

**Criminal Justice Modifications**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matt MacPherson**

Senate Sponsor:

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**LONG TITLE****General Description:**

This bill amends statutory provisions related to criminal justice.

**Highlighted Provisions:**

This bill:

- defines terms;
- amends the requirements for the adult sentencing and supervision length guidelines to address domestic violence offenses;
- modifies the crime for the commission of domestic violence in the presence of a child;
- addresses the right to bail for a domestic violence offense;
- modifies the definition of domestic violence;
- amends the requirements for a peace officer investigating domestic violence;
- modifies the definition of cohabitant;
- provides that a jail release agreement may not prohibit an individual arrested or cited for the commission of domestic violence in the presence of a child from communicating with a minor child in certain circumstances;
- prohibits a parent from waiving the conditions of a jail release agreement if the minor child is the alleged victim and the parent was arrested or cited for the qualifying offense;
- clarifies cross-references to child abuse offenses; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**35A-8-901**, as last amended by Laws of Utah 2022, Chapter 335

**63M-7-401.1**, as enacted by Laws of Utah 2024, Chapter 208

31 **63M-7-404.3**, as enacted by Laws of Utah 2024, Chapter 197  
 32 **76-2-409**, as enacted by Laws of Utah 2020, Chapter 411  
 33 **76-5-114**, as renumbered and amended by Laws of Utah 2022, Chapter 181  
 34 **76-5-208**, as last amended by Laws of Utah 2023, Chapter 111  
 35 **77-20-201**, as last amended by Laws of Utah 2024, Chapter 197  
 36 **77-36-1**, as last amended by Laws of Utah 2024, Chapter 366  
 37 **77-36-2.2**, as last amended by Laws of Utah 2023, Chapter 447  
 38 **78B-7-102**, as last amended by Laws of Utah 2023, Chapter 170  
 39 **78B-7-802**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4  
 40 **81-9-202**, as renumbered and amended by Laws of Utah 2024, Chapter 366  
 41 **81-9-208**, as renumbered and amended by Laws of Utah 2024, Chapter 366  
 42 **81-9-402**, as renumbered and amended by Laws of Utah 2024, Chapter 366

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

45 Section 1. Section **35A-8-901** is amended to read:

46 **35A-8-901 . Assistance to domestic violence shelters -- Rulemaking authority.**

- 47 (1)(a) The Division of Child and Family Services within the Department of Human  
 48 Services has statutory responsibility to provide violence services, including  
 49 temporary shelter, to victims of domestic violence under the provisions of Sections  
 50 80-2-102 and 80-2-301.
- 51 (b) The division may assist the Division of Child and Family Services by providing for  
 52 the development, construction, and improvement of shelters for victims of domestic  
 53 violence, as [~~described~~] defined in Section 77-36-1, through loans and grants to  
 54 nonprofit and governmental entities.
- 55 (2) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative  
 56 Rulemaking Act, make rules establishing:
- 57 (a) procedures for applying for loans and grants;  
 58 (b) criteria for awarding loans and grants; and  
 59 (c) requirements for the repayment of loans.
- 60 (3) The division may appoint an advisory panel to:
- 61 (a) assist the division in developing rules under Subsection (2); and  
 62 (b) recommend how available funds should be disbursed.
- 63 (4) The division shall make loans and grants with money specifically appropriated for that  
 64 purpose.

65 (5) The division shall coordinate with the Division of Child and Family Services in  
 66 complying with the provisions of this section.

67 Section 2. Section **63M-7-401.1** is amended to read:

68 **63M-7-401.1 . Definitions for part.**

69 As used in this part:

70 (1) "Adjudication" means an adjudication, as that term is defined in Section 80-1-102, of an  
 71 offense under Section 80-6-701.

72 (2) "Adult sentencing and supervision length guidelines" means the guidelines established  
 73 in Section 63M-7-404.3.

74 (3) "Civil disability" means a legal right or privilege that is revoked as a result of the  
 75 individual's conviction or adjudication.

76 (4) "Collateral consequence" means:

77 (a) a discretionary disqualification; or

78 (b) a mandatory sanction.

79 (5) "Conviction" means the same as that term is defined in Section 77-38b-102.

80 (6) "Disadvantage" means any legal or regulatory restriction that:

81 (a) is imposed on an individual as a result of the individual's conviction or adjudication;  
 82 and

83 (b) is not a civil disability or a legal penalty.

84 (7) "Discretionary disqualification" means a penalty, a civil disability, or a disadvantage  
 85 that a court in a civil proceeding, or a federal, state, or local government agency or  
 86 official, may impose on an individual as a result of the individual's adjudication or  
 87 conviction for an offense regardless of whether the penalty, the civil disability, or the  
 88 disadvantage is specifically designated as a penalty, a civil disability, or a disadvantage.

89 (8) "Domestic violence offense" means the same as that term is defined in Section 77-36-1.

90 [~~(8)~~] (9) "Juvenile" means a minor as that term is defined in Section 80-1-102.

91 [~~(9)~~] (10) "Juvenile disposition guidelines" means the guidelines established in Section  
 92 63M-7-404.5.

93 [~~(10)~~] (11) "Mandatory sanction" means a penalty, a civil disability, or a disadvantage that:

94 (a) is imposed on an individual as a result of the individual's adjudication or conviction  
 95 for an offense regardless of whether the penalty, the civil disability, or the  
 96 disadvantage is specifically designated as a penalty, a civil disability, or a  
 97 disadvantage; and

98 (b) is not included in the judgment for the adjudication or conviction.

99 [(11)] (12) "Master offense list" means a document that contains all offenses that exist in  
100 statute and each offense's associated penalty.

101 [(12)] (13) "Offense" means a felony, a misdemeanor, an infraction, or an adjudication  
102 under the laws of this state, another state, or the United States.

103 [(13)] (14) "Penalty" means an administrative, civil, or criminal sanction imposed to punish  
104 the individual for the individual's conviction or adjudication.

105 [(14)] (15) "Sentencing commission" means the sentencing commission created in Section  
106 63M-7-401.2.

107 Section 3. Section **63M-7-404.3** is amended to read:

108 **63M-7-404.3 . Adult sentencing and supervision length guidelines.**

109 (1) The sentencing commission shall establish and maintain adult sentencing and  
110 supervision length guidelines regarding:

111 (a) the sentencing and release of offenders in order to:

112 (i) accept public comment;

113 (ii) relate sentencing practices and correctional resources;

114 (iii) increase equity in sentencing;

115 (iv) better define responsibility in sentencing; and

116 (v) enhance the discretion of the sentencing court while preserving the role of the  
117 Board of Pardons and Parole;

118 (b) the length of supervision of offenders on probation or parole in order to:

119 (i) accept public comment;

120 (ii) increase equity in criminal supervision lengths;

121 (iii) relate the length of supervision to an offender's progress;

122 (iv) take into account an offender's risk of offending again;

123 (v) relate the length of supervision to the amount of time an offender has remained  
124 under supervision in the community; and

125 (vi) enhance the discretion of the sentencing court while preserving the role of the  
126 Board of Pardons and Parole; and

127 (c) appropriate, evidence-based probation and parole supervision policies and services  
128 that assist offenders in successfully completing supervision and reduce incarceration  
129 rates from community supervision programs while ensuring public safety, including:

130 (i) treatment and intervention completion determinations based on individualized  
131 case action plans;

132 (ii) measured and consistent processes for addressing violations of conditions of

- 133 supervision;
- 134 (iii) processes that include using positive reinforcement to recognize an offender's  
135 progress in supervision;
- 136 (iv) engaging with social services agencies and other stakeholders who provide  
137 services that meet the needs of an offender; and
- 138 (v) identifying community violations that may not warrant revocation of probation or  
139 parole.
- 140 (2)(a) Before July 1, 2024, the sentencing commission shall revise and review the adult  
141 sentencing and supervision length guidelines to reflect appropriate penalties for the  
142 following offenses:
- 143 (i) an interlock restricted driver operating a vehicle without an ignition interlock  
144 system, Section 41-6a-518.2;
- 145 (ii) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and  
146 (iii) negligently operating a vehicle resulting in death, Section 76-5-207.
- 147 (b) The guidelines under Subsection (2)(a) shall consider the following:
- 148 (i) the current sentencing requirements for driving under the influence of alcohol,  
149 drugs, or a combination of both as identified in Section 41-6a-505 when injury or  
150 death do not result;
- 151 (ii) the degree of injury and the number of victims suffering injury or death as a result  
152 of the offense;
- 153 (iii) the offender's number of previous convictions for driving under the influence  
154 related offenses as defined in Subsection 41-6a-501(2)(a); and  
155 (iv) whether the offense amounts to extreme DUI, as that term is defined in Section  
156 41-6a-501.
- 157 (3) On or before October 31, 2024, the sentencing commission shall review and revise the  
158 supervision tools in the adult sentencing and supervision length guidelines to:
- 159 (a) recommend appropriate sanctions for an individual who violates probation or parole  
160 by:
- 161 (i) committing a felony offense, a misdemeanor offense described in Title 76,  
162 Chapter 5, Offenses Against the Individual, or a misdemeanor offense for driving  
163 under the influence described in Section 41-6a-502;
- 164 (ii) possessing a dangerous weapon; or  
165 (iii) willfully refusing to participate in treatment ordered by the court or the Board of  
166 Pardons and Parole; and

167 (b) recommend appropriate incentives for an individual on probation or parole that:

168 (i) completes all conditions of probation or parole; or

169 (ii) maintains eligible employment as defined in Section 64-13g-101.

170 (4)(a) On or before July 1, 2025, the sentencing commission shall review and revise the  
 171 sentencing and supervision length guidelines to reflect appropriate penalties for a  
 172 domestic violence offense in a matrix that:

173 (i) considers a prior conviction of a domestic violence offense as an aggravating  
 174 factor; and

175 (ii) takes into account an offender's risk of reoffending based on a domestic violence  
 176 risk assessment.

177 (b) The guidelines under Subsection (4)(a) shall consider:

178 (i) the offense category for a domestic violence offense;

179 (ii) the current sentencing requirements for a domestic violence offense, including the  
 180 enhancement of a subsequent domestic violence offense under Section 77-36-1.1;

181 (iii) identifiable risk factors for evaluating a domestic violence risk assessment; and

182 (iv) the offender's number of previous convictions, as that term is defined in Section  
 183 77-36-1.1, for a domestic violence offense.

184 [~~4~~] (5) The sentencing commission shall establish guidelines in the adult sentencing and  
 185 supervision length guidelines that recommend an enhanced sentence that a court or the  
 186 Board of Pardons and Parole should consider when determining the period in which a  
 187 habitual offender, as defined in Section 77-18-102, will be incarcerated.

188 [~~5~~] (6) The sentencing commission shall modify:

189 (a) the adult sentencing and supervision length guidelines to reduce recidivism for the  
 190 purposes of protecting the public and ensuring efficient use of state funds; and

191 (b) the criminal history score in the adult sentencing and supervision length guidelines to  
 192 reduce recidivism, including factors in an offender's criminal history that are relevant  
 193 to the accurate determination of an individual's risk of offending again.

194 Section 4. Section **76-2-409** is amended to read:

195 **76-2-409 . Battered person mitigation.**

196 (1) As used in this section:

197 (a) "Abuse" means the same as that term is defined in Section 78B-7-102.

198 [~~(b) "Cohabitant" means:~~]

199 [~~(i) the same as that term is defined in Section 78B-7-102; or]~~

200 [~~(ii) the relationship of a minor and a natural parent, an adoptive parent, a stepparent,~~

201           or an individual living with the minor's natural parent as if a stepparent to the  
202           minor.]

203           (b)(i) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

204           (ii) "Cohabitant" includes, notwithstanding the definition in Section 78B-7-102, an  
205           individual who is a minor child if the individual's parent or stepparent, or an  
206           individual living with the minor child's parent, committed the criminal offense.

207           (c) "Minor child" means the same as that term is defined in Section 81-1-101.

208           (d) "Parent" means the same as that term is defined in Section 81-1-101.

209       (2)(a) An individual is entitled to battered person mitigation if:

210           (i) the individual committed a criminal offense that was not legally justified;

211           (ii) the individual committed the criminal offense against a cohabitant who  
212           demonstrated a pattern of abuse against the individual or another cohabitant of the  
213           individual; and

214           (iii) the individual reasonably believed that the criminal offense was necessary to end  
215           the pattern of abuse.

216       (b) A reasonable belief under Subsection (2)(a) is determined from the viewpoint of a  
217       reasonable person in the individual's circumstances, as the individual's circumstances  
218       are perceived by the individual.

219       (3) An individual claiming mitigation under Subsection (2)(a) has the burden of proving, by  
220       clear and convincing evidence, each element that would entitle the individual to  
221       mitigation under Subsection (2)(a).

222       (4) Mitigation under Subsection (2)(a) results in a one-step reduction of the level of offense  
223       of which the individual is convicted.

224       (5)(a) If the trier of fact is a jury, an individual is not entitled to mitigation under  
225       Subsection (2)(a) unless the jury:

226           (i) finds the individual proved, in accordance with Subsection (3), that the individual  
227           is entitled to mitigation by unanimous vote; and

228           (ii) returns a special verdict for the reduced charge at the same time the jury returns  
229           the general verdict.

230       (b) A nonunanimous vote by the jury on the question of mitigation under Subsection  
231       (2)(a) does not result in a hung jury.

232       (6) An individual intending to claim mitigation under Subsection (2)(a) at the individual's  
233       trial shall give notice of the individual's intent to claim mitigation under Subsection  
234       (2)(a) to the prosecuting agency at least 30 days before the individual's trial.

235 Section 5. Section **76-5-114** is amended to read:

236 **76-5-114 . Commission of domestic violence in the presence of a child.**

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

238 (i) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

239 (ii) "Criminal homicide offense" means an offense listed in Subsection 76-5-201(2).

240 (iii) "Domestic violence offense" means the same as that term is defined in Section  
241 77-36-1.

242 (iv) "In the presence of a child" means:

243 (A) in the physical presence of a child; or

244 (B) having knowledge that a child is present and may see or hear [~~an act of~~  
245 ~~domestic violence~~] conduct described in Subsection (2)(a), (b), (c), or (d).

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

247 (2) An actor commits domestic violence in the presence of a child if the actor:

248 (a) commits or attempts to commit a criminal homicide offense against a cohabitant in  
249 the presence of a child;

250 (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon,  
251 or other means or force likely to produce death or serious bodily injury against a  
252 cohabitant, in the presence of a child; [~~or~~]

253 (c) intentionally or knowingly impedes the breathing or the circulation of blood of  
254 another individual by the actor's use of unlawful force or violence by applying  
255 pressure to the neck or throat of an individual or obstructing the nose, mouth, or  
256 airway of an individual in the presence of a child; or

257 [~~(e)~~] (d) under circumstances not amounting to a violation of Subsection [~~(2)(a) or (b)~~]  
258 (2)(a), (b), or (c), commits [~~an act of domestic violence~~] a domestic violence offense  
259 in the presence of a child.

260 (3)(a) A violation of Subsection [~~(2)(a) or (b)~~] (2)(a), (b), or (c) is a third degree felony.

261 (b) A violation of Subsection [~~(2)(e)~~] (2)(d) is a class B misdemeanor.

262 (4)(a) A charge under this section is separate and distinct from, and is in addition to, a  
263 charge of [~~domestic violence~~] a domestic violence offense in which the victim is the  
264 cohabitant.

265 (b) Either or both charges may be filed by the [~~prosecutor~~] prosecuting attorney.

266 (5) An actor who commits a violation of this section when more than one child is present is  
267 guilty of one [~~offense of domestic violence~~] domestic violence offense in the presence of  
268 a child regarding each child present when the violation occurred.



269 Section 6. Section **76-5-208** is amended to read:

270 **76-5-208 . Child abuse homicide -- Penalties.**

271 (1)(a) As used in this section, "child abuse" means an offense described in [~~Sections~~  
272 ~~76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114.~~] :

273 (i) Section 76-5-109, child abuse;

274 (ii) Section 76-5-109.2, aggravated child abuse;

275 (iii) Section 75-6-109.3, child abandonment; or

276 (iv) Section 76-5-114, commission of domestic violence in the presence of a child.

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

278 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an  
279 actor commits child abuse homicide if:

280 (a)(i) the actor causes the death of another individual who is younger than 18 years  
281 old; and

282 (ii) the individual's death results from child abuse; and

283 (b)(i) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);

284 (ii) the child abuse is done with criminal negligence under Subsection  
285 76-5-109.2(3)(c); or

286 (iii) under circumstances not amounting to the type of child abuse homicide  
287 described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly,  
288 recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or  
289 (c).

290 (3)(a) A violation of Subsection (2) under the circumstances described in Subsection  
291 (2)(b)(i) is a first degree felony.

292 (b) A violation of Subsection (2) under the circumstances described in Subsection  
293 (2)(b)(ii) or (iii) is a second degree felony.

294 Section 7. Section **77-20-201** is amended to read:

295 **77-20-201 . Right to bail -- Capital felony.**

296 (1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail  
297 as a matter of right, except if the individual is charged with:

298 (a) a capital felony when there is substantial evidence to support the charge;

299 (b) a felony committed while on parole or on probation for a felony conviction, or while  
300 free on bail awaiting trial on a previous felony charge, when there is substantial  
301 evidence to support the current felony charge;

302 (c) a felony when there is substantial evidence to support the charge and the court finds,

- 303 by clear and convincing evidence, that:
- 304 (i) the individual would constitute a substantial danger to any other individual or to  
305 the community after considering available conditions of release that the court may  
306 impose if the individual is released on bail; or
- 307 (ii) the individual is likely to flee the jurisdiction of the court if the individual is  
308 released on bail;
- 309 (d) a felony when there is substantial evidence to support the charge and the court finds,  
310 by clear and convincing evidence, that the individual violated a material condition of  
311 release while previously on bail;
- 312 (e) a domestic violence offense if:
- 313 (i) there is substantial evidence to support the charge; and
- 314 (ii) the court finds, by clear and convincing evidence, that:
- 315 (A) the individual would constitute a substantial danger to an alleged victim of  
316 domestic violence after considering available conditions of release that the  
317 court may impose if the individual is released on bail; or
- 318 (B) the domestic violence offense is committed while the individual is on parole  
319 or probation for a conviction of a domestic violence offense or while released  
320 pretrial on a previous charge for a domestic violence offense;
- 321 (f) the offense of driving under the influence or driving with a measurable controlled  
322 substance in the body if:
- 323 (i) the offense results in death or serious bodily injury to an individual;
- 324 (ii) there is substantial evidence to support the charge; and
- 325 (iii) the court finds, by clear and convincing evidence, that the individual would  
326 constitute a substantial danger to the community after considering available  
327 conditions of release that the court may impose if the individual is released on  
328 bail;
- 329 (g) a felony violation of Section 76-9-101 if:
- 330 (i) there is substantial evidence to support the charge; and
- 331 (ii) the court finds, by clear and convincing evidence, that the individual is not likely  
332 to appear for a subsequent court appearance; or
- 333 (h) except as provided in Subsection (4), the offense of driving under the influence or  
334 driving with a measurable controlled substance in the body:
- 335 (i) if committed while on parole or on probation for a driving under the influence or  
336 driving with a measurable controlled substance in the body conviction; or

337 (ii) while the individual is out of custody awaiting trial on a previous driving under  
 338 the influence or driving with a measurable controlled substance in the body  
 339 charge, when the court finds there is substantial evidence to support the current  
 340 charge.

341 (2) Notwithstanding any other provision of this section, there is a rebuttable presumption  
 342 that an individual is a substantial danger to the community under Subsection (1)(f)(iii):  
 343 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or  
 344 greater if the individual is arrested for, or charged with, the offense of driving under  
 345 the influence and the offense resulted in death or serious bodily injury to an  
 346 individual; or  
 347 (b) if the individual has a measurable amount of controlled substance in the individual's  
 348 body, the individual is arrested for, or charged with, the offense of driving with a  
 349 measurable controlled substance in the body and the offense resulted in death or  
 350 serious bodily injury to an individual.

351 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section  
 352 76-5-202, aggravated murder, is a capital felony unless:  
 353 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or  
 354 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting  
 355 attorney has not filed a notice to seek the death penalty.

356 (4) For purposes of Subsection (1)(h), there is a rebuttable presumption that an individual  
 357 would not constitute a substantial danger to any other person or the community if:  
 358 (a) the court orders the person to participate in an inpatient drug and alcohol treatment  
 359 program; or  
 360 (b) the court orders the person to participate in home confinement through the use of  
 361 electronic monitoring as described in Section 41-6a-506.

362 Section 8. Section **77-36-1** is amended to read:

363 **77-36-1 . Definitions.**

364 As used in this chapter:

365 (1) "Child abuse offense" means an offense described in:

366 (a) Section 76-5-109, child abuse;

367 (b) Section 76-5-109.2, aggravated child abuse; or

368 (c) Section 76-5-110, abuse or neglect of a child with a disability.

369 [(+)] (2) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

370 (3) "Dangerous weapon" means the same as that term is defined in Section 76-1-101.5.

371 ~~[(2)] (4)~~ "Department" means the Department of Public Safety.

372 ~~[(3)] (5)~~ "Divorced" means an individual who has obtained a divorce under Title 81, Chapter  
373 4, Part 4, Divorce.

374 ~~[(4)(a)~~ "Domestic violence" or "domestic violence offense" means any criminal offense  
375 involving violence or physical harm or threat of violence or physical harm, or any  
376 attempt, conspiracy, or solicitation to commit a criminal offense involving violence  
377 or physical harm, when committed by one cohabitant against another.]

378 ~~[(b)~~ "Domestic violence" or "domestic violence offense" includes the commission of or  
379 attempt to commit, any of the following offenses by one cohabitant against another:]

380 ~~[(i) aggravated assault under Section 76-5-103;]~~

381 ~~[(ii) aggravated cruelty to an animal under Subsection 76-9-301(4), with the intent to~~  
382 ~~harass or threaten the other cohabitant;]~~

383 ~~[(iii) assault under Section 76-5-102;]~~

384 ~~[(iv) criminal homicide under Section 76-5-201;]~~

385 ~~[(v) harassment under Section 76-5-106;]~~

386 ~~[(vi) electronic communication harassment under Section 76-9-201;]~~

387 ~~[(vii) kidnapping, child kidnapping, or aggravated kidnapping under Sections~~  
388 ~~76-5-301, 76-5-301.1, and 76-5-302;]~~

389 ~~[(viii) mayhem under Section 76-5-105;]~~

390 ~~[(ix) propelling a bodily substance or material, as described in Section 76-5-102.9]~~

391 ~~[(x) sexual offenses under Title 76, Chapter 5, Part 4, Sexual Offenses, and sexual~~  
392 ~~exploitation of a minor and aggravated sexual exploitation of a minor, as~~  
393 ~~described in Sections 76-5b-201 and 76-5b-201.1;]~~

394 ~~[(xi) stalking under Section 76-5-106.5;]~~

395 ~~[(xii) unlawful detention and unlawful detention of a minor under Section 76-5-304;]~~

396 ~~[(xiii) violation of a protective order or ex parte protective order under Section~~  
397 ~~76-5-108;]~~

398 ~~[(xiv) an offense against property under Title 76, Chapter 6, Part 1, Property~~  
399 ~~Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title~~  
400 ~~76, Chapter 6, Part 3, Robbery;]~~

401 ~~[(xv) possession of a deadly weapon with criminal intent under Section 76-10-507;]~~

402 ~~[(xvi) discharge of a firearm from a vehicle, near a highway, or in the direction of any~~  
403 ~~person, building, or vehicle under Section 76-10-508;]~~

404 ~~[(xvii) disorderly conduct under Section 76-9-102, if a conviction or adjudication of~~

405 ~~disorderly conduct is the result of a plea agreement in which the perpetrator was~~  
 406 ~~originally charged with a domestic violence offense otherwise described in this~~  
 407 ~~Subsection (4), except that a conviction or adjudication of disorderly conduct as a~~  
 408 ~~domestic violence offense, in the manner described in this Subsection (4)(p), does~~  
 409 ~~not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec.~~  
 410 ~~921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;~~  
 411 ~~[(xviii) child abuse under Section 76-5-114;]~~  
 412 ~~[(xix) threatening use of a dangerous weapon under Section 76-10-506;]~~  
 413 ~~[(xx) threatening violence under Section 76-5-107;]~~  
 414 ~~[(xxi) tampering with a witness under Section 76-8-508;]~~  
 415 ~~[(xxii) retaliation against a witness, victim, or informant under Section 76-8-508.3;]~~  
 416 ~~[(xxiii) receiving or soliciting a bribe as a witness under Section 76-8-508.7;]~~  
 417 ~~[(xxiv) unlawful distribution of an intimate image under Section 76-5b-203;]~~  
 418 ~~[(xxv) unlawful distribution of a counterfeit intimate image under Section 76-5b-205;]~~  
 419 ~~[(xxvi) sexual battery under Section 76-9-702.1;]~~  
 420 ~~[(xxvii) voyeurism under Section 76-9-702.7;]~~  
 421 ~~[(xxviii) damage to or interruption of a communication device under Section 76-6-108;~~  
 422 ~~or]~~  
 423 ~~[(xxix) an offense under Subsection 78B-7-806(1).]~~

424 (6)(a) "Domestic violence" or "domestic violence offense" means:  
 425 (i) an offense involving violence or physical harm, or a threat of violence or physical  
 426 harm, that is committed by one cohabitant against another cohabitant; or  
 427 (ii) an attempt, a conspiracy, or a solicitation to commit an offense involving violence  
 428 or physical harm by one cohabitant against another cohabitant.  
 429 (b) "Domestic violence" or "domestic violence offense" includes the commission of, or  
 430 an attempt to commit, an offense by one cohabitant against another cohabitant that is  
 431 an offense described in:  
 432 (i) Section 76-5-102, assault;  
 433 (ii) Section 76-5-102.9, propelling a bodily substance or material;  
 434 (iii) Section 76-5-103, aggravated assault;  
 435 (iv) Section 76-5-105, mayhem;  
 436 (v) Section 76-5-106, harassment;  
 437 (vi) Section 76-5-106.5, stalking;  
 438 (vii) Section 76-5-107, threat of violence;

- 439           (viii) Section 76-5-108, violation of a protective order;  
440           (ix) Section 76-5-109, child abuse;  
441           (x) Section 76-5-109.2, aggravated child abuse;  
442           (xi) Section 76-5-110, abuse or neglect of a child with a disability;  
443           (xii) Section 76-5-111, abuse of a vulnerable adult;  
444           (xiii) Section 76-5-111.2, aggravated abuse of a vulnerable adult;  
445           (xiv) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;  
446           (xv) Section 76-5-111.4, financial exploitation of a vulnerable adult;  
447           (xvi) Section 76-5-114, commission of domestic violence in the presence of a child;  
448           (xvii) Section 76-5-201, criminal homicide;  
449           (xviii) Section 76-5-301, kidnapping;  
450           (xix) Section 76-5-301.1, child kidnapping;  
451           (xx) Section 76-5-302, aggravated kidnapping;  
452           (xxi) Section 76-5-304, unlawful detention and unlawful detention of a minor;  
453           (xxii) Section 76-5-308, human trafficking for labor;  
454           (xxiii) Section 76-5-308.1, human trafficking for sexual exploitation;  
455           (xxiv) Section 76-5-308.5, human trafficking of a child;  
456           (xxv) Section 76-5-310, aggravated human trafficking;  
457           (xxvi) Section 76-5-311, human trafficking of a vulnerable adult;  
458           (xxvii) Title 76, Chapter 5, Part 4, Sexual Offenses;  
459           (xxviii) Section 76-5b-201, sexual exploitation of a minor;  
460           (xxix) Section 76-5b-201.1, aggravated sexual exploitation of a minor;  
461           (xxx) Section 76-5b-203, distribution of an intimate image;  
462           (xxxi) Section 76-5b-205, unlawful distribution of a counterfeit intimate image;  
463           (xxxii) Title 76, Chapter 6, Part 1, Property Destruction;  
464           (xxxiii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;  
465           (xxxiv) Title 76, Chapter 6, Part 3, Robbery;  
466           (xxxv) Section 76-8-508, tampering with a witness;  
467           (xxxvi) Section 76-8-508.3, retaliation against a witness, victim, or informant;  
468           (xxxvii) Section 76-8-508.7, receiving or soliciting a bribe as a witness;  
469           (xxxviii) Section 76-9-102, disorderly conduct, if a conviction or adjudication of  
470           disorderly conduct is the result of a plea agreement in which the perpetrator was  
471           originally charged with an offense otherwise described in this Subsection (6),  
472           except that a conviction or adjudication of disorderly conduct as a domestic

473 violence offense, in the manner described in this Subsection (6)(xxxviii), does not  
 474 constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921,  
 475 and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

476 (xxxix) Section 76-9-201, electronic communication harassment;

477 (xl) Subsection 76-9-301(4), aggravated cruelty to an animal if the intent is to harass  
 478 or threaten the other cohabitant;

479 (xli) Section 76-9-702.1, sexual battery;

480 (xlii) Section 76-9-702.7, voyeurism;

481 (xliii) Title 76, Chapter 9, Part 4, Offenses Against Privacy;

482 (xliv) Section 76-10-506, threatening with or using dangerous weapon in fight or  
 483 quarrel;

484 (xlv) Section 76-10-507, possession of a deadly weapon with criminal intent;

485 (xlvi) Section 76-10-508, discharge of a firearm from a vehicle, near a highway, or in  
 486 direction of specified items; or

487 (xlvii) Subsection 78B-7-806(1), for a violation of a jail release court order or jail  
 488 release agreement.

489 [(5)] (7) "Jail release agreement" means the same as that term is defined in Section  
 490 78B-7-801.

491 [(6)] (8) "Jail release court order" means the same as that term is defined in Section  
 492 78B-7-801.

493 [(7)] (9) "Marital status" means married and living together, divorced, separated, or not  
 494 married.

495 [(8)] (10) "Married and living together" means a couple:

496 (a) whose marriage was solemnized under Section 81-2-305 or 81-2-407; and

497 (b) who are living in the same residence.

498 [(9)] (11) "Not married" means any living arrangement other than married and living  
 499 together, divorced, or separated.

500 [(10)] (12) "Protective order" includes an order issued under Subsection 78B-7-804(3).

501 [(11)] (13) "Pretrial protective order" means a written order:

502 (a) specifying and limiting the contact a person who has been charged with a domestic  
 503 violence offense may have with an alleged victim or other specified individuals; and

504 (b) specifying other conditions of release under Section 78B-7-802 or 78B-7-803,  
 505 pending trial in the criminal case.

506 [(12)] (14) "Sentencing protective order" means a written order of the court as part of

507 sentencing in a domestic violence case that limits the contact an individual who is  
 508 convicted or adjudicated of a domestic violence offense may have with a victim or other  
 509 specified individuals under Section 78B-7-804.

510 [(13)] (15) "Separated" means a couple:

511 (a) who have had their marriage solemnized under Section 81-2-305 or 81-2-407; and

512 (b) who are not living in the same residence.

513 (16) "Serious bodily injury" means the same as that term is defined in Section 76-1-101.5.

514 [(14)] (17) "Victim" means a cohabitant who has been subjected to domestic violence.

515 Section 9. Section 77-36-2.2 is amended to read:

516 **77-36-2.2 . Powers and duties of law enforcement officers to arrest -- Reports of**  
 517 **domestic violence cases -- Reports of parties' marital status.**

518 (1) The primary duty of law enforcement officers responding to a domestic violence call is  
 519 to protect the victim and enforce the law.

520 (2)(a) In addition to the arrest powers described in Section 77-7-2, when a peace officer  
 521 responds to a domestic violence call and has probable cause to believe that [~~an act of~~  
 522 ~~domestic violence~~] a domestic violence offense has been committed, the peace officer  
 523 shall arrest without a warrant or [~~shall~~] issue a citation to [~~any person~~] an individual  
 524 that the peace officer has probable cause to believe has committed [~~an act of domestic~~  
 525 ~~violence~~] a domestic violence offense.

526 (b)[(1)] If the peace officer has probable cause to believe that there will be continued  
 527 violence against the alleged victim, or if there is evidence that the perpetrator has [  
 528 ~~either~~] recently caused serious bodily injury or used a dangerous weapon in the  
 529 domestic violence offense, the peace officer:

530 (i) [~~shall~~] arrest and take the alleged perpetrator into custody[;] ; and

531 (ii) may not utilize the option of issuing a citation under this section.

532 [(ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous  
 533 weapon" mean the same as those terms are defined in Section 76-1-101.5.]

534 (c) If a peace officer does not immediately exercise arrest powers or initiate criminal  
 535 proceedings by citation or otherwise, the officer shall notify the victim of the right to  
 536 initiate a criminal proceeding and of the importance of preserving evidence, in  
 537 accordance with the requirements of Section 77-36-2.1.

538 (d)(i) This Subsection (2) does not apply to a domestic abuse offense that is a child  
 539 abuse offense.

540 (ii) A peace officer shall investigate a child abuse offense in accordance with Title



541 80, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective  
542 Custody of a Child.

543 (3)(a) If a law enforcement officer receives complaints of domestic violence from two or  
544 more opposing ~~[persons]~~ individuals, the officer shall evaluate each complaint  
545 separately to determine who the predominant aggressor was.

546 (b) If the officer determines that one ~~[person]~~ individual was the predominant physical  
547 aggressor, the officer need not arrest the other ~~[person]~~ individual alleged to have  
548 committed ~~[domestic violence]~~ a domestic violence offense.

549 (c) In determining who the predominant aggressor was, the officer shall consider:

550 ~~[(a)]~~ (i) any prior complaints of domestic violence;

551 ~~[(b)]~~ (ii) the relative severity of injuries inflicted on each ~~[person]~~ individual;

552 ~~[(c)]~~ (iii) the likelihood of future injury to each of the parties; and

553 ~~[(d)]~~ (iv) whether one of the parties acted in self defense.

554 (4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible  
555 arrest of all parties in order to discourage any party's request for intervention by law  
556 enforcement.

557 (5)(a) A law enforcement officer who does not make an arrest after investigating a  
558 complaint of domestic violence, or who arrests two or more parties, shall submit a  
559 detailed, written report specifying the grounds for not arresting any party or for  
560 arresting both parties.

561 (b) A law enforcement officer who does not make an arrest shall notify the victim of the  
562 right to initiate a criminal proceeding and of the importance of preserving evidence.

563 (6)(a) A law enforcement officer responding to a complaint of domestic violence shall  
564 prepare an incident report that includes:

565 (i) the officer's disposition of the case; and

566 (ii) the results of any lethality assessment completed in accordance with Section  
567 77-36-2.1.

568 ~~[(b) From January 1, 2009, until December 31, 2013, any law enforcement officer~~  
569 ~~employed by a city of the first or second class responding to a complaint of domestic~~  
570 ~~violence shall also report, either as a part of an incident report or on a separate form,~~  
571 ~~the following information:]~~

572 ~~[(i) marital status of each of the parties involved;]~~

573 ~~[(ii) social, familial, or legal relationship of the suspect to the victim; and]~~

574 ~~[(iii) whether or not an arrest was made.]~~

- 575 ~~[(e) The information obtained in Subsection (6)(b):]~~  
 576 ~~[(i) shall be reported monthly to the department;]~~  
 577 ~~[(ii) shall be reported as numerical data that contains no personal identifiers; and]~~  
 578 ~~[(iii) is a public record as defined in Section 63G-2-103.]~~  
 579 ~~[(d)]~~ (b) The incident report shall be made available to the victim, upon request, at no  
 580 cost.  
 581 ~~[(e)]~~ (c) The law enforcement agency shall forward a copy of the incident report to the  
 582 appropriate prosecuting attorney within five days after the complaint of domestic  
 583 violence occurred.  
 584 ~~[(7) The department shall compile the information described in Subsections (6)(b) and (e)~~  
 585 ~~into a report and present that report to the Law Enforcement and Criminal Justice~~  
 586 ~~Interim Committee during the 2013 interim, no later than May 31, 2013.]~~  
 587 ~~[(8)]~~ (7) Each law enforcement agency shall, as soon as practicable, make a written record  
 588 and maintain records of all incidents of domestic violence reported to ~~[it]~~ the law  
 589 enforcement agency, and shall be identified by a law enforcement agency code for  
 590 domestic violence.  
 591 Section 10. Section **78B-7-102** is amended to read:  
 592 **78B-7-102 . Definitions.**  
 593 As used in this chapter:  
 594 (1) "Abuse" means, except as provided in Section 78B-7-201, intentionally or knowingly  
 595 causing or attempting to cause another individual physical harm or intentionally or  
 596 knowingly placing another individual in reasonable fear of imminent physical harm.  
 597 (2) "Affinity" means the same as that term is defined in Section 76-1-101.5.  
 598 (3) "Child" means an individual who is younger than 18 years old.  
 599 ~~[(3)]~~ (4) "Civil protective order" means an order issued, subsequent to a hearing on the  
 600 petition, of which the petitioner and respondent have been given notice, under:  
 601 (a) Part 2, Child Protective Orders;  
 602 (b) Part 4, Dating Violence Protective Orders;  
 603 (c) Part 5, Sexual Violence Protective Orders;  
 604 (d) Part 6, Cohabitant Abuse Protective Orders; or  
 605 (e) Part 11, Workplace Violence Protective Orders.  
 606 ~~[(4)]~~ (5) "Civil stalking injunction" means a stalking injunction issued under Part 7, Civil  
 607 Stalking Injunctions.  
 608 ~~[(5)]~~ (6)(a) "Cohabitant" means an ~~[emancipated individual under Section 15-2-1 or an~~

609 individual who is 16 years old or older who] individual who:

610 (i) is emancipated as described in Section 15-2-1 or is 16 years old or older; and

611 ~~(ii)~~~~(i)~~ (A) is or was a spouse of the other party;

612 ~~(ii)~~ (B) is or was living as if a spouse of the other party;

613 ~~(iii)~~ (C) is related by blood or marriage to the other party as the individual's

614 parent, grandparent, sibling, or any other individual related to the individual by

615 consanguinity or affinity to the second degree;

616 ~~(iv)~~ (D) has or had one or more children in common with the other party;

617 ~~(v)~~ (E) is the biological parent of the other party's unborn minor child;

618 ~~(vi)~~ (F) resides or has resided in the same residence as the other party; or

619 ~~(vii)~~ (G) is or was in a consensual sexual relationship with the other party.

620 (b) "Cohabitant" does not include a child if:

621 (i) the other party is the child's sibling, step-sibling, or foster sibling and the other

622 party is a child; or

623 (ii) the other party is the child's parent, stepparent, or foster parent.

624 ~~(b) "Cohabitant" does not include:~~

625 ~~(i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or]~~

626 ~~(ii) the relationship between natural, adoptive, step, or foster siblings who are under~~

627 ~~18 years old.]~~

628 ~~(6)~~ (7) "Consanguinity" means the same as that term is defined in Section 76-1-101.5.

629 ~~(7)~~ (8) "Criminal protective order" means an order issued under Part 8, Criminal Protective

630 Orders.

631 ~~(8)~~ (9) "Criminal stalking injunction" means a stalking injunction issued under Part 9,

632 Criminal Stalking Injunctions.

633 ~~(9)~~ (10) "Court clerk" means a district court clerk.

634 ~~(10)~~ (11)(a) "Dating partner" means an individual who:

635 (i)(A) is an emancipated individual under Section 15-2-1 or Title 80, Chapter 7,

636 Emancipation; or

637 (B) is 18 years old or older; and

638 (ii) is, or has been, in a dating relationship with the other party.

639 (b) "Dating partner" does not include an intimate partner.

640 ~~(11)~~ (12)(a) "Dating relationship" means a social relationship of a romantic or intimate

641 nature, or a relationship which has romance or intimacy as a goal by one or both

642 parties, regardless of whether the relationship involves sexual intimacy.

- 643 (b) "Dating relationship" does not include casual fraternization in a business,  
644 educational, or social context.
- 645 (c) In determining, based on a totality of the circumstances, whether a dating  
646 relationship exists:
- 647 (i) all relevant factors shall be considered, including:
- 648 (A) whether the parties developed interpersonal bonding above a mere casual  
649 fraternization;
- 650 (B) the length of the parties' relationship;
- 651 (C) the nature and the frequency of the parties' interactions, including  
652 communications indicating that the parties intended to begin a dating  
653 relationship;
- 654 (D) the ongoing expectations of the parties, individual or jointly, with respect to  
655 the relationship;
- 656 (E) whether, by statement or conduct, the parties demonstrated an affirmation of  
657 their relationship to others; and
- 658 (F) whether other reasons exist that support or detract from a finding that a dating  
659 relationship exists; and
- 660 (ii) it is not necessary that all, or a particular number, of the factors described in  
661 Subsection ~~[(11)(e)(i)]~~ (12)(c)(i) are found to support the existence of a dating  
662 relationship.
- 663 ~~[(12)]~~ (13) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 664 ~~[(13)]~~ (14) "Ex parte civil protective order" means an order issued without notice to the  
665 respondent under:
- 666 (a) Part 2, Child Protective Orders;
- 667 (b) Part 4, Dating Violence Protective Orders;
- 668 (c) Part 5, Sexual Violence Protective Orders;
- 669 (d) Part 6, Cohabitant Abuse Protective Orders; or
- 670 (e) Part 11, Workplace Violence Protective Orders.
- 671 ~~[(14)]~~ (15) "Ex parte civil stalking injunction" means a stalking injunction issued without  
672 notice to the respondent under Part 7, Civil Stalking Injunctions.
- 673 ~~[(15)]~~ (16) "Foreign protection order" means the same as that term is defined in Section  
674 78B-7-302.
- 675 ~~[(16)]~~ (17) "Household animal" means an animal that is tamed and kept as a pet.
- 676 ~~[(17)]~~ (18) "Intimate partner" means the same as that term is defined in 18 U.S.C. Sec. 921.

- 677 ~~[(18)]~~ (19) "Law enforcement unit" or "law enforcement agency" means any public agency  
678 having general police power and charged with making arrests in connection with  
679 enforcement of the criminal statutes and ordinances of this state or any political  
680 subdivision.
- 681 (20) "Minor child" means the same as that term is defined in Section 81-1-101.
- 682 ~~[(19)]~~ (21) "Peace officer" means those individuals specified in Title 53, Chapter 13, Peace  
683 Officer Classifications.
- 684 ~~[(20)]~~ (22) "Qualifying domestic violence offense" means the same as that term is defined in  
685 Section 77-36-1.1.
- 686 ~~[(21)]~~ (23) "Respondent" means the individual against whom enforcement of a protective  
687 order is sought.
- 688 ~~[(22)]~~ (24) "Stalking" means the same as that term is defined in Section 76-5-106.5.  
689 Section 11. Section **78B-7-802** is amended to read:
- 690 **78B-7-802 . Conditions for release after arrest for domestic violence and other**  
691 **offenses -- Jail release agreements -- Jail release court orders.**
- 692 (1) Upon arrest or issuance of a citation for [-]a qualifying offense[-] and before the  
693 individual is released under Section 77-20-204 or 77-20-205, the individual may not  
694 telephone, contact, or otherwise communicate with the alleged victim, directly or  
695 indirectly.
- 696 (2)(a) After[-] an individual is arrested or issued a citation for a qualifying offense, the  
697 individual[-] may not be released before:
- 698 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or  
699 (ii) the individual signs a jail release agreement.
- 700 (b) If an arrested individual is booked into jail, the arresting officer shall ensure that the  
701 information presented to the magistrate includes whether the alleged victim has made  
702 a waiver described in Subsection (5)(a).
- 703 (c) If the magistrate determines there is probable cause to support the charge or charges  
704 of [-]one or more qualifying offenses[-], the magistrate shall issue a temporary  
705 pretrial status order, as defined in Section 77-20-102, in accordance with Section  
706 77-20-205.
- 707 (d) The magistrate may not release an individual arrested for a qualifying offense unless  
708 the magistrate issues a jail release court order or the arrested individual signs a jail  
709 release agreement.
- 710 (e) A jail release agreement or jail release court order may not prohibit an individual

711 who is arrested or cited for an offense for the commission of domestic violence in the  
712 presence of a child, as described in Section 76-5-114, from telephoning, contacting,  
713 or otherwise communicating with a minor child if:

714 (i) the individual is the parent or guardian of the minor child; and

715 (ii) the alleged victim of the offense is not the minor child or the parent or guardian  
716 of the minor child.

717 (3)(a) If an individual charged with [-]a qualifying offense[-] fails to either schedule an  
718 initial appearance or to appear at the time scheduled by the magistrate within 96  
719 hours after the time of arrest, the individual shall comply with the release conditions  
720 of a jail release agreement or jail release court order until the individual makes an  
721 initial appearance.

722 (b) If the [~~prosecutor~~] prosecuting attorney has not filed charges against an individual  
723 who was arrested for a qualifying offense and who appears in court at the time  
724 scheduled by the magistrate under Subsection (2), or by the court under Subsection  
725 (3)(b)(ii), the court:

726 (i) may, upon the motion of the [~~prosecutor~~] prosecuting attorney and after allowing  
727 the individual an opportunity to be heard on the motion, extend the release  
728 conditions described in the jail release court order or the jail release agreement by  
729 no more than three court days; and

730 (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the  
731 arrested individual to appear at a time scheduled before the end of the granted  
732 extension.

733 (c)(i) If the [~~prosecutor~~] prosecuting attorney determines that there is insufficient  
734 evidence to file charges before an initial appearance scheduled under Subsection  
735 (3)(a), the [~~prosecutor~~] prosecuting attorney shall transmit a notice of declination to[  
736 ~~either~~] :

737 (A) the magistrate who signed the jail release court order[~~or~~]; or

738 (B) if the releasing agency obtains a jail release agreement from the released  
739 arrestee, [~~to~~]the statewide domestic violence network described in Section  
740 78B-7-113.

741 (ii) A [~~prosecutor's~~] prosecuting attorney's notice of declination transmitted under this  
742 Subsection (3)(c) is considered a motion to dismiss a jail release court order and a  
743 notice of expiration of a jail release agreement.

744 (4) Except as provided in Subsections (3) and (11) or otherwise ordered by a court, a jail

- 745 release agreement or jail release court order expires at midnight after the earlier of:
- 746 (a) the arrested or cited individual's initial scheduled court appearance described in
- 747 Subsection (3)(a);
- 748 (b) the day on which the [~~prosecutor~~] prosecuting attorney transmits the notice of the
- 749 declination under Subsection (3)(c); or
- 750 (c) 30 days after the day on which the individual is arrested or issued a citation.
- 751 (5)(a)(i) After an individual is arrested or issued a citation for a qualifying offense, an
- 752 alleged victim who is not a [~~minor~~] child may waive in writing any condition of a
- 753 jail release agreement by:
- 754 (A) appearing in person to the law enforcement agency that arrested the individual
- 755 or issued the citation to the individual for the qualifying offense;
- 756 (B) appearing in person to the jail or correctional facility that released the arrested
- 757 individual from custody; or
- 758 (C) appearing in person to the clerk at the court of the jurisdiction where the
- 759 charges are filed.
- 760 (ii) An alleged victim who is not a [~~minor~~] child may waive in writing the release
- 761 conditions prohibiting:
- 762 (A) telephoning, contacting, or otherwise communicating with the alleged victim,
- 763 directly or indirectly; or
- 764 (B) knowingly entering on the premises of the alleged victim's residence or on
- 765 premises temporarily occupied by the alleged victim.
- 766 (iii) Except as provided in Subsection (5)(a)(iv) or (v), a parent or guardian may
- 767 waive any condition of a jail release agreement on behalf of an alleged victim who
- 768 is a [~~minor~~] child in the manner described in Subsections (5)(a)(i) and (ii).
- 769 (iv) A parent or guardian may not waive any condition of a jail release agreement on
- 770 behalf of an alleged victim who is a child if the parent or guardian is the
- 771 individual who is arrested or issued a citation for a qualifying offense.
- 772 [~~(iv)~~] (v) A parent or guardian may not, without the approval of the court, waive the
- 773 release conditions described in Subsection (5)(a)(ii) on behalf of an alleged victim
- 774 who is a [~~minor~~] child if the alleged victim who is a [~~minor~~] child:
- 775 (A) allegedly suffers bodily injury as a result of the qualifying offense;
- 776 (B) summons or attempts to summon emergency aid for the qualifying offense; or
- 777 (C) after the time at which the qualifying offense is allegedly committed and
- 778 before the time at which the arrested or cited individual signs the jail release

779 agreement, discloses to a law enforcement officer that the arrested or cited  
780 individual threatened the alleged victim who is a [~~minor~~] child with bodily  
781 injury.

782 [(v)] (vi) Upon waiver, the release conditions described in Subsection (5)(a)(ii) do not  
783 apply to the arrested or cited individual.

784 (b) A court or magistrate may modify a jail release agreement or a jail release court  
785 order in writing or on the record, and only for good cause shown.

786 (6)(a) When an individual is arrested or issued a citation and subsequently released in  
787 accordance with Subsection (2), the releasing agency shall:

788 (i) notify the arresting law enforcement agency of the release, conditions of release,  
789 and any available information concerning the location of the alleged victim;

790 (ii) make a reasonable effort to notify the alleged victim of the release; and

791 (iii) before releasing the individual who is arrested or issued a citation, give the  
792 arrested or cited individual a copy of the jail release agreement or the jail release  
793 court order.

794 (b)(i) When an individual arrested or issued a citation for domestic violence[-] is  
795 released under this section based on a jail release agreement, the releasing agency  
796 shall transmit that information to the statewide domestic violence network  
797 described in Section 78B-7-113.

798 (ii) When an individual arrested or issued a citation for domestic violence[-] is  
799 released under this section based upon a jail release court order or if a jail release  
800 agreement is modified under Subsection (5)(b), the court shall transmit that order  
801 to the statewide domestic violence network described in Section 78B-7-113.

802 (c) This Subsection (6) does not create or increase liability of a law enforcement officer  
803 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

804 (7) An individual who is[-] arrested for a [-]qualifying offense that is a [-]felony and  
805 released [-]in accordance with [-]this section may subsequently be held without bail if  
806 there is substantial evidence to support a new felony charge against the individual.

807 (8) At the time an arrest is made or a citation is issued for[-] a qualifying offense[-], the  
808 arresting officer shall provide the alleged victim with written notice containing:

809 (a) the release conditions described in this section, and notice that the alleged perpetrator  
810 will not be released, before appearing before the court with jurisdiction over the  
811 offense for which the alleged perpetrator was arrested, unless:

812 (i) the alleged perpetrator enters into a jail release agreement to comply with the



- 813 release conditions; or
- 814 (ii) the magistrate issues a jail release order that specifies the release conditions;
- 815 (b) notification of the penalties for violation of any jail release agreement or jail release
- 816 court order;
- 817 (c) the address of the appropriate court in the district or county in which the alleged
- 818 victim resides;
- 819 (d) the availability and effect of any waiver of the release conditions; and
- 820 (e) information regarding the availability of and procedures for obtaining civil and
- 821 criminal protective orders with or without the assistance of an attorney.
- 822 (9) At the time an arrest is made or a citation is issued for [-]a qualifying offense[-], the
- 823 arresting officer shall provide the alleged perpetrator with written notice containing:
- 824 (a) notification that the alleged perpetrator may not contact the alleged victim before
- 825 being released, including telephoning, contacting, or otherwise communicating with
- 826 the alleged victim, directly or indirectly;
- 827 (b) the release conditions described in this section and notice that the alleged perpetrator
- 828 will not be released, before appearing before the court with jurisdiction over the
- 829 offense for which the alleged perpetrator was arrested, unless:
- 830 (i) the alleged perpetrator enters into a jail release agreement to comply with the
- 831 release conditions; or
- 832 (ii) the magistrate issues a jail release court order;
- 833 (c) notification of the penalties for violation of any jail release agreement or jail release
- 834 court order; and
- 835 (d) notification that the alleged perpetrator is to personally appear in court on the next
- 836 day the court is open for business after the day of the arrest.
- 837 (10)(a) A pretrial or sentencing protective order issued under this part supersedes a jail
- 838 release agreement or jail release court order.
- 839 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail
- 840 release agreement or jail release court order, the court shall dismiss the jail release
- 841 agreement or jail release court order.
- 842 (11)(a) This section does not apply if the individual arrested for the qualifying offense is
- 843 a minor who is under 18 years old, unless the qualifying offense is domestic violence.
- 844 (b) A jail release agreement signed by, or a jail release court order issued against, a
- 845 minor expires on the earlier of:
- 846 (i) the day of the minor's initial court appearance described in Subsection (3)(a);

- 847 (ii) the day on which the [~~prosecutor~~] prosecuting attorney transmits the notice of  
848 declination under Subsection (3)(c);  
849 (iii) 30 days after the day on which the minor is arrested or issued a citation; or  
850 (iv) the day on which the juvenile court terminates jurisdiction.

851 Section 12. Section **81-9-202** is amended to read:

852 **81-9-202 . Advisory guidelines for a custody and parent-time arrangement.**

- 853 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304,  
854 the following advisory guidelines are suggested to govern a custody and parent-time  
855 arrangement between parents.
- 856 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a  
857 court-imposed solution.
- 858 (3) A parent-time schedule shall be used to maximize the continuity and stability of the  
859 minor child's life.
- 860 (4) Each parent shall give special consideration to make the minor child available to attend  
861 family functions including funerals, weddings, family reunions, religious holidays,  
862 important ceremonies, and other significant events in the life of the minor child or in the  
863 life of either parent which may inadvertently conflict with the parent-time schedule.
- 864 (5)(a) The court shall determine the responsibility for the pick up, delivery, and return of  
865 the minor child when the parent-time order is entered.
- 866 (b) The court may change the responsibility described in Subsection (5)(a) at any time a  
867 subsequent modification is made to the parent-time order.
- 868 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:  
869 (i) have the minor child ready for parent-time at the time the minor child is to be  
870 picked up[-]; and  
871 (ii) be present at the custodial home or make reasonable alternate arrangements to  
872 receive the minor child at the time the minor child is returned.
- 873 (d) If the custodial parent will be transporting the minor child, the noncustodial parent  
874 shall:  
875 (i) be at the appointed place at the time the noncustodial parent is to receive the  
876 minor child; and  
877 (ii) have the minor child ready to be picked up at the appointed time and place or  
878 have made reasonable alternate arrangements for the custodial parent to pick up  
879 the minor child.
- 880 (6) A parent may not interrupt regular school hours for a school-age minor child for the

- 881 exercise of parent-time.
- 882 (7) The court may:
- 883 (a) make alterations in the parent-time schedule to reasonably accommodate the work  
884 schedule of both parents; and
- 885 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the  
886 standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 887 (8) The court may make alterations in the parent-time schedule to reasonably accommodate  
888 the distance between the parties and the expense of exercising parent-time.
- 889 (9) A parent may not withhold parent-time or child support due to the other parent's failure  
890 to comply with a court-ordered parent-time schedule.
- 891 (10)(a) The custodial parent shall notify the noncustodial parent within 24 hours of  
892 receiving notice of all significant school, social, sports, and community functions in  
893 which the minor child is participating or being honored.
- 894 (b) The noncustodial parent is entitled to attend and participate fully in the functions  
895 described in Subsection (10)(a).
- 896 (c) The noncustodial parent shall have access directly to all school reports including  
897 preschool and daycare reports and medical records.
- 898 (d) A parent shall immediately notify the other parent in the event of a medical  
899 emergency.
- 900 (11) Each parent shall provide the other with the parent's current address and telephone  
901 number, email address, and other virtual parent-time access information within 24 hours  
902 of any change.
- 903 (12)(a) Each parent shall permit and encourage, during reasonable hours, reasonable and  
904 uncensored communications with the minor child, in the form of mail privileges and  
905 virtual parent-time if the equipment is reasonably available.
- 906 (b) If the parents cannot agree on whether the equipment is reasonably available, the  
907 court shall decide whether the equipment for virtual parent-time is reasonably  
908 available by taking into consideration:
- 909 (i) the best interests of the minor child;
- 910 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
- 911 (iii) any other factors the court considers material.
- 912 (13)(a) Parental care is presumed to be better care for the minor child than surrogate care.
- 913 (b) The court shall encourage the parties to cooperate in allowing the noncustodial  
914 parent, if willing and able to transport the minor child, to provide the child care.

915 (c) Child care arrangements existing during the marriage are preferred as are child care  
916 arrangements with nominal or no charge.

917 (14) Each parent shall:

918 (a) provide all surrogate care providers with the name, current address, and telephone  
919 number of the other parent; and

920 (b) provide the noncustodial parent with the name, current address, and telephone  
921 number of all surrogate care providers unless the court for good cause orders  
922 otherwise.

923 (15)(a) Each parent is entitled to an equal division of major religious holidays celebrated  
924 by the parents.

925 (b) The parent who celebrates a religious holiday that the other parent does not celebrate  
926 shall have the right to be together with the minor child on the religious holiday.

927 (16) If the minor child is on a different parent-time schedule than a sibling, based on  
928 Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for  
929 parent-time with all the minor children so that parent-time is uniform between school  
930 aged and nonschool aged children, is appropriate.

931 (17)(a) When one or both parents are servicemembers or contemplating joining a  
932 uniformed service, the parents should resolve issues of custodial responsibility in the  
933 event of deployment as soon as practicable through reaching a voluntary agreement  
934 pursuant to Section 78B-20-201 or through court order obtained pursuant to this part.

935 (b) Service members shall ensure their family care plan reflects orders and agreements  
936 entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents  
937 Custody, Parent-time, and Visitation Act.

938 (18) A parent shall immediately notify the other parent if:

939 (a) the parent resides with an individual or provides an individual with access to the  
940 minor child; and

941 (b) the parent knows that the individual:

942 (i) is required to register as a sex offender~~[-or]~~, a kidnap offender, or a child abuse  
943 offender for an offense against a minor child under Title 77, Chapter 41, [~~Sex and~~  
944 ~~Kidnap Offender Registry~~] Sex, Kidnap. and Child Abuse Offender Registry;

945 [(ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child  
946 Abuse Offender Registry; or]

947 [(iii) (ii) has been convicted of an offense described in:

948 [~~(A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,~~

- 949                   76-5-114, or 76-5-208;]
- 950                   [(B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4,
- 951                   Sexual Offenses;]
- 952                   [(C) an offense for kidnapping or human trafficking of a minor child under Title
- 953                   76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;]
- 954                   [(D) a sexual exploitation offense against a minor child under Title 76, Chapter
- 955                   5b, Sexual Exploitation Act; or]
- 956                   (A) Section 76-5-109, child abuse;
- 957                   (B) Section 76-6-109.2, aggravated child abuse;
- 958                   (C) Section 76-5-109.3, child abandonment;
- 959                   (D) Section 76-5-114, commission of domestic violence in the presence of a child;
- 960                   (E) Section 76-5-208, child abuse homicide;
- 961                   (F) Title 76, Chapter 5, Part 4, Sexual Offenses, for which the victim was younger
- 962                   than 18 years old;
- 963                   (G) Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling, for
- 964                   which the victim was younger than 18 years old; or
- 965                   (H) Title 76, Chapter 5b, Sexual Exploitation Act, for which the victim was
- 966                   younger than 18 years old; or
- 967                   [(E)] (iii) has been convicted of an offense that is substantially similar to an offense [
- 968                   under Subsections (18)(b)(iii)(A) through (D)] described in Subsection (18)(b)(ii).
- 969 (19)(a) For emergency purposes, whenever the minor child travels with a parent, the
- 970                   parent shall provide the following information to the other parent:
- 971                   (i) an itinerary of travel dates;
- 972                   (ii) destinations;
- 973                   (iii) places where the minor child or traveling parent can be reached; and
- 974                   (iv) the name and telephone number of an available third person who would be
- 975                   knowledgeable of the minor child's location.
- 976                   (b) Unchaperoned travel of a minor child under the age of five years is not
- 977                   recommended.
- 978                   Section 13. Section **81-9-208** is amended to read:
- 979                   **81-9-208 . Modification or termination of a custody or parent-time order --**
- 980 **Noncompliance with a parent-time order.**
- 981 (1) The court has continuing jurisdiction to make subsequent changes to modify:
- 982                   (a) custody of a minor child if there is a showing of a substantial and material change in

- 983 circumstances since the entry of the order; and
- 984 (b) parent-time for a minor child if there is a showing that there is a change in
- 985 circumstances since the entry of the order.
- 986 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a
- 987 showing by a parent that the other parent:
- 988 (a) resides with an individual or provides an individual with access to the minor child;
- 989 and
- 990 (b) knows that the individual:
- 991 (i) is required to register as a sex offender~~[-or]~~, a kidnap offender, or a child abuse
- 992 offender for an offense against a minor child under Title 77, Chapter 41, [Sex and
- 993 Kidnap Offender Registry] Sex, Kidnap, and Child Abuse Offender Registry;
- 994 [~~(ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child~~
- 995 ~~Abuse Offender Registry; or]~~
- 996 [~~(iii)~~] (ii) has been convicted of an offense described in:
- 997 [~~(A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,~~
- 998 ~~76-5-114, or 76-5-208;~~]
- 999 [~~(B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4,~~
- 1000 ~~Sexual Offenses;]~~
- 1001 [~~(C) an offense for kidnapping or human trafficking of a minor child under Title~~
- 1002 ~~76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;]~~
- 1003 [~~(D) a sexual exploitation offense against a minor child under Title 76, Chapter~~
- 1004 ~~5b, Sexual Exploitation Act; or]~~
- 1005 (A) Section 76-5-109, child abuse;
- 1006 (B) Section 76-6-109.2, aggravated child abuse;
- 1007 (C) Section 76-5-109.3, child abandonment;
- 1008 (D) Section 76-5-114, commission of domestic violence in the presence of a child;
- 1009 (E) Section 76-5-208, child abuse homicide;
- 1010 (F) Title 76, Chapter 5, Part 4, Sexual Offenses, for which the victim was younger
- 1011 than 18 years old;
- 1012 (G) Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling, for
- 1013 which the victim was younger than 18 years old; or
- 1014 (H) Title 76, Chapter 5b, Sexual Exploitation Act, for which the victim was
- 1015 younger than 18 years old; or
- 1016 [~~(E)~~] (iii) has been convicted of an offense that is substantially similar to an offense [

- 1017            ~~under Subsections (2)(b)(iii)(A) through (D).]~~ described in Subsection (2)(b)(ii).
- 1018 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if
- 1019 they are not the parents, the court may, after a hearing, modify or terminate an order that
- 1020 established joint legal custody or joint physical custody if:
- 1021 (a) the verified petition or accompanying affidavit initially alleges that admissible
- 1022 evidence will show that there has been a substantial and material change in the
- 1023 circumstances of the minor child or one or both parents or joint legal or physical
- 1024 custodians since the entry of the order to be modified;
- 1025 (b) a modification of the terms and conditions of the order would be an improvement for
- 1026 and in the best interest of the minor child; and
- 1027 (c)(i) both parents have complied in good faith with the dispute resolution procedure
- 1028 in accordance with Subsection 81-9-205(8); or
- 1029 (ii) if no dispute resolution procedure is contained in the order that established joint
- 1030 legal custody or joint physical custody, the court orders the parents to participate
- 1031 in a dispute resolution procedure in accordance with Subsection 81-9-205(13)
- 1032 unless the parents certify that, in good faith, they have used a dispute resolution
- 1033 procedure to resolve their dispute.
- 1034 (4)(a) In determining whether the best interest of a minor child will be served by either
- 1035 modifying or terminating the joint legal custody or joint physical custody order, the
- 1036 court shall, in addition to other factors the court considers relevant, consider the
- 1037 factors described in Sections 81-9-204 and 81-9-205.
- 1038 (b) A court order modifying or terminating an existing joint legal custody or joint
- 1039 physical custody order shall contain written findings that:
- 1040 (i) a substantial and material change of circumstance has occurred; and
- 1041 (ii) a modification of the terms and conditions of the order would be an improvement
- 1042 for and in the best interest of the minor child.
- 1043 (c) The court shall give substantial weight to the existing joint legal custody or joint
- 1044 physical custody order when the minor child is thriving, happy, and well-adjusted.
- 1045 (5) The court shall, in every case regarding a petition for termination of a joint legal
- 1046 custody or joint physical custody order, consider reasonable alternatives to preserve the
- 1047 existing order in accordance with Section 81-9-204.
- 1048 (6) The court may modify the terms and conditions of the existing order in accordance with
- 1049 this chapter and may order the parents to file a parenting plan in accordance with
- 1050 Section 81-9-203.

- 1051 (7) A parent requesting a modification from sole custody to joint legal custody or joint  
1052 physical custody or both, or any other type of shared parenting arrangement, shall file  
1053 and serve a proposed parenting plan with the petition to modify in accordance with  
1054 Section 81-9-203.
- 1055 (8) If an issue before the court involves custodial responsibility in the event of deployment  
1056 of one or both parents who are service members, and the service member has not yet  
1057 been notified of deployment, the court shall resolve the issue based on the standards in  
1058 Sections 78B-20-306 through 78B-20-309.
- 1059 (9) If the court finds that an action to modify custody or parent-time is filed or answered  
1060 frivolously and, in a manner, designed to harass the other party, the court shall assess  
1061 attorney fees as costs against the offending party.
- 1062 (10) If a petition to modify custody or parent-time provisions of a court order is made and  
1063 denied, the court shall order the petitioner to pay the reasonable attorney fees expended  
1064 by the prevailing party in that action if the court determines that the petition was without  
1065 merit and not asserted or defended against in good faith.
- 1066 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a  
1067 visitation order by a grandparent or other member of the immediate family where a  
1068 visitation or parent-time right has been previously granted by the court, the court:
- 1069 (a) may award to the prevailing party:
- 1070 (i) actual attorney fees incurred;
- 1071 (ii) the costs incurred by the prevailing party because of the other party's failure to  
1072 provide or exercise court-ordered visitation or parent-time, including:
- 1073 (A) court costs;
- 1074 (B) child care expenses;
- 1075 (C) transportation expenses actually incurred;
- 1076 (D) lost wages, if ascertainable; or
- 1077 (E) counseling for a parent or a minor child if ordered or approved by the court; or
- 1078 (iii) any other appropriate equitable remedy; and
- 1079 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up  
1080 parent-time is not in the best interest of the minor child.
- 1081 Section 14. Section **81-9-402** is amended to read:
- 1082 **81-9-402 . Custody and visitation for individuals other than a parent -- Venue.**
- 1083 (1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a  
1084 parent retain the fundamental right and duty to exercise primary control over the care,



- 1085 supervision, upbringing, and education of a minor child of the parent.
- 1086 (b) There is a rebuttable presumption that a parent's decisions are in the minor child's  
1087 best interests.
- 1088 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or  
1089 visitation rights to an individual other than a parent who, by clear and convincing  
1090 evidence, establishes that:
- 1091 (a) the individual has intentionally assumed the role and obligations of a parent;  
1092 (b) the individual and the minor child have formed a substantial emotional bond and  
1093 created a parent-child type relationship;  
1094 (c) the individual substantially contributed emotionally or financially to the minor child's  
1095 well being;  
1096 (d) the assumption of the parental role is not the result of a financially compensated  
1097 surrogate care arrangement;  
1098 (e) the continuation of the relationship between the individual and the minor child is in  
1099 the minor child's best interest;  
1100 (f) the loss or cessation of the relationship between the individual and the minor child  
1101 would substantially harm the minor child; and  
1102 (g) the parent:  
1103 (i) is absent; or  
1104 (ii) is found by a court to have abused or neglected the minor child.
- 1105 (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350,  
1106 an individual shall file a verified petition, or a petition supported by an affidavit, for  
1107 custodial or visitation rights to the minor child in the juvenile court if a matter is pending  
1108 in the juvenile court, or in the district court in the county where the minor child:  
1109 (a) currently resides; or  
1110 (b) lived with a parent or an individual other than a parent who acted as a parent within  
1111 six months before the commencement of the action.
- 1112 (4) An individual may file a petition under this section in a pending divorce, parentage  
1113 action, or other proceeding, including a proceeding in the juvenile court involving  
1114 custody of or visitation with a minor child.
- 1115 (5) The petition shall include detailed facts supporting the petitioner's right to file the  
1116 petition including the criteria set forth in Subsection (2) and residency information  
1117 described in Section 78B-13-209.
- 1118 (6) An individual may not file a petition under this section against a parent who is actively

- 1119 serving outside the state in any branch of the military.
- 1120 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the
- 1121 Utah Rules of Civil Procedure on all of the following:
- 1122 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
- 1123 (b) any individual who has court-ordered custody or visitation rights;
- 1124 (c) the minor child's guardian;
- 1125 (d) the guardian ad litem, if one has been appointed;
- 1126 (e) an individual or agency that has physical custody of the minor child or that claims to
- 1127 have custody or visitation rights; and
- 1128 (f) any other individual or agency that has previously appeared in any action regarding
- 1129 custody of or visitation with the minor child.
- 1130 (8) The court may order a custody evaluation to be conducted in any proceeding brought
- 1131 under this section.
- 1132 (9) The court may enter temporary orders in a proceeding brought under this section
- 1133 pending the entry of final orders.
- 1134 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child
- 1135 under this section to an individual:
- 1136 (a) who is not the parent of the minor child; and
- 1137 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no
- 1138 contest to a felony or attempted felony involving conduct that constitutes any of the
- 1139 following:
- 1140 [~~(i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and~~
- 1141 ~~76-5-114;~~]
- 1142 (i) child abuse, as described in Section 76-5-109;
- 1143 (ii) aggravated child abuse, as described in Section 76-5-109.2;
- 1144 (iii) child abandonment, as described in Section 76-5-109.3;
- 1145 (iv) commission of domestic violence in the presence of a child, as described in
- 1146 Section 76-5-114;
- 1147 [~~(ii)~~] (v) child abuse homicide, as described in Section 76-5-208;
- 1148 [~~(iii)~~] (vi) child kidnapping, as described in Section 76-5-301.1;
- 1149 [~~(iv)~~] (vii) human trafficking of a child, as described in Section 76-5-308.5;
- 1150 [~~(v)~~] (viii) sexual abuse of a minor, as described in Section 76-5-401.1;
- 1151 [~~(vi)~~] (ix) rape of a child, as described in Section 76-5-402.1;
- 1152 [~~(vii)~~] (x) object rape of a child, as described in Section 76-5-402.3;

1153            [~~(viii)~~] (xi) sodomy on a child, as described in Section 76-5-403.1;  
1154            [~~(ix)~~] (xii) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated  
1155            sexual abuse of a child, as described in Section 76-5-404.3;  
1156            [~~(x)~~] (xiii) sexual exploitation of a minor, as described in Section 76-5b-201;  
1157            [~~(xi)~~] (xiv) aggravated sexual exploitation of a minor, as described in Section  
1158            76-5b-201.1; or  
1159            [~~(xii)~~] (xv) an offense in another state that, if committed in this state, would constitute  
1160            an offense described in this Subsection (10).

1161 (11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed  
1162            in Subsection (10) that prevents a court from granting custody except as provided in  
1163            this Subsection (11).

1164 (b) An individual described in Subsection (10) may only be considered for custody of a  
1165            minor child if the following criteria are met by clear and convincing evidence:

1166            (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;

1167            (ii) at least 10 years have elapsed from the day on which the individual is  
1168            successfully released from prison, jail, parole, or probation related to a  
1169            disqualifying offense;

1170            (iii) during the 10 years before the day on which the individual files a petition with  
1171            the court seeking custody the individual has not been convicted, plead guilty, or  
1172            plead no contest to an offense greater than an infraction or traffic violation that  
1173            would likely impact the health, safety, or well-being of the minor child;

1174            (iv) the individual can provide evidence of successful treatment or rehabilitation  
1175            directly related to the disqualifying offense;

1176            (v) the court determines that the risk related to the disqualifying offense is unlikely to  
1177            cause harm, as defined in Section 80-1-102, or potential harm to the minor child  
1178            currently or at any time in the future when considering all of the following:

1179            (A) the minor child's age;

1180            (B) the minor child's gender;

1181            (C) the minor child's development;

1182            (D) the nature and seriousness of the disqualifying offense;

1183            (E) the preferences of a minor child who is 12 years old or older;

1184            (F) any available assessments, including custody evaluations, parenting  
1185            assessments, psychological or mental health assessments, and bonding  
1186            assessments; and

- 1187 (G) any other relevant information;
- 1188 (vi) the individual can provide evidence of the following:
- 1189 (A) the relationship with the minor child is of long duration;
- 1190 (B) that an emotional bond exists with the minor child; and
- 1191 (C) that custody by the individual who has committed the disqualifying offense
- 1192 ensures the best interests of the minor child are met;
- 1193 (vii)(A) there is no other responsible relative known to the court who has or likely
- 1194 could develop an emotional bond with the minor child and does not have a
- 1195 disqualifying offense; or
- 1196 (B) if there is a responsible relative known to the court that does not have a
- 1197 disqualifying offense, Subsection (11)(d) applies; and
- 1198 (viii) that the continuation of the relationship between the individual with the
- 1199 disqualifying offense and the minor child could not be sufficiently maintained
- 1200 through any type of visitation if custody were given to the relative with no
- 1201 disqualifying offense described in Subsection (11)(d).
- 1202 (c) The individual with the disqualifying offense bears the burden of proof regarding
- 1203 why placement with that individual is in the best interest of the minor child over
- 1204 another responsible relative or equally situated individual who does not have a
- 1205 disqualifying offense.
- 1206 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to
- 1207 the court who does not have a disqualifying offense:
- 1208 (i) preference for custody is given to a relative who does not have a disqualifying
- 1209 offense; and
- 1210 (ii) before the court may place custody with the individual who has the disqualifying
- 1211 offense over another responsible, willing, and able relative:
- 1212 (A) an impartial custody evaluation shall be completed; and
- 1213 (B) a guardian ad litem shall be assigned.
- 1214 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final
- 1215 decision on custody has not been made and to a case filed on or after March 25, 2017.
- 1216 Section 15. **Effective Date.**
- 1217 This bill takes effect on May 7, 2025.