~ (5)(a) are met, the court may impose a term of
3758 imprisonment of not less than:

3759 (i) 15 years and which may be for life;

3760 (ii) 10 years and which may be for life; or

3761 (iii) six years and which may be for life.

3762 ~~[(5)]~~ (6) Imprisonment under this section is mandatory in accordance with Section
3763 [76-3-406](#).

3764 Section 83. Section ~~76-5-402.2~~ is amended to read:

3765 **76-5-402.2. Object rape -- Penalties.**

3766 ~~[(1) A person who, without the victim's consent, causes the penetration, however~~
3767 ~~slight, of the genital or anal opening of another person who is 14 years of age or older, by any~~
3768 ~~foreign object, substance, instrument, or device, including a part of the human body other than~~
3769 ~~the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or~~
3770 ~~with the intent to arouse or gratify the sexual desire of any person, commits an offense which]~~

3771 (1) Terms defined in Section [76-1-101.5](#) apply to this section.

3772 (2) An actor commits object rape if:

3773 (a) the actor:

3774 (i) acts without an individual's consent;

3775 (ii) causes the penetration, however slight, of the genital or anal opening of the
3776 individual by:

3777 (A) a foreign object;

3778 (B) a substance;

3779 (C) an instrument;

3780 (D) a device; or

3781 (E) a part of the human body other than the mouth or genitals; and
3782 (iii) (A) intends to cause substantial emotional or bodily pain to the individual; or
3783 (B) intends to arouse or gratify the sexual desire of any individual; and
3784 (b) the individual described in Subsection (2)(a)(i) is 14 years old or older.
3785 (3) A violation of Subsection (2) is a first degree felony, punishable by a term of
3786 imprisonment of:
3787 (a) except as provided in Subsection [(+) (3)(b) or (c), not less than five years and
3788 which may be for life;
3789 (b) except as provided in Subsection [(+) (3)(c) or [(2)] (4), 15 years and which may
3790 be for life, if the trier of fact finds that:
3791 (i) during the course of the commission of the object rape the defendant caused serious
3792 bodily injury to [another] the victim; or
3793 (ii) at the time of the commission of the object rape, the defendant was younger than 18
3794 years [~~of age~~] old and was previously convicted of a grievous sexual offense; or
3795 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3796 object rape, the defendant was previously convicted of a grievous sexual offense.
3797 [(2)] (4) If, when imposing a sentence under Subsection [(+) (3)(b), a court finds that a
3798 lesser term than the term described in Subsection [(+) (3)(b) is in the interests of justice and
3799 states the reasons for this finding on the record, the court may impose a term of imprisonment
3800 of not less than:
3801 (a) 10 years and which may be for life; or
3802 (b) six years and which may be for life.
3803 [(3)] (5) The provisions of Subsection [(2)] (4) do not apply [~~when a person~~] if a
3804 defendant is sentenced under Subsection [(+) (3)(a) or (c).
3805 [(4)] (6) Imprisonment under Subsection [(+) (b), (1)(c), or (2)] (3)(b), (3)(c), or (4) is
3806 mandatory in accordance with Section 76-3-406.
3807 Section 84. Section 76-5-402.3 is amended to read:
3808 **76-5-402.3. Object rape of a child -- Penalty.**

3809 (1) Terms defined in Section 76-1-101.5 apply to this section.

3810 ~~[(1) A person]~~ (2) (a) An actor commits object rape of a child ~~[when the person]~~ if:

3811 (i) the actor causes the penetration or touching, however slight, of the genital or anal

3812 opening ~~[of a child who is under the age of 14 by any]~~ of the individual by, except as provided

3813 in Subsection (2)(b):

3814 (A) a foreign object[:];

3815 (B) a substance[:];

3816 (C) an instrument[:]; or

3817 (D) a device[:~~, not including a part of the human body, with intent~~];

3818 (ii) the actor:

3819 (A) intends to cause substantial emotional or bodily pain to the ~~[child]~~ individual; or

3820 ~~[with the intent]~~

3821 (B) intends to arouse or gratify the sexual desire of any ~~[person:]~~ individual; and

3822 (iii) the individual described in Subsection (2)(a)(i) is younger than 14 years old.

3823 (b) Subsection (2)(a) does not include penetration or touching by a part of the human

3824 body.

3825 ~~[(2) Object rape of a child]~~ (3) (a) A violation of Subsection (2) is a first degree felony

3826 punishable by a term of imprisonment of:

3827 ~~[(a)]~~ (i) except as provided in Subsections ~~[(2)(b)]~~ (3)(a)(ii) and (4), not less than 25

3828 years and which may be for life; or

3829 ~~[(b)]~~ (ii) life without parole, if the trier of fact finds that:

3830 ~~[(i)]~~ (A) during the course of the commission of the object rape of a child the defendant

3831 caused serious bodily injury to ~~[another]~~ the victim; or

3832 ~~[(ii)]~~ (B) at the time of the commission of the object rape of a child the defendant was

3833 previously convicted of a grievous sexual offense.

3834 ~~[(3)]~~ (b) Subsection ~~[(2)(b)]~~ (3)(a)(ii) does not apply if the defendant was younger than

3835 18 years ~~[of age]~~ old at the time of the offense.

3836 (4) (a) When imposing a sentence under ~~[Subsection (2)(a)]~~ Subsections (3)(a)(i) and

3837 (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

3838 (i) it is a first time offense for the defendant under this section;

3839 (ii) the defendant was younger than 21 years [~~of age~~] old at the time of the offense; and

3840 (iii) the court finds that a lesser term than the term described in Subsection [~~(2)(a)~~]

3841 (3)(a)(i) is in the interests of justice under the facts and circumstances of the case, including the
3842 age of the victim, and states the reasons for this finding on the record.

3843 (b) If the conditions of Subsection (4)(a) are met, the court may impose a term of
3844 imprisonment of not less than:

3845 (i) 15 years and which may be for life;

3846 (ii) 10 years and which may be for life; or

3847 (iii) six years and which may be for life.

3848 (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

3849 Section 85. Section 76-5-403 is amended to read:

3850 **76-5-403. Forcible sodomy -- Penalties.**

3851 (1) (a) As used in this section, "sodomy" means engaging in any sexual act with an
3852 individual who is 14 years [~~of age~~] old or older involving the genitals of one individual and the
3853 mouth or anus of another individual[~~, regardless of the sex of either participant~~].

3854 (b) Terms defined in Section 76-1-101.5 apply to this section.

3855 (2) (a) An [~~individual~~] actor commits forcible sodomy when the actor commits sodomy
3856 upon another individual without the [~~other's~~] other individual's consent.

3857 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
3858 violation of Subsection (2)(a).

3859 (3) [~~Forcible sodomy~~] A violation of Subsection (2) is a first degree felony, punishable
3860 by a term of imprisonment of:

3861 (a) except as provided in Subsection (3)(b) or (c), not less than five years and which
3862 may be for life;

3863 (b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life,
3864 if the trier of fact finds that:

3865 (i) during the course of the commission of the forcible sodomy the defendant caused
3866 serious bodily injury to [~~another~~] the victim; or

3867 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
3868 [~~of age~~] old and was previously convicted of a grievous sexual offense; or

3869 (c) life without parole, if the trier of fact finds that at the time of the commission of the
3870 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

3871 (4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser
3872 term than the term described in Subsection (3)(b) is in the interests of justice and states the
3873 reasons for this finding on the record, the court may impose a term of imprisonment of not less
3874 than:

3875 (a) 10 years and which may be for life; or

3876 (b) six years and which may be for life.

3877 (5) The provisions of Subsection (4) do not apply when [~~an individual~~] a defendant is
3878 sentenced under Subsection (3)(a) or (c).

3879 (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance
3880 with Section [76-3-406](#).

3881 Section 86. Section [76-5-403.1](#) is amended to read:

3882 **[76-5-403.1. Sodomy on a child -- Penalties.](#)**

3883 (1) Terms defined in Section [76-1-101.5](#) apply to this section.

3884 [~~(1) A person~~] (2) (a) An actor commits sodomy [upon] on a child if:

3885 (i) the actor engages in any sexual act upon or with [~~a child who is under the age of 14,~~
3886 involving] another individual;

3887 (ii) the individual is younger than 14 years old; and

3888 (iii) the sexual act involves the genitals or anus of the actor or the [~~child~~] individual
3889 and the mouth or anus of either [~~person, regardless of the sex of either participant.~~] the actor or
3890 individual.

3891 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
3892 relevant element of a violation of Subsection (2)(a).

3893 ~~[(2) Sodomy upon a child]~~ (3) A violation of Subsection (2)(a) is a first degree felony
3894 punishable by a term of imprisonment of:

3895 (a) except as provided in Subsections ~~[(2)]~~ (3)(b) and ~~[(4)]~~ (5), not less than 25 years
3896 and which may be for life; or

3897 (b) life without parole, if the trier of fact finds that:

3898 (i) during the course of the commission of the sodomy ~~[upon]~~ on a child the defendant
3899 caused serious bodily injury to ~~[another]~~ the victim; or

3900 (ii) at the time of the commission of the sodomy ~~[upon]~~ on a child, the defendant was
3901 previously convicted of a grievous sexual offense.

3902 ~~[(3)]~~ (4) Subsection ~~[(2)]~~ (3)(b) does not apply if the defendant was younger than 18
3903 years ~~[of age]~~ old at the time of the offense.

3904 ~~[(4)]~~ (5) (a) When imposing a sentence under ~~[Subsection (2)]~~ Subsections (3)(a) and
3905 ~~[(4)]~~ (5)(b), a court may impose a term of imprisonment under Subsection ~~[(4)]~~ (5)(b) if:

3906 (i) it is a first time offense for the defendant under this section;

3907 (ii) the defendant was younger than 21 years ~~[of age]~~ old at the time of the offense; and

3908 (iii) the court finds that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a)
3909 is in the interests of justice under the facts and circumstances of the case, including the age of
3910 the victim, and states the reasons for this finding on the record.

3911 (b) If the conditions of Subsection ~~[(4)]~~ (5)(a) are met, the court may impose a term of
3912 imprisonment of not less than:

3913 (i) 15 years and which may be for life;

3914 (ii) 10 years and which may be for life; or

3915 (iii) six years and which may be for life.

3916 ~~[(5)]~~ (6) Imprisonment under this section is mandatory in accordance with Section
3917 [76-3-406](#).

3918 Section 87. Section **76-5-404** is amended to read:

3919 **76-5-404. Forcible sexual abuse -- Penalties -- Limitations.**

3920 (1) (a) As used in this section, "indecent liberties" means the same as that term is

3921 defined in Section 76-5-401.1.

3922 (b) Terms defined in Section 76-1-101.5 apply to this section.

3923 ~~[(1) An individual]~~ (2) (a) Under circumstances not amounting to an offense listed in
3924 Subsection (4), an actor commits forcible sexual abuse if [the victim is 14 years of age or older
3925 and, under circumstances not amounting to rape, object rape, forcible sodomy, or attempted
3926 rape or forcible sodomy,];

3927 (i) without the consent of the individual, the actor:

3928 (A) touches the anus, buttocks, pubic area, or any part of the genitals of [another, or]
3929 another individual;

3930 (B) touches the breast of [a] another individual who is female[-]; or

3931 (C) otherwise takes indecent liberties with [another, with intent to] another individual;

3932 (ii) the actor intends to:

3933 (A) cause substantial emotional or bodily pain to any individual [or with the intent to];

3934 or

3935 (B) arouse or gratify the sexual desire of any individual[-, without the consent of the
3936 other, regardless of the sex of any participant.]; and

3937 ~~[(2) Forcible sexual abuse is:]~~

3938 ~~[(a) except as provided in Subsection (2)(b);]~~

3939 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
3940 older.

3941 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
3942 relevant element of a violation of Subsection (2)(a).

3943 (3) (a) A violation of Subsection (2) is a felony of the second degree, punishable by a
3944 term of imprisonment of not less than one year nor more than 15 years[-; or (b) except as
3945 provided in Subsection (3)];.

3946 (b) (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection
3947 (3)(b)(ii), a violation of Subsection (2) is a felony of the first degree, punishable by a term of
3948 imprisonment for 15 years and which may be for life, if the trier of fact finds that during the

3949 course of the commission of the forcible sexual abuse the defendant caused serious bodily
 3950 injury to ~~[another]~~ the victim.

3951 ~~[(3)]~~ (ii) If, when imposing a sentence under Subsection ~~[(2)(b)]~~ (3)(b)(i), a court finds
 3952 that a lesser term than the term described in Subsection ~~[(2)(b)]~~ (3)(b)(i) is in the interests of
 3953 justice and states the reasons for this finding on the record, the court may impose a term of
 3954 imprisonment of not less than:

3955 ~~[(a)]~~ (A) 10 years and which may be for life; or

3956 ~~[(b)]~~ (B) six years and which may be for life.

3957 (4) The offenses referred to in Subsection (2)(a) are:

3958 (a) rape, in violation of Section [76-5-402](#);

3959 (b) object rape, in violation of Section [76-5-402.2](#);

3960 (c) forcible sodomy, in violation of Section [76-5-403](#); or

3961 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).

3962 ~~[(4)]~~ (5) Imprisonment under Subsection ~~[(2)]~~ (3)(b) or ~~[(3)]~~ (4) is mandatory in
 3963 accordance with Section [76-3-406](#).

3964 Section 88. Section **76-5-404.1** is amended to read:

3965 **76-5-404.1. Sexual abuse of a child -- Penalties -- Limitations.**

3966 (1) (a) As used in this section:

3967 ~~[(a)]~~ (i) "Adult" means an individual 18 years ~~[of age]~~ old or older.

3968 ~~[(b)]~~ (ii) "Child" means an individual ~~[under the age of 14.]~~ younger than 14 years old.

3969 (iii) "Indecent liberties" means the same as that term is defined in Section [76-5-401.1](#).

3970 ~~[(c)]~~ (iv) "Position of special trust" means:

3971 ~~[(i)]~~ (A) an adoptive parent;

3972 ~~[(ii)]~~ (B) an athletic manager who is an adult;

3973 ~~[(iii)]~~ (C) an aunt;

3974 ~~[(iv)]~~ (D) a babysitter;

3975 ~~[(v)]~~ (E) a coach;

3976 ~~[(vi)]~~ (F) a cohabitant of a parent if the cohabitant is an adult;

- 3977 ~~[(vii)]~~ (G) a counselor;
- 3978 ~~[(viii)]~~ (H) a doctor or physician;
- 3979 ~~[(ix)]~~ (I) an employer;
- 3980 ~~[(x)]~~ (J) a foster parent;
- 3981 ~~[(xi)]~~ (K) a grandparent;
- 3982 ~~[(xii)]~~ (L) a legal guardian;
- 3983 ~~[(xiii)]~~ (M) a natural parent;
- 3984 ~~[(xiv)]~~ (N) a recreational leader who is an adult;
- 3985 ~~[(xv)]~~ (O) a religious leader;
- 3986 ~~[(xvi)]~~ (P) a sibling or a stepsibling who is an adult;
- 3987 ~~[(xvii)]~~ (Q) a scout leader who is an adult;
- 3988 ~~[(xviii)]~~ (R) a stepparent;
- 3989 ~~[(xix)]~~ (S) a teacher or any other individual employed by or volunteering at a public or
 3990 private elementary school or secondary school, and who is 18 years ~~[of age]~~ old or older;
- 3991 ~~[(xx)]~~ (T) an instructor, professor, or teaching assistant at a public or private institution
 3992 of higher education;
- 3993 ~~[(xxi)]~~ (U) an uncle;
- 3994 ~~[(xxii)]~~ (V) a youth leader who is an adult; or
- 3995 ~~[(xxiii)]~~ (W) any individual in a position of authority, other than those individuals
 3996 listed in Subsections ~~[(1)(c)(i) through (xxiii)]~~ (1)(a)(iv)(A) through (V), which enables the
 3997 individual to exercise undue influence over the child.
- 3998 (b) Terms defined in Section [76-1-101.5](#) apply to this section.
- 3999 ~~[(2) An individual]~~ (2) (a) Under circumstances not amounting to an offense listed in
 4000 Subsection (4), an actor commits sexual abuse of a child if ~~[, under circumstances not~~
 4001 ~~amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit~~
 4002 ~~any of these offenses,]~~ the actor:
- 4003 (i) (A) touches the anus, buttocks, pubic area, or genitalia of any child~~[-];~~
- 4004 (B) touches the breast of a female child~~[-];~~ or

4005 (C) otherwise takes indecent liberties with a child~~[, with intent to]~~; and
4006 (ii) the actor's conduct is with intent to:
4007 (A) cause substantial emotional or bodily pain to any individual; or ~~[with the intent]~~
4008 (B) to arouse or gratify the sexual desire of any individual ~~[regardless of the sex of any~~
4009 ~~participant]~~.
4010 ~~[(3) Sexual abuse of a child is a second degree felony.]~~
4011 ~~[(4) An individual commits aggravated sexual abuse of a child when in conjunction~~
4012 ~~with the offense described in Subsection (2) any of the following circumstances have been~~
4013 ~~charged and admitted or found true in the action for the offense:]~~
4014 ~~[(a) the offense was committed by the use of a dangerous weapon as defined in Section~~
4015 ~~76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or~~
4016 ~~was committed during the course of a kidnapping;]~~
4017 ~~[(b) the accused caused bodily injury or severe psychological injury to the victim~~
4018 ~~during or as a result of the offense;]~~
4019 ~~[(c) the accused was a stranger to the victim or made friends with the victim for the~~
4020 ~~purpose of committing the offense;]~~
4021 ~~[(d) the accused used, showed, or displayed pornography or caused the victim to be~~
4022 ~~photographed in a lewd condition during the course of the offense;]~~
4023 ~~[(e) the accused, prior to sentencing for this offense, was previously convicted of any~~
4024 ~~sexual offense;]~~
4025 ~~[(f) the accused committed the same or similar sexual act upon two or more victims at~~
4026 ~~the same time or during the same course of conduct;]~~
4027 ~~[(g) the accused committed, in Utah or elsewhere, more than five separate acts, which~~
4028 ~~if committed in Utah would constitute an offense described in this chapter, and were~~
4029 ~~committed at the same time, or during the same course of conduct, or before or after the instant~~
4030 ~~offense;]~~
4031 ~~[(h) the offense was committed by an individual who occupied a position of special~~
4032 ~~trust in relation to the victim;]~~

4033 ~~[(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or~~
4034 ~~sexual acts by the victim with any other individual, or sexual performance by the victim before~~
4035 ~~any other individual, human trafficking, or human smuggling; or]~~

4036 ~~[(j) the accused caused the penetration, however slight, of the genital or anal opening~~
4037 ~~of the child by any part or parts of the human body other than the genitals or mouth.]~~

4038 ~~[(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of~~
4039 ~~imprisonment of:]~~

4040 ~~[(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and~~
4041 ~~which may be for life;]~~

4042 ~~[(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of~~
4043 ~~fact finds that during the course of the commission of the aggravated sexual abuse of a child~~
4044 ~~the defendant caused serious bodily injury to another; or]~~

4045 ~~[(c) life without parole, if the trier of fact finds that at the time of the commission of~~
4046 ~~the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous~~
4047 ~~sexual offense.]~~

4048 ~~[(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a~~
4049 ~~lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and~~
4050 ~~states the reasons for this finding on the record, the court may impose a term of imprisonment~~
4051 ~~of not less than:]~~

4052 ~~[(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or]~~

4053 ~~[(b) for purposes of Subsection (5)(a) or (b):]~~

4054 ~~[(i) 10 years and which may be for life; or]~~

4055 ~~[(ii) six years and which may be for life.]~~

4056 ~~[(7) The provisions of Subsection (6) do not apply when an individual is sentenced~~
4057 ~~under Subsection (5)(c).]~~

4058 ~~[(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18~~
4059 ~~years of age at the time of the offense.]~~

4060 ~~[(9) Imprisonment under this section is mandatory in accordance with Section~~

4061 ~~76-3-406.]~~

4062 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
4063 relevant element of a violation of Subsection (2)(a).

4064 (3) A violation of Subsection (2) is a second degree felony.

4065 (4) The offenses referred to in Subsection (2)(a) are:

4066 (a) rape of a child, in violation of Section ~~76-5-402.1~~;

4067 (b) object rape of a child, in violation of Section ~~76-5-402.3~~;

4068 (c) sodomy on a child, in violation of Section ~~76-5-403.1~~; or

4069 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).

4070 (5) Imprisonment under this section is mandatory in accordance with Section ~~76-3-406~~.

4071 Section 89. Section ~~76-5-404.3~~ is enacted to read:

4072 **76-5-404.3. Aggravated sexual abuse of a child -- Penalties.**

4073 (1) (a) As used in this section:

4074 (i) "Adult" means the same as that term is defined in Section ~~76-4-404.1~~.

4075 (ii) "Child" means the same as that term is defined in Section ~~76-4-404.1~~.

4076 (iii) "Position of special trust" means the same as that term is defined in Section
4077 ~~76-4-404.1~~.

4078 (b) Terms defined in Section ~~76-1-101.5~~ apply to this section.

4079 (2) (a) An actor commits aggravated sexual abuse of a child if, in conjunction with the
4080 offense described in Subsection ~~76-4-404.1~~(2)(a), any of the following circumstances have
4081 been charged and admitted or found true in the action for the offense:

4082 (i) the actor committed the offense:

4083 (A) by the use of a dangerous weapon;

4084 (B) by force, duress, violence, intimidation, coercion, menace, or threat of harm; or

4085 (C) during the course of a kidnaping;

4086 (ii) the actor caused bodily injury or severe psychological injury to the child during or
4087 as a result of the offense;

4088 (iii) the actor was a stranger to the child or made friends with the child for the purpose

4089 of committing the offense;

4090 (iv) the actor used, showed, or displayed pornography or caused the child to be
4091 photographed in a lewd condition during the course of the offense;

4092 (v) the actor, prior to sentencing for this offense, was previously convicted of any
4093 sexual offense;

4094 (vi) the actor committed the same or similar sexual act upon two or more individuals at
4095 the same time or during the same course of conduct;

4096 (vii) the actor committed, in Utah or elsewhere, more than five separate acts, which if
4097 committed in Utah would constitute an offense described in this chapter, and were committed
4098 at the same time, or during the same course of conduct, or before or after the instant offense;

4099 (viii) the actor occupied a position of special trust in relation to the child;

4100 (ix) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
4101 sexual acts by the child with any other individual, sexual performance by the child before any
4102 other individual, human trafficking, or human smuggling; or

4103 (x) the actor caused the penetration, however slight, of the genital or anal opening of
4104 the child by any part or parts of the human body other than the genitals or mouth.

4105 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
4106 relevant element of a violation of Subsection (2)(a).

4107 (3) Except as provided in Subsection (6), a violation of Subsection (2) is a first degree
4108 felony punishable by a term of imprisonment of:

4109 (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and
4110 which may be for life;

4111 (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact
4112 finds that during the course of the commission of the aggravated sexual abuse of a child the
4113 defendant caused serious bodily injury to another; or

4114 (c) life without parole, if the trier of fact finds that at the time of the commission of the
4115 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
4116 sexual offense.

4117 (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a
4118 lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and
4119 states the reasons for this finding on the record, the court may impose a term of imprisonment
4120 of not less than:

4121 (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

4122 (b) for purposes of Subsection (3)(a) or (b):

4123 (i) 10 years and which may be for life; or

4124 (ii) six years and which may be for life.

4125 (5) The provisions of Subsection (4) do not apply if a defendant is sentenced under
4126 Subsection (3)(c).

4127 (6) Subsection (3)(b) or (3)(c) does not apply if the defendant was younger than 18
4128 years old at the time of the offense.

4129 (7) Imprisonment under this section is mandatory in accordance with Section [76-3-406](#).

4130 Section 90. Section **76-5-405** is amended to read:

4131 **76-5-405. Aggravated sexual assault -- Penalty.**

4132 (1) Terms defined in Section [76-1-101.5](#) apply to this section.

4133 ~~[(1) A person]~~ (2) An actor commits aggravated sexual assault if:

4134 (a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the
4135 actor:

4136 (i) uses, or threatens ~~[the victim]~~ another individual with the use of, a dangerous
4137 weapon ~~[as defined in Section [76-1-601](#)];~~

4138 (ii) compels, or attempts to compel, ~~[the victim]~~ another individual to submit to rape,
4139 object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious
4140 bodily injury to be inflicted imminently on any ~~[person]~~ individual; or

4141 (iii) is aided or abetted by one or more persons;

4142 (b) in the course of an attempted rape, attempted object rape, or attempted forcible
4143 sodomy, the actor:

4144 (i) causes serious bodily injury to any ~~[person]~~ individual;

4145 (ii) uses, or threatens [~~the victim~~] the individual with the use of[;] a dangerous weapon
 4146 [~~as defined in Section 76-1-601~~];

4147 (iii) attempts to compel [~~the victim~~] the individual to submit to rape, object rape, or
 4148 forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted
 4149 imminently on any [~~person~~] individual; or

4150 (iv) is aided or abetted by one or more persons; or

4151 (c) in the course of an attempted forcible sexual abuse, the actor:

4152 (i) causes serious bodily injury to any [~~person~~] individual;

4153 (ii) uses, or threatens the [~~victim~~] individual with the use of[;] a dangerous weapon [~~as~~
 4154 ~~defined in Section 76-1-601~~];

4155 (iii) attempts to compel the [~~victim~~] individual to submit to forcible sexual abuse, by
 4156 threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any [~~person~~]
 4157 individual; or

4158 (iv) is aided or abetted by one or more persons.

4159 [~~(2) Aggravated sexual assault~~] (3) A violation of Subsection (2) is a first degree
 4160 felony, punishable by a term of imprisonment of:

4161 (a) for an aggravated sexual assault described in Subsection [(+) (2)(a):

4162 (i) except as provided in Subsection [(2) (3)(a)(ii) or [(3) (4)(a), not less than 15 years
 4163 and which may be for life; or

4164 (ii) life without parole, if the trier of fact finds that at the time of the commission of the
 4165 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

4166 (b) for an aggravated sexual assault described in Subsection [(+) (2)(b):

4167 (i) except as provided in Subsection [(2) (3)(b)(ii) or [(4) (5)(a), not less than 10
 4168 years and which may be for life; or

4169 (ii) life without parole, if the trier of fact finds that at the time of the commission of the
 4170 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

4171 or

4172 (c) for an aggravated sexual assault described in Subsection [(+) (2)(c):

4173 (i) except as provided in Subsection ~~[(2)]~~ (3)(c)(ii) or ~~[(5)]~~ (6)(a), not less than six
4174 years and which may be for life; or

4175 (ii) life without parole, if the trier of fact finds that at the time of the commission of the
4176 aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

4177 ~~[(3)]~~ (4) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(a)(i), a court finds
4178 that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(a)(i) is in the interests of
4179 justice and states the reasons for this finding on the record, the court may impose a term of
4180 imprisonment of not less than:

4181 (i) 10 years and which may be for life; or

4182 (ii) six years and which may be for life.

4183 (b) The provisions of Subsection ~~[(3)]~~ (4)(a) do not apply when a ~~[person]~~ defendant is
4184 sentenced under Subsection ~~[(2)]~~ (3)(a)(ii).

4185 ~~[(4)]~~ (5) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(b)(i), a court finds
4186 that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(b)(i) is in the interests of
4187 justice and states the reasons for this finding on the record, the court may impose a term of
4188 imprisonment of not less than six years and which may be for life.

4189 (b) The provisions of Subsection ~~[(4)]~~ (5)(a) do not apply when a ~~[person]~~ defendant is
4190 sentenced under Subsection ~~[(2)]~~ (3)(b)(ii).

4191 ~~[(5)]~~ (6) (a) If, when imposing a sentence under Subsection ~~[(2)]~~ (3)(c)(i), a court finds
4192 that a lesser term than the term described in Subsection ~~[(2)]~~ (3)(c)(i) is in the interests of
4193 justice and states the reasons for this finding on the record, the court may impose a term of
4194 imprisonment of not less than three years and which may be for life.

4195 (b) The provisions of Subsection ~~[(5)]~~ (6)(a) do not apply when a ~~[person]~~ defendant is
4196 sentenced under Subsection ~~[(2)]~~ (3)(c)(ii).

4197 ~~[(6)]~~ (7) Subsections ~~[(2)]~~ (3)(a)(ii), ~~[(2)]~~ (3)(b)(ii), and ~~[(2)]~~ (3)(c)(ii) do not apply if
4198 the defendant was younger than 18 years ~~[of age]~~ old at the time of the offense.

4199 ~~[(7)]~~ (8) Imprisonment under this section is mandatory in accordance with Section
4200 76-3-406.

4201 Section 91. Section **76-5-406.3** is amended to read:

4202 **76-5-406.3. Applicability of sentencing provisions.**

4203 A person convicted of a violation of Section [76-5-301.1](#), child kidnaping; Section
4204 [76-5-302](#), aggravated kidnaping; Section [76-5-402.1](#), rape of a child; Section [76-5-402.3](#),
4205 object rape of a child; Section [76-5-403.1](#), sodomy on a child; Section [~~76-5-404.1~~] [76-5-404.3](#),
4206 aggravated sexual abuse of a child; or Section [76-5-405](#), aggravated sexual assault shall be
4207 sentenced as follows:

4208 (1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in
4209 accordance with the statutory provisions in effect prior to that date.

4210 (2) If the person commits the crime and is sentenced on or after April 29, 1996, he
4211 shall be punished in accordance with the statutory provisions in effect after April 29, 1996.

4212 (3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after
4213 April 29, 1996, he shall be given the option prior to sentencing to proceed either under the law
4214 which was in effect at the time the offense was committed or the law which was in effect at the
4215 time of sentencing. If the person refuses to select, the court shall sentence the person in
4216 accordance with the law in effect at the time of sentencing. The provisions of Subsections
4217 [77-27-9\(2\)\(a\)](#) and (b) apply to the sentence of any person who selects under this section to be
4218 sentenced in accordance with the law in effect prior to April 29, 1996.

4219 Section 92. Section **76-5-406.5** is amended to read:

4220 **76-5-406.5. Circumstances required for probation or suspension of sentence for**
4221 **certain sex offenses against a child.**

4222 (1) In a case involving a conviction for a violation of Section [76-5-402.1](#), rape of a
4223 child; Section [76-5-402.3](#), object rape of a child; Section [76-5-403.1](#), sodomy on a child; or any
4224 attempt to commit a felony under those sections or a conviction for a violation of [~~Subsections~~
4225 ~~[76-5-404.1\(4\)](#) and [\(5\)](#)~~] [Section 76-5-404.3](#), aggravated sexual abuse of a child, the court may
4226 suspend execution of sentence and consider probation to a residential sexual abuse treatment
4227 center only if all of the following circumstances are found by the court to be present and the
4228 court in its discretion, considering the circumstances of the offense, including the nature,

4229 frequency, and duration of the conduct, and considering the best interests of the public and the
4230 child victim, finds probation to a residential sexual abuse treatment center to be proper:

4231 (a) the defendant did not use a weapon, force, violence, substantial duress or menace,
4232 or threat of harm, in committing the offense or before or after committing the offense, in an
4233 attempt to frighten the child victim or keep the child victim from reporting the offense;

4234 (b) the defendant did not cause bodily injury to the child victim during or as a result of
4235 the offense and did not cause the child victim severe psychological harm;

4236 (c) the defendant, prior to the offense, had not been convicted of any public offense in
4237 Utah or elsewhere involving sexual misconduct in the commission of the offense;

4238 (d) the defendant did not commit an offense described in this Part 4, Sexual Offenses,
4239 against more than one child victim or victim, at the same time, or during the same course of
4240 conduct, or previous to or subsequent to the instant offense;

4241 (e) the defendant did not use, show, or display pornography or create sexually-related
4242 photographs or tape recordings in the course of the offense;

4243 (f) the defendant did not act in concert with another offender during the offense or
4244 knowingly commit the offense in the presence of a person other than the victim or with lewd
4245 intent to reveal the offense to another;

4246 (g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution
4247 or sexual act by the child victim with any other person or sexual performance by the child
4248 victim before any other person;

4249 (h) the defendant admits the offense of which he has been convicted and has been
4250 accepted for mental health treatment in a residential sexual abuse treatment center that has been
4251 approved by the Department of Corrections under Subsection (3);

4252 (i) rehabilitation of the defendant through treatment is probable, based upon evidence
4253 provided by a treatment professional who has been approved by the Department of Corrections
4254 under Subsection (3) and who has accepted the defendant for treatment;

4255 (j) prior to being sentenced, the defendant has undergone a complete psychological
4256 evaluation conducted by a professional approved by the Department of Corrections and:

4257 (i) the professional's opinion is that the defendant is not an exclusive pedophile and
4258 does not present an immediate and present danger to the community if released on probation
4259 and placed in a residential sexual abuse treatment center; and

4260 (ii) the court accepts the opinion of the professional;

4261 (k) if the offense is committed by a parent, stepparent, adoptive parent, or legal
4262 guardian of the child victim, the defendant shall, in addition to establishing all other conditions
4263 of this section, establish it is in the child victim's best interest that the defendant not be
4264 imprisoned, by presenting evidence provided by a treatment professional who:

4265 (i) is treating the child victim and understands he will be treating the family as a whole;

4266 or

4267 (ii) has assessed the child victim for purposes of treatment as ordered by the court
4268 based on a showing of good cause; and

4269 (l) if probation is imposed, the defendant, as a condition of probation, may not reside in
4270 a home where children younger than 18 years [~~of age~~] old reside for at least one year beginning
4271 with the commencement of treatment, and may not again take up residency in a home where
4272 children younger than 18 years [~~of age~~] old reside during the period of probation until allowed
4273 to do so by order of the court.

4274 (2) A term of incarceration of at least 90 days is to be served prior to treatment and
4275 continue until the time when bed space is available at a residential sexual abuse treatment
4276 center as provided under Subsection (3) and probation is to be imposed for up to a maximum of
4277 10 years.

4278 (3) (a) The Department of Corrections shall develop qualification criteria for the
4279 approval of the sexual abuse treatment programs and professionals under this section. The
4280 criteria shall include the screening criteria employed by the department for sexual offenders.

4281 (b) The sexual abuse treatment program shall be at least one year in duration, shall be
4282 residential, and shall specifically address the sexual conduct for which the defendant was
4283 convicted.

4284 (4) Establishment by the defendant of all the criteria of this section does not mandate

4285 the granting under this section of probation or modification of the sentence that would
4286 otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The
4287 court has discretion to deny the request based upon its consideration of the circumstances of the
4288 offense, including:

4289 (a) the nature, frequency, and duration of the conduct;
4290 (b) the effects of the conduct on any child victim involved;
4291 (c) the best interest of the public and any child victim; and
4292 (d) the characteristics of the defendant, including any risk the defendant presents to the
4293 public and specifically to children.

4294 (5) The defendant has the burden to establish by a preponderance of evidence
4295 eligibility under all of the criteria of this section.

4296 (6) If the court finds a defendant granted probation under this section fails to cooperate
4297 or succeed in treatment or violates probation to any substantial degree, the sentence previously
4298 imposed for the offense shall be immediately executed.

4299 (7) The court shall enter written findings of fact regarding the conditions established by
4300 the defendant that justify the granting of probation under this section.

4301 (8) In cases involving conviction of any sexual offense against a child other than those
4302 offenses provided in Subsection (1), the court shall consider the circumstances described in
4303 Subsection (1) as advisory in determining whether or not execution of sentence should be
4304 suspended and probation granted. The defendant is not required to satisfy all of those
4305 circumstances for eligibility pursuant to this Subsection (8).

4306 Section 93. Section 76-5-407 is amended to read:

4307 **76-5-407. Consensual conduct in marriage.**

4308 [(+) The provisions of this part do not apply to consensual conduct between
4309 individuals married to each other.

4310 [~~(2) In any prosecution for:~~]

4311 [~~(a) the following offenses, any sexual penetration, however slight, is sufficient to
4312 constitute the relevant element of the offense:]~~]

- 4313 [~~(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving~~
4314 ~~sexual intercourse;~~]
- 4315 [~~(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section~~
4316 ~~76-5-401.2, involving sexual intercourse; or]~~
- 4317 [~~(iii) rape, a violation of Section 76-5-402; or]~~
- 4318 [~~(b) the following offenses, any touching, however slight, is sufficient to constitute the~~
4319 ~~relevant element of the offense:]~~
- 4320 [~~(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving~~
4321 ~~acts of sodomy;~~]
- 4322 [~~(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section~~
4323 ~~76-5-401.2, involving acts of sodomy;~~]
- 4324 [~~(iii) forcible sodomy, a violation of Subsection 76-5-403(2);]~~
- 4325 [~~(iv) rape of a child, a violation of Section 76-5-402.1; or]~~
- 4326 [~~(v) object rape of a child, a violation of Section 76-5-402.3:]~~
- 4327 [~~(3) In any prosecution for the following offenses, any touching, even if accomplished~~
4328 ~~through clothing, is sufficient to constitute the relevant element of the offense:]~~
- 4329 [~~(a) sodomy on a child, a violation of Section 76-5-403.1;]~~
- 4330 [~~(b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section~~
4331 ~~76-5-404.1;]~~
- 4332 [~~(c) sexual abuse of a minor, a violation of Section 76-5-401.1;]~~
- 4333 [~~(d) unlawful sexual conduct with a 16- or 17-year-old, a violation of Section~~
4334 ~~76-5-401.2;]~~
- 4335 [~~(e) forcible sexual abuse, a violation of Section 76-5-404;]~~
- 4336 [~~(f) custodial sexual relations, a violation of Section 76-5-412; or]~~
- 4337 [~~(g) custodial sexual relations or misconduct with youth receiving state services, a~~
4338 ~~violation of Section 76-5-413.]~~
- 4339 Section 94. Section 76-5-412 is amended to read:
- 4340 **76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.**

- 4341 (1) (a) As used in this section:
- 4342 [~~(a)~~] (i) "Actor" means:
- 4343 (A) a law enforcement officer, as defined in Section [53-13-103](#);
- 4344 [~~(i)~~] (B) a correctional officer, as defined in Section [53-13-104](#);
- 4345 [~~(ii)~~] (C) a special function officer, as defined in Section [53-13-105](#); or
- 4346 [~~(iii)~~] ~~a law enforcement officer, as defined in Section [53-13-103](#); or~~
- 4347 [~~(iv)~~] (D) an employee of, or private provider or contractor for, the Department of
- 4348 Corrections or a county jail.
- 4349 (ii) "Indecent liberties" means the same as that term is defined in Section [76-5-401.1](#).
- 4350 [~~(b)~~] (iii) "Person in custody" means an individual, either an adult 18 years [~~of age~~] old
- 4351 or older, or a minor younger than 18 years [~~of age~~] old, who is:
- 4352 [~~(i)~~] (A) a prisoner, as defined in Section [76-5-101](#), and includes a prisoner who is in
- 4353 the custody of the Department of Corrections created under Section [64-13-2](#), but who is being
- 4354 housed at the Utah State Hospital established under Section [62A-15-601](#) or other medical
- 4355 facility;
- 4356 [~~(ii)~~] (B) under correctional supervision, such as at a work release facility or as a
- 4357 parolee or probationer; or
- 4358 [~~(iii)~~] (C) under lawful or unlawful arrest, either with or without a warrant.
- 4359 [~~(c)~~] (iv) "Private provider or contractor" means [~~any person or entity~~] a person that
- 4360 contracts with the Department of Corrections or with a county jail to provide services or
- 4361 functions that are part of the operation of the Department of Corrections or a county jail under
- 4362 state or local law.
- 4363 (b) Terms defined in Section [76-1-101.5](#) apply to this section.
- 4364 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts
- 4365 under Subsection [~~(3)~~] (2)(b):
- 4366 (i) under circumstances not amounting to commission of, or an attempt to commit, an
- 4367 offense under Subsection [~~(6)~~] (4); and
- 4368 (ii) (A) the actor knows that the individual is a person in custody; or

4369 (B) a reasonable person in the actor's position should have known under the
4370 circumstances that the individual was a person in custody.

4371 (b) Acts referred to in Subsection (2)(a) are:

4372 (i) having sexual intercourse with a person in custody;

4373 (ii) engaging in a sexual act with a person in custody involving the genitals of one
4374 individual and the mouth or anus of another individual; or

4375 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
4376 person in custody by any foreign object, substance, instrument, or device, including a part of
4377 the human body; and

4378 (B) intending to cause substantial emotional or bodily pain to any individual.

4379 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
4380 relevant element of a violation of Subsection (2)(a).

4381 ~~[(b)]~~ (3) (a) A violation of Subsection (2)~~[(a)]~~ is a third degree felony~~[-but if]~~.

4382 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18
4383 years [of age] old, a violation of Subsection (2)~~[(a)]~~ is a second degree felony.

4384 (c) If the act committed under ~~[this]~~ Subsection ~~[(2)]~~ (3) amounts to an offense subject
4385 to a greater penalty under another provision of state law than is provided under this Subsection
4386 ~~[(2)]~~ (3), this Subsection ~~[(2)]~~ (3) does not prohibit prosecution and sentencing for the more
4387 serious offense.

4388 ~~[(3) Acts referred to in Subsection (2)(a) are:]~~

4389 ~~[(a) having sexual intercourse with a person in custody;]~~

4390 ~~[(b) engaging in any sexual act with a person in custody involving the genitals of one~~
4391 ~~individual and the mouth or anus of another individual, regardless of the sex of either~~
4392 ~~participant; or]~~

4393 ~~[(c) causing the penetration, however slight, of the genital or anal opening of a person~~
4394 ~~in custody by any foreign object, substance, instrument, or device, including a part of the~~
4395 ~~human body, with the intent to cause substantial emotional or bodily pain to any individual,~~
4396 ~~regardless of the sex of any participant.]~~

4397 ~~[(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the~~
4398 ~~acts under Subsection (5):]~~

4399 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~
4400 ~~offense under Subsection (6); and]~~

4401 ~~[(ii) (A) the actor knows that the individual is a person in custody; or]~~

4402 ~~[(B) a reasonable person in the actor's position should have known under the~~
4403 ~~circumstances that the individual was a person in custody.]~~

4404 ~~[(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in~~
4405 ~~custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree~~
4406 ~~felony.]~~

4407 ~~[(c) If the act committed under this Subsection (4) amounts to an offense subject to a~~
4408 ~~greater penalty under another provision of state law than is provided under this Subsection (4),~~
4409 ~~this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.]~~

4410 ~~[(5) Acts referred to in Subsection (4)(a) are the following acts when committed with~~
4411 ~~the intent to cause substantial emotional or bodily pain to any individual or with the intent to~~
4412 ~~arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:]~~

4413 ~~[(a) touching the anus, buttocks, pubic area, or any part of the genitals of a person in~~
4414 ~~custody;]~~

4415 ~~[(b) touching the breast of a female person in custody; or]~~

4416 ~~[(c) otherwise taking indecent liberties with a person in custody.]~~

4417 ~~[(6)] (4) The offenses referred to in [Subsections] Subsection (2)(a)(i) and ~~[(4)(a)(i)]~~
4418 Subsection 76-5-412.2(2)(a)(i) are:~~

4419 (a) Section 76-5-401, unlawful sexual activity with a minor;

4420 (b) Section 76-5-402, rape;

4421 (c) Section 76-5-402.1, rape of a child;

4422 (d) Section 76-5-402.2, object rape;

4423 (e) Section 76-5-402.3, object rape of a child;

4424 (f) Section 76-5-403, forcible sodomy;

- 4425 (g) Section [76-5-403.1](#), sodomy on a child;
- 4426 (h) Section [76-5-404](#), forcible sexual abuse;
- 4427 (i) Section [76-5-404.1](#), sexual abuse of a child, or [Section 76-5-404.3](#), aggravated
4428 sexual abuse of a child; or
- 4429 (j) Section [76-5-405](#), aggravated sexual assault.
- 4430 ~~[(7)]~~ (5) (a) It is not a defense to the commission of, or the attempt to commit, the
4431 offense of custodial sexual relations under Subsection (2) ~~[or custodial sexual misconduct~~
4432 ~~under Subsection (4), or an attempt to commit either of these offenses,]~~ if the person in custody
4433 is younger than 18 years ~~[of age]~~ old, that the actor:
- 4434 (i) mistakenly believed the person in custody to be 18 years ~~[of age]~~ old or older at the
4435 time of the alleged offense; or
- 4436 (ii) was unaware of the true age of the person in custody.
- 4437 (b) Consent of the person in custody is not a defense to any violation or attempted
4438 violation of Subsection (2) ~~[or (4)]~~.
- 4439 ~~[(8)]~~ (6) It is a defense that the commission by the actor of an act under Subsection (2)
4440 ~~[or (4)]~~ is the result of compulsion, as the defense is described in Subsection [76-2-302\(1\)](#).
- 4441 Section 95. Section [76-5-412.2](#) is enacted to read:
- 4442 **[76-5-412.2. Custodial sexual misconduct -- Penalties -- Defenses.](#)**
- 4443 (1) (a) As used in this section:
- 4444 (i) "Actor" means the same as that term is defined in Section [76-5-412](#).
- 4445 (ii) "Indecent liberties" means the same as that term is defined in Section [76-5-401.1](#).
- 4446 (iii) "Person in custody" means the same as that term is defined in Section [76-5-412](#).
- 4447 (iv) "Private provider or contractor" means the same as that term is defined in Section
4448 [76-5-412](#).
- 4449 (b) Terms defined in Section [76-1-101.5](#) apply to this section.
- 4450 (2) (a) An actor commits custodial sexual misconduct if:
- 4451 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not
4452 amounting to commission of, or an attempt to commit, an offense under Subsection

4453 [76-5-412](#)(4); and

4454 (ii) (A) the actor knows that the individual is a person in custody; or

4455 (B) a reasonable person in the actor's position should have known under the

4456 circumstances that the individual was a person in custody.

4457 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with

4458 the intent to cause substantial emotional or bodily pain to another individual or with the intent

4459 to arouse or gratify the sexual desire of any individual:

4460 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in

4461 custody;

4462 (ii) touching the breast of a female person in custody; or

4463 (iii) otherwise taking indecent liberties with a person in custody.

4464 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

4465 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18

4466 years old, a violation of Subsection (2) is a third degree felony.

4467 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater

4468 penalty under another provision of state law than is provided under this Subsection (3), this

4469 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

4470 (4) (a) It is not a defense to the commission of, or attempt to commit, the offense

4471 described in Subsection (2) if the person in custody is younger than 18 years old, that the actor:

4472 (i) mistakenly believed the person in custody to be 18 years old or older at the time of

4473 the alleged offense; or

4474 (ii) was unaware of the true age of the person in custody.

4475 (b) Consent of the person in custody is not a defense to any violation or attempted

4476 violation of Subsection (2).

4477 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the

4478 result of compulsion, as the defense is described in Subsection [76-2-302](#)(1).

4479 Section 96. Section **76-5-413** is amended to read:

4480 **76-5-413. Custodial sexual relations with youth receiving state services --**

4481 **Penalties -- Defenses and limitations.**

4482 (1) (a) As used in this section:

4483 ~~[(a)]~~ (i) "Actor" means:4484 ~~[(i)]~~ (A) an individual employed by the Department of Human Services, as created in
4485 Section [62A-1-102](#), or an employee of a private provider or contractor; or4486 ~~[(ii)]~~ (B) an individual employed by the juvenile court of the state, or an employee of a
4487 private provider or contractor.4488 ~~[(b)]~~ (ii) "Department" means the Department of Human Services created in Section
4489 [62A-1-102](#).4490 ~~[(c)]~~ (iii) "Juvenile court" means the juvenile court of the state created in Section
4491 [78A-6-102](#).4492 ~~[(d)]~~ (iv) "Private provider or contractor" means ~~[any individual or entity]~~ a person that
4493 contracts with the:4494 ~~[(i)]~~ (A) department to provide services or functions that are part of the operation of the
4495 department; or4496 ~~[(ii)]~~ (B) juvenile court to provide services or functions that are part of the operation of
4497 the juvenile court.4498 ~~[(e)]~~ (v) "Youth receiving state services" means an individual:4499 ~~[(i)]~~ (A) younger than 18 years old, except as provided under Subsection ~~[(1)(e)(ii)]~~
4500 (1)(a)(v)(B), who is:4501 ~~[(A)]~~ (I) in the custody of the department under Section [80-6-703](#); or4502 ~~[(B)]~~ (II) receiving services from any division of the department if any portion of the
4503 costs of these services is covered by public money; or4504 ~~[(ii)]~~ (B) younger than 21 years old:4505 ~~[(A)]~~ (I) who is in the custody of the Division of Juvenile Justice Services, or the
4506 Division of Child and Family Services; or4507 ~~[(B)]~~ (II) whose case is under the jurisdiction of the juvenile court.4508 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

4509 (2) (a) ~~[An]~~ Under circumstances not amounting to an offense listed in Subsection (4),
 4510 an actor commits custodial sexual relations with a youth receiving state services if:

4511 (i) the actor commits any of the acts ~~[under Subsection (3):]~~ described in Subsection
 4512 (2)(b); and

4513 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~
 4514 ~~offense under Subsection (6); and]~~

4515 (ii) (A) the actor knows that the individual is a youth receiving state services; or

4516 (B) a reasonable person in the actor's position should have known under the
 4517 circumstances that the individual was a youth receiving state services.

4518 (b) Acts referred to in Subsection (2)(a)(i) are:

4519 (i) having sexual intercourse with a youth receiving state services;

4520 (ii) engaging in any sexual act with a youth receiving state services involving the
 4521 genitals of one individual and the mouth or anus of another individual; or

4522 (iii) (A) causing the penetration, however slight, of the genital or anal opening of a
 4523 youth receiving state services by any foreign object, substance, instrument, or device, including
 4524 a part of the human body; and

4525 (B) with the intent to cause substantial emotional or bodily pain to any individual or
 4526 with the intent to arouse or gratify the sexual desire of any individual.

4527 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
 4528 relevant element of a violation of Subsection (2)(a).

4529 ~~[(b)]~~ (3) (a) A violation of Subsection (2)~~[(a)]~~ is a third degree felony~~[-but if]~~.

4530 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
 4531 than 18 years old, a violation of Subsection (2)~~[(a)]~~ is a second degree felony.

4532 (c) If the act committed under ~~[this]~~ Subsection (2) amounts to an offense subject to a
 4533 greater penalty under another provision of state law than is provided under this Subsection ~~[(2)]~~
 4534 (3), this Subsection ~~[(2)]~~ (3) does not prohibit prosecution and sentencing for the more serious
 4535 offense.

4536 ~~[(3) Acts referred to in Subsection (2)(a) are:]~~

- 4537 ~~[(a) having sexual intercourse with a youth receiving state services;]~~
- 4538 ~~[(b) engaging in any sexual act with a youth receiving state services involving the~~
- 4539 ~~genitals of one individual and the mouth or anus of another individual, regardless of the sex of~~
- 4540 ~~either participant; or]~~
- 4541 ~~[(c) causing the penetration, however slight, of the genital or anal opening of a youth~~
- 4542 ~~receiving state services by any foreign object, substance, instrument, or device, including a part~~
- 4543 ~~of the human body, with the intent to cause substantial emotional or bodily pain to any~~
- 4544 ~~individual, regardless of the sex of any participant or with the intent to arouse or gratify the~~
- 4545 ~~sexual desire of any individual, regardless of the sex of any participant.]~~
- 4546 ~~[(4) (a) An actor commits custodial sexual misconduct with a youth receiving state~~
- 4547 ~~services if the actor commits any of the acts under Subsection (5):]~~
- 4548 ~~[(i) under circumstances not amounting to commission of, or an attempt to commit, an~~
- 4549 ~~offense under Subsection (6); and]~~
- 4550 ~~[(ii) (A) the actor knows that the individual is a youth receiving state services; or]~~
- 4551 ~~[(B) a reasonable person in the actor's position should have known under the~~
- 4552 ~~circumstances that the individual was a youth receiving state services.]~~
- 4553 ~~[(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth~~
- 4554 ~~receiving state services is younger than 18 years old, a violation of Subsection (4)(a) is a third~~
- 4555 ~~degree felony.]~~
- 4556 ~~[(c) If the act committed under this Subsection (4) amounts to an offense subject to a~~
- 4557 ~~greater penalty under another provision of state law than is provided under this Subsection (4),~~
- 4558 ~~this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.]~~
- 4559 ~~[(5) Acts referred to in Subsection (4)(a) are the following acts when committed with~~
- 4560 ~~the intent to cause substantial emotional or bodily pain to any individual or with the intent to~~
- 4561 ~~arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:]~~
- 4562 ~~[(a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth~~
- 4563 ~~receiving state services;]~~
- 4564 ~~[(b) touching the breast of a female youth receiving state services; or]~~

4565 ~~[(c) otherwise taking indecent liberties with a youth receiving state services.]~~
4566 ~~[(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:]~~
4567 ~~[(a) Section [76-5-401](#), unlawful sexual activity with a minor;]~~
4568 ~~[(b) Section [76-5-402](#), rape;]~~
4569 ~~[(c) Section [76-5-402.1](#), rape of a child;]~~
4570 ~~[(d) Section [76-5-402.2](#), object rape;]~~
4571 ~~[(e) Section [76-5-402.3](#), object rape of a child;]~~
4572 ~~[(f) Section [76-5-403](#), forcible sodomy;]~~
4573 ~~[(g) Section [76-5-403.1](#), sodomy on a child;]~~
4574 ~~[(h) Section [76-5-404](#), forcible sexual abuse;]~~
4575 ~~[(i) Section [76-5-404.1](#), sexual abuse of a child or aggravated sexual abuse of a child;~~
4576 or]
4577 ~~[(j) Section [76-5-405](#), aggravated sexual assault.]~~
4578 (4) The offenses referred to in Subsection (2) are:
4579 (a) unlawful sexual activity with a minor, in violation of Section [76-5-401](#);
4580 (b) rape, in violation of Section [76-5-402](#);
4581 (c) rape of a child, in violation of Section [76-5-402.1](#);
4582 (d) object rape, in violation of Section [76-5-402.2](#);
4583 (e) object rape of a child, in violation of Section [76-5-402.3](#);
4584 (f) forcible sodomy, in violation of Section [76-5-403](#);
4585 (g) sodomy on a child, in violation of Section [76-5-403.1](#);
4586 (h) forcible sexual abuse, in violation of Section [76-5-404](#);
4587 (i) sexual abuse of a child, in violation of Section [76-5-404.1](#);
4588 (j) aggravated sexual abuse of a child, in violation of Section [76-5-404.3](#);
4589 (k) aggravated sexual assault, in violation of Section [76-5-405](#); or
4590 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
4591 ~~[(7)]~~ (5) (a) It is not a defense to the commission of, or an attempt to commit, the
4592 offense ~~[of custodial sexual relations with a youth receiving state services under]~~ described in

4593 Subsection (2) [~~or custodial sexual misconduct with a youth receiving state services under~~
 4594 ~~Subsection (4), or an attempt to commit either of these offenses,]~~ if the youth receiving state
 4595 services is younger than 18 years old, that the actor:

4596 (i) mistakenly believed the youth receiving state services to be 18 years old or older at
 4597 the time of the alleged offense; or

4598 (ii) was unaware of the true age of the youth receiving state services.

4599 (b) Consent of the youth receiving state services is not a defense to any violation or
 4600 attempted violation of Subsection (2) [~~or (4)~~].

4601 [~~(8)~~] (6) It is a defense that the commission by the actor of an act under Subsection (2)
 4602 [~~or (4)~~] is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

4603 Section 97. Section 76-5-413.2 is enacted to read:

4604 **76-5-413.2. Custodial sexual misconduct with a youth receiving state services --**

4605 **Penalties -- Defenses and limitations.**

4606 (1) (a) As used in this section:

4607 (i) "Actor" means the same as that term is defined in Section 76-5-413.

4608 (ii) "Department" means the same as that term is defined in Section 76-5-413.

4609 (iii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

4610 (iv) "Juvenile court" means the same as that term is defined in Section 76-5-413.

4611 (v) "Private provider or contractor" means the same as that term is defined in Section
 4612 76-5-413.

4613 (vi) "Youth receiving state services" means the same as that term is defined in Section
 4614 76-5-413.

4615 (b) Terms defined in Section 76-1-101.5 apply to this section.

4616 (2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an
 4617 actor commits custodial sexual misconduct with a youth receiving state services if:

4618 (i) the actor commits any of the acts described in Subsection (2)(b); and

4619 (ii) (A) the actor knows that the individual is a youth receiving state services; or

4620 (B) a reasonable person in the actor's position should have known under the

4621 circumstances that the individual was a youth receiving state services.

4622 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with
4623 the intent to cause substantial emotional or bodily pain to any individual or with the intent to
4624 arouse or gratify the sexual desire of any individual:

4625 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth
4626 receiving state services;

4627 (ii) touching the breast of a female youth receiving state services; or

4628 (iii) otherwise taking indecent liberties with a youth receiving state services.

4629 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the
4630 relevant element of a violation of Subsection (2)(a).

4631 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

4632 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger
4633 than 18 years old, a violation of Subsection (2) is a third degree felony.

4634 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
4635 penalty under another provision of state law than is provided under this Subsection (3), this
4636 Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

4637 (4) The offenses referred to in Subsection (2) are:

4638 (a) unlawful sexual activity with a minor, in violation of Section [76-5-401](#);

4639 (b) rape, in violation of Section [76-5-402](#);

4640 (c) rape of a child, in violation of Section [76-5-402.1](#);

4641 (d) object rape, in violation of Section [76-5-402.2](#);

4642 (e) object rape of a child, in violation of Section [76-5-402.3](#);

4643 (f) forcible sodomy, in violation of Section [76-5-403](#);

4644 (g) sodomy on a child, in violation of Section [76-5-403.1](#);

4645 (h) forcible sexual abuse, in violation of Section [76-5-404](#);

4646 (i) sexual abuse of a child, in violation of Section [76-5-404.1](#);

4647 (j) aggravated sexual abuse of a child, in violation of Section [76-5-404.3](#);

4648 (k) aggravated sexual assault, in violation of Section [76-5-405](#); or

- 4649 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
- 4650 (5) (a) It is not a defense to the commission of, or an attempt to commit, the offense
4651 described in Subsection (2) if the youth receiving state services is younger than 18 years old,
4652 that the actor:
- 4653 (i) mistakenly believed the youth receiving state services to be 18 years old or older at
4654 the time of the alleged offense; or
- 4655 (ii) was unaware of the true age of the youth receiving state services.
- 4656 (b) Consent of the youth receiving state services is not a defense to any violation or
4657 attempted violation of Subsection (2).
- 4658 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
4659 result of compulsion, as the defense is described in Subsection [76-2-302\(1\)](#).
- 4660 Section 98. Section **76-5-701** is amended to read:
- 4661 **76-5-701. Female genital mutilation definition.**
- 4662 (1) As used in this part, [~~female genital mutilation~~] "female genital mutilation" means
4663 any procedure that involves partial or total removal of the external female genitalia, or any
4664 harmful procedure to the female genitalia, including:
- 4665 (a) clitoridectomy;
- 4666 (b) the partial or total removal of the clitoris or the prepuce;
- 4667 (c) excision or the partial or total removal of the clitoris and the labia minora, with or
4668 without excision of the labia majora;
- 4669 (d) infibulation or the narrowing of the vaginal orifice with the creation of a covering
4670 seal by cutting and appositioning the labia minora or the labia majora, with or without excision
4671 of the clitoris;
- 4672 (e) pricking, piercing, incising, or scraping, and cauterizing the genital area; or
- 4673 (f) any other actions intended to alter the structure or function of the female genitalia
4674 for non-medical reasons.
- 4675 (2) Female genital mutilation is considered a form of child abuse for mandatory
4676 reporting under Section [62A-4a-403](#).

4677 Section 99. Section **76-5-702** is amended to read:

4678 **76-5-702. Prohibition on female genital mutilation -- Exceptions.**

4679 [~~(1) It is a second degree felony for any person to:~~]

4680 (1) Terms defined in Sections [76-1-101.5](#) and [76-5-701](#) apply to this section.

4681 (2) An actor commits female genital mutilation if the actor:

4682 (a) [~~perform~~] performs a procedure described in Section [76-5-701](#) on a female under 18
4683 years [~~of age~~] old;

4684 (b) [~~give~~] gives permission for or [~~permit~~] permits a procedure described in Section
4685 [76-5-701](#) to be performed on a female under 18 years [~~of age~~] old; or

4686 (c) [~~remove or cause, permit, or facilitate~~] removes or causes, permits, or facilitates the
4687 removal of a female under 18 years [~~of age~~] old from this state for the purpose of facilitating
4688 the performance of a procedure described in Section [76-5-701](#) on the female.

4689 (3) A violation of Subsection (2) is a second degree felony.

4690 [~~(2)~~] (4) It is not a defense to [~~female genital mutilation~~] this section that the conduct
4691 described in Section [76-5-701](#) is required as a matter of religion, custom, ritual, or standard
4692 practice, or that the individual on whom it is performed or the individual's parent or guardian
4693 consented to the procedure.

4694 [~~(3)~~] (5) A surgical procedure is not a violation of [~~Section [76-5-701](#)~~] this section if the
4695 procedure is performed by a physician licensed as a medical professional in the place it is
4696 performed and the procedure is:

4697 (a) medically advisable;

4698 (b) necessary to preserve or protect the physical health of the [~~person~~] individual on
4699 whom it is performed; or

4700 (c) requested for sex reassignment surgery by the [~~person~~] individual on whom it is
4701 performed.

4702 [~~(4) A~~] (6) The license of any medical professional licensed in accordance with Title
4703 58, Chapter 31b, Nurse Practice Act, Title 58, Chapter 67, Utah Medical Practice Act, Title 58,
4704 Chapter 68, Utah Osteopathic Medical Practice Act, or Title 58, Chapter 70a, Utah Physician

4705 Assistant Act, who is convicted of a violation of this section shall ~~have their license~~ be
4706 permanently revoked by the appropriate licensing board.

4707 Section 100. Section **76-5-704** is amended to read:

4708 **76-5-704. Civil cause of action.**

4709 (1) ~~[A victim of]~~ An individual upon whom female genital mutilation was performed
4710 may bring a civil action in any court of competent jurisdiction for female genital mutilation any
4711 time within 10 years of:

4712 (a) the procedure being performed; or

4713 (b) the victim's 18th birthday.

4714 (2) The court may award actual, compensatory, and punitive damages, and any other
4715 appropriate relief.

4716 (3) A prevailing plaintiff shall be awarded attorney fees and costs.

4717 (4) Treble damages may be awarded if the plaintiff proves the defendant's acts were
4718 willful and malicious.

4719 (5) If a health care provider is charged and prosecuted for a violation of Section
4720 **76-5-702**, Section **78B-3-416** may not apply to an action against the health care provider under
4721 this section.

4722 Section 101. Section **76-5b-103** is amended to read:

4723 **76-5b-103. Definitions.**

4724 As used in this chapter:

4725 (1) "Child pornography" means any visual depiction, including any live performance,
4726 photograph, film, video, picture, or computer or computer-generated image or picture, whether
4727 made or produced by electronic, mechanical, or other means, of sexually explicit conduct,
4728 where:

4729 (a) the production of the visual depiction involves the use of a minor engaging in
4730 sexually explicit conduct;

4731 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

4732 (c) the visual depiction has been created, adapted, or modified to appear that an

4733 identifiable minor is engaging in sexually explicit conduct.

4734 (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing,
4735 providing, giving, granting admission to, or otherwise transferring or presenting child
4736 pornography or vulnerable adult pornography with or without consideration.

4737 (3) "Identifiable minor" means a person:

4738 (a) (i) who was a minor at the time the visual depiction was created, adapted, or
4739 modified; or

4740 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
4741 depiction; and

4742 (b) who is recognizable as an actual person by the person's face, likeness, or other
4743 distinguishing characteristic, such as a birthmark, or other recognizable feature.

4744 (4) "Identifiable vulnerable adult" means a person:

4745 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,
4746 or modified; or

4747 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the
4748 visual depiction; and

4749 (b) who is recognizable as an actual person by the person's face, likeness, or other
4750 distinguishing characteristic, such as a birthmark, or other recognizable feature.

4751 (5) "Lacks capacity to consent" is as defined in [~~Subsection 76-5-111(1)~~] Section
4752 76-5-111.4.

4753 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
4754 performed by live actors in person.

4755 (7) "Minor" means a person younger than 18 years [~~of age~~] old.

4756 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
4757 genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is
4758 less than completely and opaquely covered.

4759 (9) "Produce" means:

4760 (a) the photographing, filming, taping, directing, producing, creating, designing, or

4761 composing of child pornography or vulnerable adult pornography; or

4762 (b) the securing or hiring of persons to engage in the photographing, filming, taping,
4763 directing, producing, creating, designing, or composing of child pornography or vulnerable
4764 adult pornography.

4765 (10) "Sexually explicit conduct" means actual or simulated:

4766 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
4767 whether between persons of the same or opposite sex;

4768 (b) masturbation;

4769 (c) bestiality;

4770 (d) sadistic or masochistic activities;

4771 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
4772 person;

4773 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
4774 arousal of any person;

4775 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

4776 (h) the explicit representation of the defecation or urination functions.

4777 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of
4778 sexually explicit conduct which duplicates, within the perception of an average person, the
4779 appearance of an actual act of sexually explicit conduct.

4780 (12) "Vulnerable adult" is as defined in Subsection [76-5-111\(1\)](#).

4781 (13) "Vulnerable adult pornography" means any visual depiction, including any live
4782 performance, photograph, film, video, picture, or computer or computer-generated image or
4783 picture, whether made or produced by electronic, mechanical, or other means, of sexually
4784 explicit conduct, where:

4785 (a) the production of the visual depiction involves the use of a vulnerable adult
4786 engaging in sexually explicit conduct;

4787 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

4788 or

4789 (c) the visual depiction has been created, adapted, or modified to appear that an
 4790 identifiable vulnerable adult is engaging in sexually explicit conduct.

4791 Section 102. Section **76-5b-201** is amended to read:

4792 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

4793 (1) Terms defined in Section 76-1-101.5 apply to this section.

4794 [~~(1) A person is guilty of~~] (2) An actor commits sexual exploitation of a minor:

4795 (a) when the [~~person~~] actor:

4796 (i) knowingly produces, possesses, or possesses with intent to distribute child
 4797 pornography; or

4798 (ii) intentionally distributes or views child pornography; or

4799 (b) if the [~~person~~] actor is a minor's parent or legal guardian and knowingly consents to
 4800 or permits the minor to be sexually exploited as described in Subsection [~~(1)~~] (2)(a).

4801 [~~(2)(a) Except as provided in Subsection (2)(b), sexual exploitation of a minor]~~

4802 (3) (a) (i) A violation of Subsection (2) is a second degree felony.

4803 [~~(b) A violation of Subsection (1)]~~ (ii) Notwithstanding Subsection (3)(a)(i), a
 4804 violation of Subsection (2) for knowingly producing child pornography is a first degree felony
 4805 if the [~~person~~] actor produces original child pornography depicting a first degree felony that
 4806 involves:

4807 [~~(i)]~~ (A) the [~~person~~] actor or another person engaging in conduct with the minor that is
 4808 a violation of:

4809 [~~(A)]~~ (I) Section 76-5-402.1, rape of a child;

4810 [~~(B)]~~ (II) Section 76-5-402.3, object rape of a child;

4811 [~~(C)]~~ (III) Section 76-5-403.1, sodomy on a child; or

4812 [~~(D)]~~ (IV) Section [~~76-5-404.1]~~ 76-5-404.3, aggravated sexual abuse of a child; or

4813 [~~(i)]~~ (B) the minor being physically abused, as defined in Section 80-1-102.

4814 [~~(3)]~~ (b) It is a separate offense under this section:

4815 [~~(a)]~~ (i) for each minor depicted in the child pornography; and

4816 [~~(b)]~~ (ii) for each time the same minor is depicted in different child pornography.

4817 (4) (a) It is an affirmative defense to a charge of violating this section that no minor
4818 was actually depicted in the visual depiction or used in producing or advertising the visual
4819 depiction.

4820 (b) For a charge of violating this section for knowingly possessing or intentionally
4821 viewing child pornography, it is an affirmative defense that:

4822 (i) the defendant:

4823 (A) did not solicit the child pornography from the minor depicted in the child
4824 pornography;

4825 (B) is not more than two years older than the minor depicted in the child pornography;
4826 and

4827 (C) upon request of a law enforcement agent or the minor depicted in the child
4828 pornography, removes from an electronic device or destroys the child pornography and all
4829 copies of the child pornography in the defendant's possession; and

4830 (ii) the child pornography does not depict an offense under [~~Title 76,~~] Chapter 5, Part
4831 4, Sexual Offenses.

4832 (5) In proving a violation of this section in relation to an identifiable minor, proof of
4833 the actual identity of the identifiable minor is not required.

4834 (6) This section may not be construed to impose criminal or civil liability on:

4835 (a) an entity or an employee, director, officer, or agent of an entity when acting within
4836 the scope of employment, for the good faith performance of:

4837 (i) reporting or data preservation duties required under federal or state law; or

4838 (ii) implementing a policy of attempting to prevent the presence of child pornography
4839 on tangible or intangible property, or of detecting and reporting the presence of child
4840 pornography on the property;

4841 (b) a law enforcement officer acting within the scope of a criminal investigation;

4842 (c) an employee of a court who may be required to view child pornography during the
4843 course of and within the scope of the employee's employment;

4844 (d) a juror who may be required to view child pornography during the course of the

4845 individual's service as a juror;

4846 (e) an attorney or employee of an attorney who is required to view child pornography
4847 during the course of a judicial process and while acting within the scope of employment;

4848 (f) an employee of the Department of Human Services who is required to view child
4849 pornography within the scope of the employee's employment; or

4850 (g) an attorney who is required to view child pornography within the scope of the
4851 attorney's responsibility to represent the Department of Human Services, including the
4852 divisions and offices within the Department of Human Services.

4853 Section 103. Section **76-5b-202** is amended to read:

4854 **76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.**

4855 (1) Terms defined in Section 76-1-101.5 apply to this section.

4856 ~~[(1) A person is guilty of]~~ (2) An actor commits sexual exploitation of a vulnerable
4857 adult if the ~~[person]~~ actor:

4858 (a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute
4859 material that the ~~[person]~~ actor knows is vulnerable adult pornography; or

4860 (B) intentionally distributes or views material that the ~~[person]~~ actor knows is
4861 vulnerable adult pornography; and

4862 (ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult
4863 pornography lacks capacity to consent to the conduct described in Subsection ~~[(1)]~~ (2)(a); or

4864 (b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the
4865 vulnerable adult to be, sexually exploited as described in Subsection ~~[(1)]~~ (2)(a).

4866 ~~[(2) Sexual exploitation of a vulnerable adult]~~ (3) (a) A violation of Subsection (2) is a
4867 third degree felony.

4868 ~~[(3)]~~ (b) It is a separate offense under this section:

4869 ~~[(a)]~~ (i) for each vulnerable adult depicted in the vulnerable adult pornography; and

4870 ~~[(b)]~~ (ii) for each time the same vulnerable adult is depicted in different vulnerable
4871 adult pornography.

4872 (4) It is an affirmative defense to a charge of violating this section that no vulnerable

4873 adult was actually depicted in the visual depiction or used in producing or advertising the
4874 visual depiction.

4875 (5) In proving a violation of this section in relation to an identifiable vulnerable adult,
4876 proof of the actual identity of the identifiable vulnerable adult is not required.

4877 (6) This section may not be construed to impose criminal or civil liability on:

4878 (a) any entity or an employee, director, officer, or agent of an entity, when acting
4879 within the scope of employment, for the good faith performance of:

4880 (i) reporting or data preservation duties required under any federal or state law; or

4881 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult
4882 pornography on any tangible or intangible property, or of detecting and reporting the presence
4883 of vulnerable adult pornography on the property; or

4884 (b) any law enforcement officer acting within the scope of a criminal investigation.

4885 Section 104. Section **76-5b-203** is amended to read:

4886 **76-5b-203. Distribution of an intimate image -- Penalty.**

4887 (1) (a) As used in this section:

4888 [(a)] (i) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing,
4889 providing, giving, granting admission to, providing access to, or otherwise transferring or
4890 presenting an image to another individual, with or without consideration.

4891 [(b)] (ii) "Intimate image" means any visual depiction, photograph, film, video,
4892 recording, picture, or computer or computer-generated image or picture, whether made or
4893 produced by electronic, mechanical, or other means, that depicts:

4894 [(i)] (A) exposed human male or female genitals or pubic area, with less than an
4895 opaque covering;

4896 [(ii)] (B) a female breast with less than an opaque covering, or any portion of the
4897 female breast below the top of the areola; or

4898 [(iii)] (C) the individual engaged in any sexually explicit conduct.

4899 [(e)] (iii) "Sexually explicit conduct" means actual or simulated:

4900 [(i)] (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or

4901 oral-anal, whether between persons of the same or opposite sex;

4902 ~~[(ii)]~~ (B) masturbation;

4903 ~~[(iii)]~~ (C) bestiality;

4904 ~~[(iv)]~~ (D) sadistic or masochistic activities;

4905 ~~[(v)]~~ (E) exhibition of the genitals, pubic region, buttocks, or female breast of any

4906 individual;

4907 ~~[(vi)]~~ (F) visual depiction of nudity or partial nudity;

4908 ~~[(vii)]~~ (G) fondling or touching of the genitals, pubic region, buttocks, or female

4909 breast; or

4910 ~~[(viii)]~~ (H) explicit representation of the defecation or urination functions.

4911 ~~[(iv)]~~ (iv) "Simulated sexually explicit conduct" means a feigned or pretended act of

4912 sexually explicit conduct that duplicates, within the perception of an average person, the

4913 appearance of an actual act of sexually explicit conduct.

4914 (v) "Single criminal episode" means the same as that term is defined in Section

4915 76-1-401.

4916 (b) Terms defined in Section 76-1-101.5 apply to this section.

4917 (2) (a) An actor commits the offense of distribution of an intimate image if:

4918 (i) the actor knowingly or intentionally distributes to a third party, or knowingly

4919 duplicates or copies an intimate image of an individual who is 18 years old or older and knows

4920 or should know that the distribution, duplication or copying would cause a reasonable person to

4921 suffer emotional distress or harm;

4922 (ii) the actor has not received consent from the individual depicted in the image to

4923 distribute the intimate image;

4924 (iii) the intimate image was created by or provided to the actor under circumstances in

4925 which the individual depicted in the image has a reasonable expectation of privacy; and

4926 (iv) except as provided in Subsection (2)(b), actual emotional distress or harm is

4927 caused to the individual depicted in the image as a result of the distribution.

4928 (b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a)

4929 if:

4930 (i) the individual depicted in the intimate image was the victim of a crime;

4931 (ii) the intimate image was provided to law enforcement as part of an investigation or
4932 prosecution of a crime committed against the victim;

4933 (iii) the intimate image was distributed without a legitimate law enforcement or
4934 investigative purpose by an individual who had access to the intimate image due to the
4935 individual's association with the investigation or prosecution described in Subsection (2)(b)(ii);
4936 and

4937 (iv) the victim is incapacitated or deceased.

4938 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

4939 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
4940 felony on a second or subsequent conviction for an offense under this section that does not
4941 arise from a single criminal episode.

4942 [~~3~~] (4) This section does not apply to:

4943 (a) except as provided in Section 76-5b-203.5:

4944 (i) lawful practices of law enforcement agencies;

4945 (ii) prosecutorial agency functions;

4946 (iii) the reporting of a criminal offense;

4947 (iv) court proceedings or any other judicial proceeding; or

4948 (v) lawful and generally accepted medical practices and procedures;

4949 (b) an intimate image if the individual portrayed in the image voluntarily allows public
4950 exposure of the image;

4951 (c) an intimate image that is portrayed in a lawful commercial setting; or

4952 (d) an intimate image that is related to a matter of public concern or interest.

4953 [~~4~~] (5) (a) This section does not apply to an Internet service provider or interactive
4954 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
4955 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
4956 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a

4957 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
4958 in 47 U.S.C. Sec. 522, if:

4959 (i) the distribution of an intimate image by the Internet service provider occurs only
4960 incidentally through the provider's function of:

4961 (A) transmitting or routing data from one person to another person; or

4962 (B) providing a connection between one person and another person;

4963 (ii) the provider does not intentionally aid or abet in the distribution of the intimate
4964 image; and

4965 (iii) the provider does not knowingly receive from or through a person who distributes
4966 the intimate image a fee greater than the fee generally charged by the provider, as a specific
4967 condition for permitting the person to distribute the intimate image.

4968 (b) This section does not apply to a hosting company, as defined in Section
4969 76-10-1230, if:

4970 (i) the distribution of an intimate image by the hosting company occurs only
4971 incidentally through the hosting company's function of providing data storage space or data
4972 caching to a person;

4973 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
4974 of the intimate image; and

4975 (iii) the hosting company does not knowingly receive from or through a person who
4976 distributes the intimate image a fee greater than the fee generally charged by the provider, as a
4977 specific condition for permitting the person to distribute, store, or cache the intimate image.

4978 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
4979 section if it complies with Section 76-10-1231.

4980 ~~[(5)(a) Distribution of an intimate image is a class A misdemeanor except under~~
4981 ~~Subsection (5)(b).]~~

4982 ~~[(b) Distribution of an intimate image is a third degree felony on a second or~~
4983 ~~subsequent conviction for an offense under this section that arises from a separate criminal~~
4984 ~~episode as defined in Section 76-1-401.]~~

4985 Section 105. Section **76-5b-203.5** is amended to read:

4986 **76-5b-203.5. Misuse of intimate image during a criminal action.**

4987 (1) (a) As used in this section [~~,"intimate image" has the same meaning as~~]:

4988 (i) "Criminal action" means the same as that term is defined in Section [77-1-3](#).

4989 (ii) "Intimate image" means the same as that term is defined in Section [76-5b-203](#).

4990 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

4991 [~~(2) Any actor who~~] (2) An actor commits misuse of an intimate image during a
4992 criminal action if the actor:

4993 (a) obtains access to an intimate image in the course of a criminal action [~~as defined in~~
4994 ~~Subsection [77-1-3](#)(1) may not~~]; and

4995 (b) intentionally [~~display, duplicate, copy, or share~~] displays, duplicates, copies, or
4996 shares the intimate image, unless:

4997 [~~(a)~~] (i) displaying, duplicating, copying, or sharing the intimate image is done solely
4998 for the purpose of the adjudication, defense, prosecution or investigation of a criminal matter
4999 involving the intimate image;

5000 [~~(b)~~] (ii) each individual who is the subject of the intimate image gives written
5001 permission to display, duplicate, copy, or share the intimate image; or

5002 [~~(c)~~] (iii) the intimate image was not created by or provided to the actor under
5003 circumstances in which the depicted individual has a reasonable expectation of privacy.

5004 (3) [~~An actor who violates~~] A violation of Subsection (2) is [guilty of]:

5005 (a) a class A misdemeanor for a first offense; or

5006 (b) a third degree felony for each subsequent offense.

5007 (4) Nothing in this section precludes an agency that employs an individual who is
5008 involved in a criminal action from establishing internal policies for an individual's violation of
5009 this section.

5010 Section 106. Section **76-5b-204** is amended to read:

5011 **76-5b-204. Sexual extortion -- Penalties.**

5012 (1) (a) As used in this section:

- 5013 ~~[(a)]~~ (i) "Adult" means an individual 18 years ~~[of age]~~ old or older.
- 5014 ~~[(b)]~~ (ii) "Child" means any individual under ~~[the age of]~~ 18 years old.
- 5015 ~~[(c)]~~ (iii) "Distribute" means the same as that term is defined in Section 76-5b-203.
- 5016 ~~[(d)]~~ (iv) "Intimate image" means the same as that term is defined in Section
- 5017 76-5b-203.
- 5018 ~~[(e)]~~ (v) "Position of special trust" means the same as that term is defined in Section
- 5019 ~~[76-5-401.1]~~ 76-5-404.1.
- 5020 ~~[(f)]~~ (vi) "Sexually explicit conduct" means the same as that term is defined in
- 5021 ~~[Subsection]~~ Section 76-5b-203~~[(+)(c)]~~.
- 5022 ~~[(g)]~~ (vii) "Simulated sexually explicit conduct" means the same as that term is defined
- 5023 in Section 76-5b-203.
- 5024 ~~[(h)]~~ (viii) "Vulnerable adult" means the same as that term is defined in Section
- 5025 76-5-111.
- 5026 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 5027 (2) (a) An ~~[individual]~~ actor who is 18 years old or older commits the offense of sexual
- 5028 extortion if the ~~[individual]~~ actor:
- 5029 ~~[(a)]~~ (i) with an intent to coerce a victim to engage in sexual contact, in sexually
- 5030 explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute
- 5031 an image, video, or other recording of any individual naked or engaged in sexually explicit
- 5032 conduct, communicates in person or by electronic means a threat:
- 5033 ~~[(i)]~~ (A) to the victim's person, property, or reputation; or
- 5034 ~~[(ii)]~~ (B) to distribute an intimate image or video of the victim; or
- 5035 ~~[(b)]~~ (ii) knowingly causes a victim to engage in sexual contact, in sexually explicit
- 5036 conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any
- 5037 image, video, or other recording of any individual naked or engaged in sexually explicit
- 5038 conduct by means of a threat:
- 5039 ~~[(i)]~~ (A) to the victim's person, property, or reputation; or
- 5040 ~~[(ii)]~~ (B) to distribute an intimate image or video of the victim.

5041 (b) An actor commits aggravated sexual extortion when, in conjunction with the
5042 offense described in Subsection (2)(a), any of the following circumstances have been charged
5043 and admitted or found true in the action for the offense:

5044 (i) the victim is a child or vulnerable adult;

5045 (ii) the offense was committed by the use of a dangerous weapon or by violence,
5046 intimidation, menace, fraud, or threat of physical harm, or was committed during the course of
5047 a kidnapping;

5048 (iii) the actor caused bodily injury or severe psychological injury to the victim during
5049 or as a result of the offense;

5050 (iv) the actor was a stranger to the victim or became a friend of the victim for the
5051 purpose of committing the offense;

5052 (v) the actor, before sentencing for the offense, was previously convicted of any sexual
5053 offense;

5054 (vi) the actor occupied a position of special trust in relation to the victim;

5055 (vii) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
5056 sexual acts by the victim with any other individual, or sexual performance by the victim before
5057 any other individual, human trafficking, or human smuggling; or

5058 (viii) the actor caused the penetration, however slight, of the genital or anal opening of
5059 the victim by any part or parts of the human body, or by any other object.

5060 (3) (a) (i) [~~Sexual extortion~~] A violation of Subsection (2)(a) is a third degree felony.

5061 [~~(b) Aggravated sexual extortion of~~] (ii) A violation of Subsection (2)(b) in which the
5062 victim is an adult is a second degree felony.

5063 [~~(c) Aggravated sexual extortion of~~] (iii) A violation of Subsection (2)(b) in which the
5064 victim is a child or a vulnerable adult is a first degree felony.

5065 [~~(4) An individual commits aggravated sexual extortion when, in conjunction with the~~
5066 ~~offense described in Subsection (2), any of the following circumstances have been charged and~~
5067 ~~admitted or found true in the action for the offense:]~~

5068 [~~(a) the victim is a child or vulnerable adult;~~]

5069 ~~[(b) the offense was committed by the use of a dangerous weapon, as defined in~~
5070 ~~Section 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or~~
5071 ~~was committed during the course of a kidnapping;]~~

5072 ~~[(c) the individual caused bodily injury or severe psychological injury to the victim~~
5073 ~~during or as a result of the offense;]~~

5074 ~~[(d) the individual was a stranger to the victim or became a friend of the victim for the~~
5075 ~~purpose of committing the offense;]~~

5076 ~~[(e) the individual, before sentencing for the offense, was previously convicted of any~~
5077 ~~sexual offense;]~~

5078 ~~[(f) the individual occupied a position of special trust in relation to the victim;]~~

5079 ~~[(g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution~~
5080 ~~or sexual acts by the victim with any other individual, or sexual performance by the victim~~
5081 ~~before any other individual, human trafficking, or human smuggling; or]~~

5082 ~~[(h) the individual caused the penetration, however slight, of the genital or anal~~
5083 ~~opening of the victim by any part or parts of the human body, or by any other object.]~~

5084 ~~[(5)] (b) An [individual] actor commits a separate offense under this section:~~

5085 ~~[(a)] (i) for each victim the [individual] actor subjects to the offense outlined in~~
5086 ~~Subsection (2)(a); and~~

5087 ~~[(b)] (ii) for each separate time the [individual] actor subjects a victim to the offense~~
5088 ~~outlined in Subsection (2)(a).~~

5089 ~~[(6)] (c) This section does not preclude an [individual] actor from being charged and~~
5090 ~~convicted of a separate criminal act if the [individual] actor commits the separate criminal act~~
5091 ~~while the [individual] actor violates or attempts to violate this section.~~

5092 ~~[(7)] (4) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not~~
5093 ~~subject to liability under this section related to content provided by a user of the interactive~~
5094 ~~computer service.~~

5095 Section 107. Section **76-5b-205** is amended to read:

5096 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

5097 (1) (a) As used in this section:

5098 ~~[(a)]~~ (i) "Child" means an individual under ~~[the age of]~~ 18 years old.

5099 ~~[(b)]~~ (ii) "Counterfeit intimate image" means any visual depiction, photograph, film,
5100 video, recording, picture, or computer or computer-generated image or picture, whether made
5101 or produced by electronic, mechanical, or other means, that has been edited, manipulated, or
5102 altered to depict the likeness of an identifiable individual and purports to, or is made to appear
5103 to, depict that individual's:

5104 ~~[(i)]~~ (A) exposed human male or female genitals or pubic area, with less than an
5105 opaque covering;

5106 ~~[(ii)]~~ (B) a female breast with less than an opaque covering, or any portion of the
5107 female breast below the top of the areola; or

5108 ~~[(iii)]~~ (C) the individual engaged in any sexually explicit conduct or simulated sexually
5109 explicit conduct.

5110 ~~[(e)]~~ (iii) "Distribute" means the same as that term is defined in Section [76-5b-203](#).

5111 ~~[(f)]~~ (iv) "Sexually explicit conduct" means the same as that term is defined in Section
5112 [76-5b-203](#).

5113 ~~[(g)]~~ (v) "Simulated sexually explicit conduct" means the same as that term is defined
5114 in Section [76-5b-203](#).

5115 (vi) "Single criminal episode" means the same as that term is defined in Section
5116 [76-1-401](#).

5117 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

5118 (2) (a) An actor commits the offense of unlawful distribution of a counterfeit intimate
5119 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
5120 actor knows or should reasonably know would cause a reasonable person to suffer emotional or
5121 physical distress or harm, if:

5122 ~~[(a)]~~ (i) the actor has not received consent from the depicted individual to distribute the
5123 counterfeit intimate image; and

5124 ~~[(b)]~~ (ii) the counterfeit intimate image was created or provided by the actor without

5125 the knowledge and consent of the depicted individual.

5126 ~~[(3)]~~ (b) An ~~[individual]~~ actor commits aggravated unlawful distribution of a
5127 counterfeit intimate image if, in committing the offense described in Subsection (2)(a), the
5128 individual depicted in the counterfeit intimate image is a child.

5129 (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A
5130 misdemeanor.

5131 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is
5132 knowing or intentional is a third degree felony on a second or subsequent conviction for an
5133 offense under this section that does not arise from a single criminal episode.

5134 (b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree
5135 felony.

5136 (ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is
5137 knowing or intentional is a second degree felony on a second or subsequent conviction for an
5138 offense under this section that does not arise from a single criminal episode.

5139 (c) This section does not apply to an actor who engages in conduct that constitutes a
5140 violation of this section to the extent that the actor is chargeable, for the same conduct, under
5141 Section [76-5b-201](#), sexual exploitation of a minor.

5142 (4) This section does not apply to:

5143 (a) (i) lawful practices of law enforcement agencies;

5144 (ii) prosecutorial agency functions;

5145 (iii) the reporting of a criminal offense;

5146 (iv) court proceedings or any other judicial proceeding; or

5147 (v) lawful and generally accepted medical practices and procedures;

5148 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily
5149 allows public exposure of the image;

5150 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

5151 (d) a counterfeit intimate image that is related to a matter of public concern or interest
5152 or protected by the First Amendment to the United States Constitution or Article I, Sections 1

5153 and 15 of the Utah Constitution.

5154 (5) (a) This section does not apply to an Internet service provider or interactive
5155 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
5156 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
5157 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
5158 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
5159 in 47 U.S.C. Sec. 522, if:

5160 (i) the distribution of a counterfeit intimate image by the Internet service provider
5161 occurs only incidentally through the provider's function of:

5162 (A) transmitting or routing data from one person to another person; or

5163 (B) providing a connection between one person and another person;

5164 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
5165 intimate image; and

5166 (iii) the provider does not knowingly receive from or through a person who distributes
5167 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
5168 specific condition for permitting the person to distribute the counterfeit intimate image.

5169 (b) This section does not apply to a hosting company, as defined in Section
5170 [76-10-1230](#), if:

5171 (i) the distribution of a counterfeit intimate image by the hosting company occurs only
5172 incidentally through the hosting company's function of providing data storage space or data
5173 caching to a person;

5174 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
5175 of the counterfeit intimate image;

5176 (iii) the hosting company does not knowingly receive from or through a person who
5177 distributes the counterfeit intimate image a fee greater than the fee generally charged by the
5178 provider, as a specific condition for permitting the person to distribute, store, or cache the
5179 counterfeit intimate image; and

5180 (iv) the hosting company immediately removes the counterfeit intimate image upon

5181 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly
5182 depicted in the counterfeit intimate image.

5183 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
5184 section if it complies with Section 76-10-1231.

5185 ~~[(6) This section does not apply to an actor who engages in conduct that constitutes a~~
5186 ~~violation of this section to the extent that the actor is chargeable, for the same conduct, under~~
5187 ~~Section 76-5b-201, sexual exploitation of a minor.]~~

5188 ~~[(7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful~~
5189 ~~distribution of a counterfeit intimate image is a class A misdemeanor.]~~

5190 ~~[(b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a~~
5191 ~~third degree felony on a second or subsequent conviction for an offense under this section that~~
5192 ~~arises from a separate criminal episode as defined in Section 76-1-401.]~~

5193 ~~[(c) Except as provided in Subsection (7)(d), knowing or intentional aggravated~~
5194 ~~unlawful distribution of a counterfeit intimate image is a third degree felony.]~~

5195 ~~[(d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate~~
5196 ~~image is a second degree felony on a second or subsequent conviction for an offense under this~~
5197 ~~section that arises from a separate criminal episode as defined in Section 76-1-401.]~~

5198 Section 108. Section 76-6-102 is amended to read:

5199 **76-6-102. Arson.**

5200 (1) A person is guilty of arson if, under circumstances not amounting to aggravated
5201 arson, the person by means of fire or explosives unlawfully and intentionally damages:

5202 (a) any property with intention of defrauding an insurer; or

5203 (b) the property of another.

5204 (2) A violation of Subsection (1)(a) is a second degree felony.

5205 (3) A violation of Subsection (1)(b) is a second degree felony if:

5206 (a) the damage caused is or exceeds \$5,000 in value;

5207 (b) as a proximate result of the fire or explosion, any person not a participant in the
5208 offense suffers serious bodily injury as defined in Section ~~[76-1-601]~~ 76-1-101.5;

5209 (c) (i) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value; and
5210 (ii) at the time of the offense the actor has been previously convicted of a violation of
5211 this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the
5212 commission of the violation of Subsection (1)(b).

5213 (4) A violation of Subsection (1)(b) is a third degree felony if:

5214 (a) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value;

5215 (b) as a proximate result of the fire or explosion, any person not a participant in the
5216 offense suffers substantial bodily injury as defined in Section ~~[76-1-601]~~ 76-1-101.5;

5217 (c) the fire or explosion endangers human life; or

5218 (d) (i) the damage caused is or exceeds \$500 but is less than \$1,500 in value; and

5219 (ii) at the time of the offense the actor has been previously convicted of a violation of
5220 this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the
5221 commission of the violation of Subsection (1)(b).

5222 (5) A violation of Subsection (1)(b) is a class A misdemeanor if the damage caused:

5223 (a) is or exceeds \$500 but is less than \$1,500 in value; or

5224 (b) (i) is less than \$500; and

5225 (ii) at the time of the offense the actor has been previously convicted of a violation of
5226 this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the
5227 commission of the violation of Subsection (1)(b).

5228 (6) A violation of Subsection (1)(b) is a class B misdemeanor if the damage caused is
5229 less than \$500.

5230 Section 109. Section 76-6-203 is amended to read:

5231 **76-6-203. Aggravated burglary.**

5232 (1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing
5233 from a burglary the actor or another participant in the crime:

5234 (a) causes bodily injury to any person who is not a participant in the crime;

5235 (b) uses or threatens the immediate use of a dangerous weapon against any person who
5236 is not a participant in the crime; or

- 5237 (c) possesses or attempts to use any explosive or dangerous weapon.
- 5238 (2) Aggravated burglary is a first degree felony.
- 5239 (3) As used in this section, "dangerous weapon" has the same definition as under
- 5240 Section [~~76-1-601~~] [76-1-101.5](#).
- 5241 Section 110. Section **76-6-302** is amended to read:
- 5242 **76-6-302. Aggravated robbery.**
- 5243 (1) A person commits aggravated robbery if in the course of committing robbery, he:
- 5244 (a) uses or threatens to use a dangerous weapon as defined in Section [~~76-1-601~~]
- 5245 [76-1-101.5](#);
- 5246 (b) causes serious bodily injury upon another; or
- 5247 (c) takes or attempts to take an operable motor vehicle.
- 5248 (2) Aggravated robbery is a first degree felony.
- 5249 (3) For the purposes of this part, an act shall be considered to be "in the course of
- 5250 committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the
- 5251 immediate flight after the attempt or commission of a robbery.
- 5252 Section 111. Section **76-7-101** is amended to read:
- 5253 **76-7-101. Bigamy -- Penalty -- Defense.**
- 5254 (1) An individual is guilty of bigamy if:
- 5255 (a) the individual purports to marry another individual; and
- 5256 (b) knows or reasonably should know that one or both of the individuals described in
- 5257 Subsection (1)(a) are legally married to another individual.
- 5258 (2) An individual who violates Subsection (1) is guilty of an infraction.
- 5259 (3) An individual is guilty of a third degree felony if the individual induces bigamy:
- 5260 (a) under fraudulent or false pretenses; or
- 5261 (b) by threat or coercion.
- 5262 (4) An individual is guilty of a second degree felony if the individual:
- 5263 (a) cohabitates with another individual with whom the individual is engaged in bigamy
- 5264 as described in Subsection (1); and

5265 (b) in furtherance of the conduct described in Subsection (4)(a), commits a felony
5266 offense, or for Subsection (4)(b)[~~(vii)~~](xiii), a misdemeanor offense, in violation of one or
5267 more of the following:

5268 (i) Section 76-5-109, child abuse;

5269 (ii) Section 76-5-109.2, aggravated child abuse;

5270 (iii) Section 76-5-109.3, child abandonment;

5271 (iv) Section 76-5-111, abuse of a vulnerable adult;

5272 (v) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

5273 (vi) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

5274 (vii) Section 76-5-111.4, financial exploitation of a vulnerable adult;

5275 [~~(i)~~] (viii) Chapter 5, Part 2, Criminal Homicide;

5276 (ix) Section 76-5-208, child abuse homicide;

5277 [~~(ii)~~] (x) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

5278 [~~(iii)~~] (xi) Chapter 5, Part 4, Sexual Offenses;

5279 [~~(iv)~~ ~~Section 76-5-109, child abuse -- child abandonment;~~]

5280 [~~(v)~~ ~~Section 76-5-111, abuse, neglect, or exploitation of a vulnerable adult;~~]

5281 [~~(vi)~~ ~~Section 76-5-209, child abuse homicide;~~]

5282 [~~(vii)~~ ~~Section 76-9-702.1, sexual battery;~~]

5283 [~~(viii)~~] (xii) Section 76-7-201, criminal nonsupport;

5284 (xiii) Section 76-9-702.1, sexual battery;

5285 [~~(ix)~~] (xiv) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or

5286 [~~(x)~~] (xv) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

5287 (5) It is a defense to prosecution under Subsection (2) that:

5288 (a) the individual ceased the practice of bigamy as described in Subsection (1) under
5289 reasonable fear of coercion or bodily harm;

5290 (b) the individual entered the practice of bigamy, as described in Subsection (1), as a
5291 minor and ceased the practice of bigamy at any time after the individual entered the practice of
5292 bigamy; or

5293 (c) law enforcement discovers that the individual practices bigamy, as described in
5294 Subsection (1), as a result of the individual's efforts to protect the safety and welfare of another
5295 individual.

5296 Section 112. Section **76-7-305** is amended to read:

5297 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
5298 **-- Exceptions.**

5299 (1) A person may not perform an abortion, unless, before performing the abortion, the
5300 physician who will perform the abortion obtains from the woman on whom the abortion is to
5301 be performed a voluntary and informed written consent that is consistent with:

5302 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
5303 Current Opinions; and

5304 (b) the provisions of this section.

5305 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
5306 informed only if, at least 72 hours before the abortion:

5307 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
5308 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
5309 physician's assistant presents the information module to the pregnant woman;

5310 (b) the pregnant woman views the entire information module and presents evidence to
5311 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
5312 information module;

5313 (c) after receiving the evidence described in Subsection (2)(b), the individual described
5314 in Subsection (2)(a):

5315 (i) documents that the pregnant woman viewed the entire information module;

5316 (ii) gives the pregnant woman, upon her request, a copy of the documentation
5317 described in Subsection (2)(c)(i); and

5318 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
5319 who is to perform the abortion, upon request of that physician or the pregnant woman;

5320 (d) after the pregnant woman views the entire information module, the physician who

5321 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
5322 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
5323 physician's assistant, in a face-to-face consultation in any location in the state, orally informs
5324 the woman of:

- 5325 (i) the nature of the proposed abortion procedure;
- 5326 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
5327 fetus;
- 5328 (iii) the risks and alternatives to the abortion procedure or treatment;
- 5329 (iv) the options and consequences of aborting a medication-induced abortion, if the
5330 proposed abortion procedure is a medication-induced abortion;
- 5331 (v) the probable gestational age and a description of the development of the unborn
5332 child at the time the abortion would be performed;
- 5333 (vi) the medical risks associated with carrying her child to term;
- 5334 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
5335 woman, upon her request; and
- 5336 (viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
5337 child has or may have Down syndrome, the Department of Health website containing the
5338 information described in Section [26-10-14](#), including the information on the informational
5339 support sheet; and
- 5340 (e) after the pregnant woman views the entire information module, a staff member of
5341 the abortion clinic or hospital provides to the pregnant woman:
 - 5342 (i) on a document that the pregnant woman may take home:
 - 5343 (A) the address for the department's website described in Section [76-7-305.5](#); and
 - 5344 (B) a statement that the woman may request, from a staff member of the abortion clinic
5345 or hospital where the woman viewed the information module, a printed copy of the material on
5346 the department's website;
 - 5347 (ii) a printed copy of the material on the department's website described in Section
5348 [76-7-305.5](#), if requested by the pregnant woman; and

5349 (iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the
5350 disposition of the aborted fetus.

5351 (3) Before performing an abortion, the physician who is to perform the abortion shall:

5352 (a) in a face-to-face consultation, provide the information described in Subsection
5353 (2)(d), unless the attending physician or referring physician is the individual who provided the
5354 information required under Subsection (2)(d); and

5355 (b) (i) obtain from the pregnant woman a written certification that the information
5356 required to be provided under Subsection (2) and this Subsection (3) was provided in
5357 accordance with the requirements of Subsection (2) and this Subsection (3);

5358 (ii) obtain a copy of the statement described in Subsection (2)(c)(i); and

5359 (iii) ensure that:

5360 (A) the woman has received the information described in Subsections 26-21-33(3) and
5361 (4); and

5362 (B) if the woman has a preference for the disposition of the aborted fetus, the woman
5363 has informed the health care facility of the woman's decision regarding the disposition of the
5364 aborted fetus.

5365 (4) When a serious medical emergency compels the performance of an abortion, the
5366 physician shall inform the woman prior to the abortion, if possible, of the medical indications
5367 supporting the physician's judgment that an abortion is necessary.

5368 (5) If an ultrasound is performed on a woman before an abortion is performed, the
5369 individual who performs the ultrasound, or another qualified individual, shall:

5370 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
5371 manner to permit her to:

5372 (i) view the images, if she chooses to view the images; or

5373 (ii) not view the images, if she chooses not to view the images;

5374 (b) simultaneously display the ultrasound images in order to permit the woman to:

5375 (i) view the images, if she chooses to view the images; or

5376 (ii) not view the images, if she chooses not to view the images;

5377 (c) inform the woman that, if she desires, the person performing the ultrasound, or
5378 another qualified person shall provide a detailed description of the ultrasound images,
5379 including:

- 5380 (i) the dimensions of the unborn child;
- 5381 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- 5382 (iii) the presence of external body parts or internal organs, if present and viewable; and
- 5383 (d) provide the detailed description described in Subsection (5)(c), if the woman
5384 requests it.

5385 (6) The information described in Subsections (2), (3), and (5) is not required to be
5386 provided to a pregnant woman under this section if the abortion is performed for a reason
5387 described in:

5388 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
5389 concur, in writing, that the abortion is necessary to avert:

- 5390 (i) the death of the woman on whom the abortion is performed; or
- 5391 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
5392 of the woman on whom the abortion is performed; or

5393 (b) Subsection 76-7-302(3)(b)(ii).

5394 (7) In addition to the criminal penalties described in this part, a physician who violates
5395 the provisions of this section:

5396 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;
5397 and

5398 (b) shall be subject to:

5399 (i) suspension or revocation of the physician's license for the practice of medicine and
5400 surgery in accordance with Section 58-67-401 or 58-68-401; and

5401 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

5402 (8) A physician is not guilty of violating this section for failure to furnish any of the
5403 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

5404 (a) the physician can demonstrate by a preponderance of the evidence that the

5405 physician reasonably believed that furnishing the information would have resulted in a severely
5406 adverse effect on the physical or mental health of the pregnant woman;

5407 (b) in the physician's professional judgment, the abortion was necessary to avert:

5408 (i) the death of the woman on whom the abortion is performed; or

5409 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
5410 of the woman on whom the abortion is performed;

5411 (c) the pregnancy was the result of rape or rape of a child, as [~~defined~~] described in
5412 Sections 76-5-402 and 76-5-402.1;

5413 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and
5414 Section 76-7-102; or

5415 (e) at the time of the abortion, the pregnant woman was 14 years [~~of age~~] old or
5416 younger.

5417 (9) A physician who complies with the provisions of this section and Section
5418 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
5419 informed consent under Section 78B-3-406.

5420 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
5421 of Subsection (5)(b), at no expense to the pregnant woman.

5422 (b) A local health department shall refer a pregnant woman who requests an ultrasound
5423 described in Subsection (10)(a) to the department.

5424 (11) A physician is not guilty of violating this section if:

5425 (a) the information described in Subsection (2) is provided less than 72 hours before
5426 the physician performs the abortion; and

5427 (b) in the physician's professional judgment, the abortion was necessary in a case
5428 where:

5429 (i) a ruptured membrane, documented by the attending or referring physician, will
5430 cause a serious infection; or

5431 (ii) a serious infection, documented by the attending or referring physician, will cause a
5432 ruptured membrane.

5433 Section 113. Section **76-8-309** is amended to read:

5434 **76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.**

5435 (1) (a) (i) A prisoner is guilty of escape if the prisoner leaves official custody without
5436 lawful authorization.

5437 (ii) If a prisoner obtains authorization to leave official custody by means of deceit,
5438 fraud, or other artifice, the prisoner has not received lawful authorization.

5439 (b) Escape under this Subsection (1) is a third degree felony except as provided under
5440 Subsection (1)(c).

5441 (c) Escape under this Subsection (1) is a second degree felony if:

5442 (i) the actor escapes from a state prison; or

5443 (ii) (A) the actor is convicted as a party to the offense, as defined in Section [76-2-202](#);
5444 and

5445 (B) the actor is an employee at or a volunteer of a law enforcement agency, the
5446 Department of Corrections, a county or district attorney's office, the office of the state attorney
5447 general, the Board of Pardons and Parole, or the courts, the Judicial Council, the
5448 Administrative Office of the Courts, or similar administrative units in the judicial branch of
5449 government.

5450 (2) (a) A prisoner is guilty of aggravated escape if in the commission of an escape the
5451 prisoner uses a dangerous weapon, as defined in Section [~~76-1-601~~] [76-1-101.5](#), or causes
5452 serious bodily injury to another.

5453 (b) Aggravated escape is a first degree felony.

5454 (3) Any prison term imposed upon a prisoner for escape under this section shall run
5455 consecutively with any other sentence.

5456 (4) For the purposes of this section:

5457 (a) "Confinement" means the prisoner is:

5458 (i) housed in a state prison or any other facility pursuant to a contract with the Utah
5459 Department of Corrections after being sentenced and committed and the sentence has not been
5460 terminated or voided or the prisoner is not on parole;

5461 (ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county
5462 jail after sentencing and commitment and the sentence has not been terminated or voided or the
5463 prisoner is not on parole; or

5464 (iii) lawfully detained following arrest.

5465 (b) "Escape" is considered to be a continuing activity commencing with the conception
5466 of the design to escape and continuing until the escaping prisoner is returned to official custody
5467 or the prisoner's attempt to escape is thwarted or abandoned.

5468 (c) "Official custody" means arrest, whether with or without warrant, or confinement in
5469 a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement
5470 pursuant to an order of the court or sentenced and committed and the sentence has not been
5471 terminated or voided or the prisoner is not on parole. A person is considered confined in the
5472 state prison if the person:

5473 (i) without authority fails to return to the person's place of confinement from work
5474 release or home visit by the time designated for return;

5475 (ii) is in prehearing custody after arrest for parole violation;

5476 (iii) is being housed in a county jail, after felony commitment, pursuant to a contract
5477 with the Department of Corrections; or

5478 (iv) is being transported as a prisoner in the state prison by correctional officers.

5479 (d) "Prisoner" means any person who is in official custody and includes persons under
5480 trusty status.

5481 (e) "Volunteer" means any person who donates service without pay or other
5482 compensation except expenses actually and reasonably incurred as approved by the supervising
5483 agency.

5484 Section 114. Section **76-8-316** is amended to read:

5485 **76-8-316. Influencing, impeding, or retaliating against a judge or member of the**
5486 **Board of Pardons and Parole or acting against a family member of a judge or a member**
5487 **of the Board of Pardons and Parole.**

5488 (1) As used in this section:

5489 (a) "Board member" means an appointed member of the Board of Pardons and Parole.

5490 (b) "Family member" means parents, spouse, surviving spouse, children, and siblings
5491 of a judge or board member.

5492 (c) "Judge" means judges of all courts of record and courts not of record and court
5493 commissioners.

5494 (2) A person is guilty of a third degree felony if the person threatens to assault, kidnap,
5495 or murder a judge, a family member of a judge, a board member, or a family member of a
5496 board member with the intent to impede, intimidate, or interfere with the judge or board
5497 member while engaged in the performance of the judge's or board member's official duties or
5498 with the intent to retaliate against the judge or board member on account of the performance of
5499 those official duties.

5500 (3) A person is guilty of a second degree felony if the person commits an assault on a
5501 judge, a family member of a judge, a board member, or a family member of a board member
5502 with the intent to impede, intimidate, or interfere with the judge or board member while
5503 engaged in the performance of the judge's or board member's official duties, or with the intent
5504 to retaliate against the judge or board member on account of the performance of those official
5505 duties.

5506 (4) A person is guilty of a first degree felony if the person commits aggravated assault
5507 on a judge, a family member of a judge, a board member, or a family member of a board
5508 member with the intent to impede, intimidate, or interfere with the judge or board member
5509 while engaged in the performance of the judge's or board member's official duties or with the
5510 intent to retaliate against the judge or board member on account of the performance of those
5511 official duties.

5512 (5) A person is guilty of a first degree felony if the person commits attempted murder
5513 on a family member of a judge or a family member of a board member with the intent to
5514 impede, intimidate, or interfere with the judge or board member while engaged in the
5515 performance of the judge's or board member's official duties or with the intent to retaliate
5516 against the judge or board member on account of the performance of those official duties.

5517 (6) A member of the Board of Pardons and Parole is an executive officer for purposes
5518 of Subsection ~~76-5-202(1)(m)~~(2)(a)(xiii).

5519 Section 115. Section **76-8-318** is amended to read:

5520 **76-8-318. Assault or threat of violence against child welfare worker -- Penalty.**

5521 (1) As used in this section:

5522 (a) "Assault" means the same as that term is defined in Section [76-5-102](#).

5523 (b) "Child welfare worker" means an employee of the Division of Child and Family
5524 Services created in Section [62A-4a-103](#).

5525 (c) "Threat of violence" means the same as that term is defined in Section [76-5-107](#).

5526 (2) An individual who commits an assault or threat of violence against a child welfare
5527 worker is guilty of a class A misdemeanor if:

5528 (a) the individual is not:

5529 (i) a prisoner or an individual detained under Section [77-7-15](#); or

5530 (ii) a minor in the custody of or receiving services from a division within the
5531 Department of Human Services;

5532 (b) the individual knew that the victim was a child welfare worker; and

5533 (c) the child welfare worker was acting within the scope of the child welfare worker's
5534 authority at the time of the assault or threat of violence.

5535 (3) An individual who violates this section is guilty of a third degree felony if the
5536 individual:

5537 (a) causes substantial bodily injury, as defined in Section ~~[76-1-601]~~ [76-1-101.5](#); and

5538 (b) acts intentionally or knowingly.

5539 Section 116. Section **76-9-101** is amended to read:

5540 **76-9-101. Riot -- Penalties.**

5541 (1) An individual is guilty of riot if the individual:

5542 (a) simultaneously with two or more other individuals engages in violent conduct,
5543 knowingly or recklessly creating a substantial risk of causing public alarm;

5544 (b) assembles with two or more other individuals with the purpose of engaging, soon

5545 thereafter, in violent conduct, knowing, that two or more other individuals in the assembly have
5546 the same purpose; or

5547 (c) assembles with two or more other individuals with the purpose of committing an
5548 offense against a person, or the property of another person who the individual supposes to be
5549 guilty of a violation of law, believing that two or more other individuals in the assembly have
5550 the same purpose.

5551 (2) Any individual who refuses to comply with a lawful order to withdraw prior to,
5552 during, or immediately following a violation of Subsection (1) is guilty of riot. It is no defense
5553 to a prosecution under this Subsection (2) that withdrawal must take place over private
5554 property; provided, however, that an individual who withdraws in compliance with an order to
5555 withdraw may not incur criminal or civil liability by virtue of acts reasonably necessary to
5556 accomplish the withdrawal.

5557 (3) Except as provided in Subsection (4), riot is a class B misdemeanor.

5558 (4) Riot is a third degree felony if, in the course of the conduct:

5559 (a) the individual causes substantial or serious bodily injury;

5560 (b) the individual causes substantial property damage or commits arson; or

5561 (c) the individual was in possession of a dangerous weapon as defined in Section

5562 ~~[76-1-601]~~ [76-1-101.5](#).

5563 (5) An individual arrested for a violation of Subsection (4) may not be released from
5564 custody before the individual appears before a magistrate or a judge.

5565 (6) The court shall order a defendant convicted under Subsection (4) to pay restitution
5566 in accordance with Section [77-38b-205](#).

5567 Section 117. Section **76-9-702** is amended to read:

5568 **76-9-702. Lewdness.**

5569 (1) A person is guilty of lewdness if the person under circumstances not amounting to
5570 rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, sexual
5571 abuse of a minor, unlawful sexual conduct with a 16- or 17-year-old, custodial sexual relations
5572 ~~[or misconduct]~~ under Section [76-5-412](#) ~~[or]~~, custodial sexual misconduct under Section

5573 76-5-412.2, custodial sexual relations with youth receiving state services under Section
5574 76-5-413, custodial sexual misconduct with youth receiving state services under Section
5575 76-5-413.2, or an attempt to commit any of these offenses, performs any of the following acts
5576 in a public place or under circumstances which the person should know will likely cause
5577 affront or alarm to, on, or in the presence of another who is 14 years ~~[of age]~~ old or older:

5578 (a) an act of sexual intercourse or sodomy;

5579 (b) exposes his or her genitals, the female breast below the top of the areola, the
5580 buttocks, the anus, or the pubic area;

5581 (c) masturbates; or

5582 (d) any other act of lewdness.

5583 (2) (a) A person convicted the first or second time of a violation of Subsection (1) is
5584 guilty of a class B misdemeanor, except under Subsection (2)(b).

5585 (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony
5586 if at the time of the violation:

5587 (i) the person is a sex offender as defined in Section 77-27-21.7;

5588 (ii) the person has been previously convicted two or more times of violating Subsection
5589 (1); or

5590 (iii) the person has previously been convicted of a violation of Subsection (1) and has
5591 also previously been convicted of a violation of Section 76-9-702.5.

5592 (c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(17), a plea of
5593 guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77,
5594 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

5595 (ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been
5596 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

5597 (3) A woman's breast feeding, including breast feeding in any location where the
5598 woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,
5599 irrespective of whether or not the breast is covered during or incidental to feeding.

5600 Section 118. Section **76-9-702.1** is amended to read:

5601 **76-9-702.1. Sexual battery.**

5602 (1) A person is guilty of sexual battery if the person, under circumstances not
5603 amounting to an offense under Subsection (2), intentionally touches, whether or not through
5604 clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a
5605 female person, and the actor's conduct is under circumstances the actor knows or should know
5606 will likely cause affront or alarm to the person touched.

5607 (2) Offenses referred to in Subsection (1) are:

5608 (a) rape, Section [76-5-402](#);

5609 (b) rape of a child, Section [76-5-402.1](#);

5610 (c) object rape, Section [76-5-402.2](#);

5611 (d) object rape of a child, Section [76-5-402.3](#);

5612 (e) forcible sodomy, Subsection [76-5-403\(2\)](#);

5613 (f) sodomy on a child, Section [76-5-403.1](#);

5614 (g) forcible sexual abuse, Section [76-5-404](#);

5615 (h) sexual abuse of a child, [~~Subsection [76-5-404.1\(2\)](#)~~] [Section 76-5-404.1](#);

5616 (i) aggravated sexual abuse of a child, [~~Subsection [76-5-404.1\(4\)](#)~~] [Section 76-5-404.3](#);

5617 (j) aggravated sexual assault, Section [76-5-405](#); and

5618 (k) an attempt to commit any offense under this Subsection (2).

5619 (3) Sexual battery is a class A misdemeanor.

5620 (4) For purposes of Subsection [77-41-102\(17\)](#) only, a plea of guilty or nolo contendere
5621 to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in
5622 Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge
5623 under this section has been subsequently reduced or dismissed in accordance with the plea in
5624 abeyance agreement.

5625 Section 119. Section **76-9-804** is amended to read:

5626 **76-9-804. Convicted criminal gang offender -- Prohibition.**

5627 (1) A person who has been convicted of a crime for which the penalty was enhanced
5628 under Section [76-3-203.1](#) may not, except where a greater penalty is applicable under this title,

5629 possess a dangerous weapon as defined in either Section [~~76-1-601~~] 76-1-101.5 or 76-10-501,
5630 ammunition, or a facsimile of a firearm within five years after the conviction.

5631 (2) A violation of Subsection (1) is a class A misdemeanor.

5632 Section 120. Section **76-9-1003** is amended to read:

5633 **76-9-1003. Detention or arrest -- Determination of immigration status.**

5634 (1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer
5635 who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop,
5636 detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is
5637 unable to provide to the law enforcement officer a document listed in Subsection ~~76-9-1004~~(1)
5638 and the officer is otherwise unable to verify the identity of the person, the officer:

5639 (i) shall request verification of the citizenship or the immigration status of the person
5640 under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the
5641 person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

5642 (ii) may attempt to verify the immigration status of the person, except as exempted
5643 under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except
5644 that if the person is arrested and booked for a class B or C misdemeanor, the arresting law
5645 enforcement officer or the law enforcement agency booking the person shall attempt to verify
5646 the immigration status of the person.

5647 (b) In individual cases, the law enforcement officer may forego the verification of
5648 immigration status under Subsection (1)(a) if the determination could hinder or obstruct a
5649 criminal investigation.

5650 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a
5651 school resource officer for any elementary or secondary school.

5652 (d) Subsection (1)(a) does not apply to a county or municipality when it has only one
5653 law enforcement officer on duty and response support from another law enforcement agency is
5654 not available.

5655 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
5656 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary

5657 offense, the officer makes observations that give the officer reasonable suspicion that the
5658 operator or any of the passengers in the vehicle are violating Section [76-5-308](#), [76-5-308.1](#),
5659 [76-5-308.3](#), [76-5-308.5](#), [76-5-310](#), [76-5-310.1](#), or [76-10-2901](#), which concern smuggling,
5660 human trafficking, and transporting illegal aliens, the officer shall, to the extent possible within
5661 a reasonable period of time:

5662 (a) detain the occupants of the vehicle to investigate the suspected violations; and

5663 (b) inquire regarding the immigration status of the occupants of the vehicle.

5664 (3) When a person under Subsection (1) is arrested or booked into a jail, juvenile
5665 detention facility, or correctional facility, the arresting officer or the booking officer shall
5666 ensure that a request for verification of immigration status of the arrested or booked person is
5667 submitted as promptly as is reasonably possible.

5668 (4) The law enforcement agency that has custody of a person verified to be an illegal
5669 alien shall request that the United States Department of Homeland Security issue a detainer
5670 requesting transfer of the illegal alien into federal custody.

5671 (5) A law enforcement officer may not consider race, color, or national origin in
5672 implementing this section, except to the extent permitted by the constitutions of the United
5673 States and this state.

5674 Section 121. Section **76-10-1302** is amended to read:

5675 **76-10-1302. Prostitution.**

5676 (1) An individual except for a child under Section [76-10-1315](#) is guilty of prostitution
5677 when the individual:

5678 (a) engages, offers, or agrees to engage in any sexual activity with another individual
5679 for a fee, or the functional equivalent of a fee;

5680 (b) takes steps in arranging a meeting through any form of advertising, agreeing to
5681 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
5682 or the functional equivalent of a fee; or

5683 (c) loiters in or within view of any public place for the purpose of being hired to
5684 engage in sexual activity.

5685 (2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, prostitution is
5686 a class B misdemeanor.

5687 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
5688 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
5689 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of
5690 a class A misdemeanor.

5691 (3) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
5692 the individual engages in a violation of Subsection (1) at or near the time the individual
5693 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
5694 following offenses, and the individual reports the offense or attempt to law enforcement in
5695 good faith:

5696 (a) assault, Section 76-5-102;

5697 (b) aggravated assault, Section 76-5-103;

5698 (c) mayhem, Section 76-5-105;

5699 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
5700 homicide, or homicide by assault under [Title 76,] Chapter 5, Part 2, Criminal Homicide;

5701 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
5702 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
5703 trafficking of a child under [Title 76,] Chapter 5, Part 3, Kidnapping, Trafficking, and
5704 Smuggling;

5705 (f) rape, Section 76-5-402;

5706 (g) rape of a child, Section 76-5-402.1;

5707 (h) object rape, Section 76-5-402.2;

5708 (i) object rape of a child, Section 76-5-402.3;

5709 (j) forcible sodomy, Section 76-5-403;

5710 (k) sodomy on a child, Section 76-5-403.1;

5711 (l) forcible sexual abuse, Section 76-5-404;

5712 (m) [~~aggravated sexual abuse of a child or~~] sexual abuse of a child, Section 76-5-404.1,

- 5713 or aggravated sexual abuse of a child, Section [76-5-404.3](#);
- 5714 (n) aggravated sexual assault, Section [76-5-405](#);
- 5715 (o) sexual exploitation of a minor, Section [76-5b-201](#);
- 5716 (p) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 5717 (q) aggravated burglary or burglary of a dwelling under [~~Title 76,~~] Chapter 6, Part 2,
- 5718 Burglary and Criminal Trespass;
- 5719 (r) aggravated robbery or robbery under [~~Title 76,~~] Chapter 6, Part 3, Robbery; or
- 5720 (s) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b).
- 5721 Section 122. Section **76-10-1306** is amended to read:
- 5722 **76-10-1306. Aggravated exploitation of prostitution.**
- 5723 (1) A person is guilty of aggravated exploitation if:
- 5724 (a) in committing an act of exploiting prostitution, as defined in Section [76-10-1305](#),
- 5725 the person uses any force, threat, or fear against any person;
- 5726 (b) the person procured, transported, or persuaded or with whom the person shares the
- 5727 proceeds of prostitution is a child or is the spouse of the actor; or
- 5728 (c) in the course of committing exploitation of prostitution, a violation of Section
- 5729 [76-10-1305](#), the person commits human trafficking or human smuggling, a violation of Section
- 5730 [76-5-308](#), [76-5-308.1](#), [76-5-308.3](#), or [76-5-308.5](#).
- 5731 (2) Aggravated exploitation of prostitution is a second degree felony, except under
- 5732 Subsection (3).
- 5733 (3) Aggravated exploitation of prostitution involving a child is a first degree felony.
- 5734 (4) Upon a conviction for a violation of this section, the court shall order the maximum
- 5735 fine amount and may not waive or suspend the fine.
- 5736 Section 123. Section **76-10-1313** is amended to read:
- 5737 **76-10-1313. Sexual solicitation -- Penalty.**
- 5738 (1) An individual except for a child under Section [76-10-1315](#) is guilty of sexual
- 5739 solicitation when the individual:
- 5740 (a) offers or agrees to commit any sexual activity with another individual for a fee, or

5741 the functional equivalent of a fee;

5742 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
5743 individual to commit any sexual activity; or

5744 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
5745 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
5746 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
5747 of the following acts:

5748 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
5749 female breast below the top of the areola;

5750 (ii) masturbation;

5751 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
5752 female breast; or

5753 (iv) any act of lewdness.

5754 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
5755 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
5756 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

5757 (3) Except as provided in Section [76-10-1309](#) and Subsections (4) and (5), an
5758 individual who is convicted of sexual solicitation under this section or under a local ordinance
5759 adopted in compliance with Section [76-10-1307](#) is guilty of a class A misdemeanor.

5760 (4) An individual who is convicted a third time under this section or a local ordinance
5761 adopted in compliance with Section [76-10-1307](#) is guilty of a third degree felony.

5762 (5) If an individual commits an act of sexual solicitation and the individual solicited is
5763 a child, the offense is a third degree felony if the solicitation does not amount to:

5764 (a) a violation of Section [76-5-308](#), [76-5-308.1](#), or [76-5-308.5](#), human trafficking or
5765 [Section 76-5-308.3](#), human smuggling; or

5766 (b) a violation of Section [76-5-310](#), aggravated human trafficking or [Section](#)
5767 [76-5-310.1](#), aggravated human smuggling.

5768 (6) (a) Upon encountering a child engaged in commercial sex or sexual solicitation, a

5769 law enforcement officer shall follow the procedure described in Subsection 76-10-1315(2).

5770 (b) A child engaged in commercial sex or sexual solicitation shall be referred to the
5771 Division of Child and Family Services for services and may not be subjected to delinquency
5772 proceedings.

5773 (7) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
5774 the individual engages in a violation of Subsection (1) at or near the time the individual
5775 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
5776 described in Subsection 76-10-1302(3), and the individual reports the offense or attempt to law
5777 enforcement in good faith.

5778 Section 124. Section 76-10-1315 is amended to read:

5779 **76-10-1315. Safe harbor for children as victims in commercial sex or sexual**
5780 **solicitation.**

5781 (1) As used in this section:

5782 (a) "Child engaged in commercial sex" means a child who:

5783 (i) engages, offers, or agrees to engage in any sexual activity with another individual
5784 for a fee, or the functional equivalent of a fee;

5785 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to
5786 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
5787 or the functional equivalent of a fee; or

5788 (iii) loiters in or within view of any public place for the purpose of being hired to
5789 engage in sexual activity.

5790 (b) "Child engaged in sexual solicitation" means a child who offers or agrees to
5791 commit or engage in any sexual activity with another person for a fee or the functional
5792 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

5793 (c) "Division" means the Division of Child and Family Services created in Section
5794 62A-4a-103.

5795 (d) "Juvenile receiving center" means the same as that term is defined in Section
5796 80-1-102.

5797 (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
5798 enforcement officer shall:

5799 (a) conduct an investigation regarding possible human trafficking of the child pursuant
5800 to Sections [76-5-308](#), [76-5-308.1](#), and [76-5-308.5](#);

5801 (b) refer the child to the division;

5802 (c) bring the child to a juvenile receiving center, if available; and

5803 (d) contact the child's parent or guardian, if practicable.

5804 (3) When law enforcement refers a child to the division under Subsection (2)(b) the
5805 division shall provide services to the child under Title 62A, Chapter 4a, Child and Family
5806 Services.

5807 (4) A child may not be subjected to delinquency proceedings for prostitution under
5808 Section [76-10-1302](#), or sex solicitation under Section [76-10-1313](#).

5809 Section 125. Section **76-10-1504** is amended to read:

5810 **76-10-1504. Bus hijacking -- Assault with intent to commit hijacking -- Use of a**
5811 **dangerous weapon -- Penalties.**

5812 (1) (a) A person is guilty of bus hijacking if the person seizes or exercises control, by
5813 force or violence or threat of force or violence, of a bus within the state.

5814 (b) Bus hijacking is a first degree felony.

5815 (2) (a) A person is guilty of assault with the intent to commit bus hijacking if the
5816 person intimidates, threatens, or commits assault or battery toward a driver, attendant, guard, or
5817 any other person in control of a bus so as to interfere with the performance of duties by the
5818 person.

5819 (b) Assault with the intent to commit bus hijacking is a second degree felony.

5820 (3) A person who, in the commission of assault with intent to commit bus hijacking,
5821 uses a dangerous weapon, as defined in Section [~~76-1-601~~] [76-1-101.5](#), is guilty of a first
5822 degree felony.

5823 Section 126. Section **76-10-1602** is amended to read:

5824 **76-10-1602. Definitions.**

5825 As used in this part:

5826 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
5827 business trust, association, or other legal entity, and any union or group of individuals
5828 associated in fact although not a legal entity, and includes illicit as well as licit entities.

5829 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
5830 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
5831 have the same or similar purposes, results, participants, victims, or methods of commission, or
5832 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
5833 demonstrate continuing unlawful conduct and be related either to each other or to the
5834 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
5835 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
5836 activity as defined by this part shall have occurred within five years of the commission of the
5837 next preceding act alleged as part of the pattern.

5838 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
5839 interest in property, including state, county, and local governmental entities.

5840 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
5841 command, encourage, or intentionally aid another person to engage in conduct which would
5842 constitute any offense described by the following crimes or categories of crimes, or to attempt
5843 or conspire to engage in an act which would constitute any of those offenses, regardless of
5844 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
5845 or a felony:

5846 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
5847 Recording Practices Act;

5848 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
5849 Code, Sections [19-1-101](#) through [19-7-109](#);

5850 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
5851 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
5852 Code of Utah, or Section [23-20-4](#);

- 5853 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
5854 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;
- 5855 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
5856 Offenses and Procedure Act;
- 5857 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
5858 Land Sales Practices Act;
- 5859 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
5860 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
5861 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
5862 Clandestine Drug Lab Act;
- 5863 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
5864 Securities Act;
- 5865 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
5866 Procurement Code;
- 5867 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 5868 (k) a threat of terrorism, Section 76-5-107.3;
- 5869 (l) a criminal homicide[~~Sections 76-5-201, 76-5-202, and 76-5-203~~] offense, as
5870 described in Section 76-5-201;
- 5871 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 5872 (n) human trafficking, human trafficking of a child, human smuggling, or aggravated
5873 human trafficking, Sections 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-309, and
5874 76-5-310;
- 5875 (o) sexual exploitation of a minor, Section 76-5b-201;
- 5876 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 5877 (q) causing a catastrophe, Section 76-6-105;
- 5878 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 5879 (s) burglary of a vehicle, Section 76-6-204;
- 5880 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

- 5881 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 5882 (v) theft, Section 76-6-404;
- 5883 (w) theft by deception, Section 76-6-405;
- 5884 (x) theft by extortion, Section 76-6-406;
- 5885 (y) receiving stolen property, Section 76-6-408;
- 5886 (z) theft of services, Section 76-6-409;
- 5887 (aa) forgery, Section 76-6-501;
- 5888 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 5889 76-6-506.6;
- 5890 (cc) deceptive business practices, Section 76-6-507;
- 5891 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 5892 criticism of goods, Section 76-6-508;
- 5893 (ee) bribery of a labor official, Section 76-6-509;
- 5894 (ff) defrauding creditors, Section 76-6-511;
- 5895 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 5896 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 5897 (ii) bribery or threat to influence contest, Section 76-6-514;
- 5898 (jj) making a false credit report, Section 76-6-517;
- 5899 (kk) criminal simulation, Section 76-6-518;
- 5900 (ll) criminal usury, Section 76-6-520;
- 5901 (mm) fraudulent insurance act, Section 76-6-521;
- 5902 (nn) retail theft, Section 76-6-602;
- 5903 (oo) computer crimes, Section 76-6-703;
- 5904 (pp) identity fraud, Section 76-6-1102;
- 5905 (qq) mortgage fraud, Section 76-6-1203;
- 5906 (rr) sale of a child, Section 76-7-203;
- 5907 (ss) bribery to influence official or political actions, Section 76-8-103;
- 5908 (tt) threats to influence official or political action, Section 76-8-104;

- 5909 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 5910 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 5911 76-8-106;
- 5912 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 5913 (xx) obstruction of justice, Section 76-8-306;
- 5914 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 5915 (zz) false or inconsistent material statements, Section 76-8-502;
- 5916 (aaa) false or inconsistent statements, Section 76-8-503;
- 5917 (bbb) written false statements, Section 76-8-504;
- 5918 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 5919 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 5920 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 5921 (fff) tampering with evidence, Section 76-8-510.5;
- 5922 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 5923 a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and
- 5924 Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist
- 5925 Disclosure and Regulation Act;
- 5926 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 5927 76-8-1205;
- 5928 (iii) unemployment insurance fraud, Section 76-8-1301;
- 5929 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
- 5930 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 5931 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
- 5932 parts, Section 76-10-306;
- 5933 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
- 5934 device, Section 76-10-307;
- 5935 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 5936 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;

- 5937 (ooo) alteration of number or mark on pistol or revolver, Section [76-10-522](#);
- 5938 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
- 5939 [76-10-1002](#);
- 5940 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
- 5941 Section [76-10-1003](#);
- 5942 (rrr) sales in containers bearing registered trademark of substituted articles, Section
- 5943 [76-10-1004](#);
- 5944 (sss) selling or dealing with article bearing registered trademark or service mark with
- 5945 intent to defraud, Section [76-10-1006](#);
- 5946 (ttt) gambling, Section [76-10-1102](#);
- 5947 (uuu) gambling fraud, Section [76-10-1103](#);
- 5948 (vvv) gambling promotion, Section [76-10-1104](#);
- 5949 (www) possessing a gambling device or record, Section [76-10-1105](#);
- 5950 (xxx) confidence game, Section [76-10-1109](#);
- 5951 (yyy) distributing pornographic material, Section [76-10-1204](#);
- 5952 (zzz) inducing acceptance of pornographic material, Section [76-10-1205](#);
- 5953 (aaaa) dealing in harmful material to a minor, Section [76-10-1206](#);
- 5954 (bbbb) distribution of pornographic films, Section [76-10-1222](#);
- 5955 (cccc) indecent public displays, Section [76-10-1228](#);
- 5956 (dddd) prostitution, Section [76-10-1302](#);
- 5957 (eeee) aiding prostitution, Section [76-10-1304](#);
- 5958 (ffff) exploiting prostitution, Section [76-10-1305](#);
- 5959 (gggg) aggravated exploitation of prostitution, Section [76-10-1306](#);
- 5960 (hhhh) communications fraud, Section [76-10-1801](#);
- 5961 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
- 5962 Currency Transaction Reporting Act;
- 5963 (jjjj) vehicle compartment for contraband, Section [76-10-2801](#);
- 5964 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in

5965 this state; and

5966 (III) any act illegal under the laws of the United States and enumerated in 18 U.S.C.

5967 Sec. 1961(1)(B), (C), and (D).

5968 Section 127. **Repealer.**

5969 This bill repeals:

5970 Section **76-5-210, Targeting a law enforcement officer defined.**

5971 Section **76-5-306, Lesser included offenses.**

5972 Section **76-5-416, Indecent liberties -- Definition.**

5973 Section 128. **Coordinating S.B. 123 with H.B. 29 -- Technical amendment.**

5974 If this S.B. 123 and H.B. 29, Driving Offenses Amendments, both pass and become
5975 law, it is the intent of the Legislature that this coordination clause supersede the coordination
5976 clause in H.B. 29 for Subsection 76-5-201(2) and that the Office of Legislative Research and
5977 General Counsel prepare the Utah Code database for publication by amending Subsection
5978 76-5-201(2) to read:

5979 "(2) The following are criminal homicide:

5980 (a) aggravated murder;

5981 (b) murder;

5982 (c) manslaughter;

5983 (d) child abuse homicide;

5984 (e) homicide by assault;

5985 (f) negligent homicide; and

5986 (g) negligently operating a vehicle resulting in death."

5987 Section 129. **Revisor instructions.**

5988 The Legislature intends that the Office of Legislative Research and General Counsel, in
5989 preparing the Utah Code database for publication, not enroll this bill if S.B. 124, Criminal
5990 Code Recodification Cross References, does not pass.