

**Child Abuse and Torture Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

House Sponsor: Ryan D. Wilcox

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**LONG TITLE****Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 14 voting for 1 voting against 3 absent

**General Description:**

This bill concerns child abuse and torture.

**Highlighted Provisions:**

This bill:

- ▶ creates a new criminal offense for child torture and provides penalties;
- ▶ adds the offense of child torture to the list of offenses for which imprisonment is mandatory;
- ▶ amends existing definitions relating to the offenses of child abuse and aggravated criminal child abuse;
- ▶ modifies child abandonment, abuse or neglect of a child with a disability, and other statutes that rely on certain definitions concerning criminal child abuse;
- ▶ includes the offense of child torture in statutes that reference child abuse or aggravated child abuse, including statutes concerning background checks, murder and aggravated murder, child abuse homicide, bigamy, jail release agreements and orders, and adoption, parent-time, and custody statutes;
- ▶ adds the offense of child torture to the definition of "violent felony";
- ▶ includes the offense of child torture as a registrable offense on the Sex, Kidnap, and Child Abuse Offender Registry;
- ▶ modifies the definition of "severe type of child abuse or neglect" in the juvenile code to refer to the amended definition of serious injury in the criminal child abuse statute; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **26B-2-120**, as last amended by Laws of Utah 2024, Chapter 234

35 **53G-6-204**, as last amended by Laws of Utah 2024, Chapters 113, 386

36 **76-2-401**, as last amended by Laws of Utah 2022, Chapter 181

37 **76-3-203.5**, as last amended by Laws of Utah 2024, Chapters 96, 179

38 **76-3-406**, as last amended by Laws of Utah 2024, Chapter 96

39 **76-5-109**, as last amended by Laws of Utah 2022, Chapters 181, 335

40 **76-5-109.2**, as enacted by Laws of Utah 2022, Chapter 181

41 **76-5-109.3**, as last amended by Laws of Utah 2024, Chapter 225

42 **76-5-110**, as last amended by Laws of Utah 2022, Chapter 181

43 **76-5-202**, as last amended by Laws of Utah 2022, Chapter 181

44 **76-5-203**, as last amended by Laws of Utah 2024, Chapters 96, 187

45 **76-5-208**, as last amended by Laws of Utah 2023, Chapter 111

46 **76-7-101**, as last amended by Laws of Utah 2022, Chapter 181

47 **77-41-102**, as last amended by Laws of Utah 2024, Chapter 234

48 **78B-6-117**, as last amended by Laws of Utah 2022, Chapters 185, 430

49 **78B-7-801**, as last amended by Laws of Utah 2023, Chapter 114

50 **80-1-102**, as last amended by Laws of Utah 2024, Chapter 256

51 **81-9-202**, as renumbered and amended by Laws of Utah 2024, Chapter 366

52 **81-9-207**, as renumbered and amended by Laws of Utah 2024, Chapter 366

53 **81-9-208**, as renumbered and amended by Laws of Utah 2024, Chapter 366

54 **81-9-402**, as renumbered and amended by Laws of Utah 2024, Chapter 366

55 ENACTS:

56 **76-5-109.4**, Utah Code Annotated 1953

57

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

59 Section 1. Section **26B-2-120** is amended to read:

60 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

61 (1) As used in this section:

62 (a)(i) "Applicant" means an individual who is associated with a certification,

63 contract, or licensee with the department under this part and has direct access,

64 including:

- 65 (A) an adoptive parent or prospective adoptive parent, including an applicant for  
66 an adoption in accordance with Section 78B-6-128;
- 67 (B) a foster parent or prospective foster parent;
- 68 (C) an individual who provides respite care to a foster parent or an adoptive parent  
69 on more than one occasion;
- 70 (D) an individual who transports a child for a youth transportation company;
- 71 (E) an individual who provides certified peer support, as defined in Section  
72 26B-5-610;
- 73 (F) an individual who provides peer supports, has a disability or a family member  
74 with a disability, or is in recovery from a mental illness or a substance use  
75 disorder;
- 76 (G) an individual who has lived experience with the services provided by the  
77 department, and uses that lived experience to provide support, guidance, or  
78 services to promote resiliency and recovery;
- 79 (H) an individual who is identified as a mental health professional, licensed under  
80 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in  
81 the practice of mental health therapy, as defined in Section 58-60-102;
- 82 (I) an individual, other than the child or vulnerable adult receiving the service,  
83 who is 12 years old or older and resides in a home, that is licensed or certified  
84 by the division;
- 85 (J) an individual who is 12 years old or older and is associated with a certification,  
86 contract, or licensee with the department under this part and has or will likely  
87 have direct access;
- 88 (K) a foster home licensee that submits an application for an annual background  
89 screening as required by Subsection 26B-2-105(4)(d)(iii); or
- 90 (L) a short-term relief care provider.
- 91 (ii) "Applicant" does not include:
- 92 (A) an individual who is in the custody of the Division of Child and Family  
93 Services or the Division of Juvenile Justice and Youth Services;
- 94 (B) an individual who applies for employment with, or is employed by, the  
95 Department of Health and Human Services;
- 96 (C) a parent of a person receiving services from the Division of Services for  
97 People with Disabilities, if the parent provides direct care to and resides with  
98 the person, including if the parent provides direct care to and resides with the

- 99 person pursuant to a court order; or
- 100 (D) an individual or a department contractor who provides services in an adults  
101 only substance use disorder program, as defined by rule adopted by the  
102 Department of Health and Human Services in accordance with Title 63G,  
103 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program  
104 director or a member, as defined by Section 26B-2-105, of the program.
- 105 (b) "Application" means a background check application to the office.
- 106 (c) "Bureau" means the Bureau of Criminal Identification within the Department of  
107 Public Safety, created in Section 53-10-201.
- 108 (d) "Criminal finding" means a record of:
- 109 (i) an arrest for a criminal offense;
- 110 (ii) a warrant for a criminal arrest;
- 111 (iii) charges for a criminal offense; or
- 112 (iv) a criminal conviction.
- 113 (e) "Direct access" means that an individual has, or likely will have:
- 114 (i) contact with or access to a child or vulnerable adult by which the individual will  
115 have the opportunity for personal communication or touch with the child or  
116 vulnerable adult; or
- 117 (ii) an opportunity to view medical, financial, or other confidential personal  
118 identifying information of the child, the child's parent or legal guardian, or the  
119 vulnerable adult.
- 120 (f)(i) "Direct access qualified" means that the applicant has an eligible determination  
121 by the office within the license and renewal time period; and
- 122 (ii) no more than 180 days have passed since the date on which the applicant's  
123 association with a certification, contract, or licensee with the department expires.
- 124 (g) "Incidental care" means occasional care, not in excess of five hours per week and  
125 never overnight, for a foster child.
- 126 (h) "Licensee" means an individual or a human services program licensed by the  
127 division.
- 128 (i) "Non-criminal finding" means a record maintained in:
- 129 (i) the Division of Child and Family Services' Management Information System  
130 described in Section 80-2-1001;
- 131 (ii) the Division of Child and Family Services' Licensing Information System  
132 described in Section 80-2-1002;

- 133 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or  
134 exploitation database described in Section 26B-6-210;
- 135 (iv) juvenile court arrest, adjudication, and disposition records;
- 136 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,  
137 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex  
138 offender registry; or
- 139 (vi) a state child abuse or neglect registry.
- 140 (j) "Office" means the Office of Background Processing within the department.
- 141 (k) "Personal identifying information" means:
- 142 (i) current name, former names, nicknames, and aliases;
- 143 (ii) date of birth;
- 144 (iii) physical address and email address;
- 145 (iv) telephone number;
- 146 (v) driver license or other government-issued identification;
- 147 (vi) social security number;
- 148 (vii) only for applicants who are 18 years old or older, fingerprints, in a form  
149 specified by the office; and
- 150 (viii) other information specified by the office by rule made in accordance with Title  
151 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 152 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the  
153 following to the office:
- 154 (a) personal identifying information;
- 155 (b) a fee established by the office under Section 63J-1-504;
- 156 (c) a disclosure form, specified by the office, for consent for:
- 157 (i) an initial background check upon association with a certification, contract, or  
158 licensee with the department;
- 159 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a  
160 certification, contract, or licensee with the department for 180 days;
- 161 (iii) a background check when the office determines that reasonable cause exists; and
- 162 (iv) retention of personal identifying information, including fingerprints, for  
163 monitoring and notification as described in Subsections (3)(c) and (4);
- 164 (d) if an applicant resided outside of the United States and its territories during the five  
165 years immediately preceding the day on which the information described in  
166 Subsections (2)(a) through (c) is submitted to the office, documentation establishing

167 whether the applicant was convicted of a crime during the time that the applicant  
168 resided outside of the United States or its territories; and

169 (e) an application showing an applicant's association with a certification, contract, or a  
170 licensee with the department, for the purpose of the office tracking the direct access  
171 qualified status of the applicant, which expires 180 days after the date on which the  
172 applicant is no longer associated with a certification, contract, or a licensee with the  
173 department.

174 (3) The office:

175 (a) shall perform the following duties as part of a background check of an applicant  
176 before the office grants or denies direct access qualified status to an applicant:

177 (i) check state and regional criminal background databases for the applicant's  
178 criminal history by:

179 (A) submitting personal identifying information to the bureau for a search; or

180 (B) using the applicant's personal identifying information to search state and  
181 regional criminal background databases as authorized under Section 53-10-108;

182 (ii) submit the applicant's personal identifying information and fingerprints to the  
183 bureau for a criminal history search of applicable national criminal background  
184 databases;

185 (iii) search the Division of Child and Family Services' Licensing Information System  
186 described in Section 80-2-1002;

187 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title  
188 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national  
189 sex offender registry for an applicant 18 years old or older;

190 (v) if the applicant is associated with a licensee for a prospective foster or adoptive  
191 parent, search the Division of Child and Family Services' Management  
192 Information System described in Section 80-2-1001;

193 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,  
194 or exploitation database described in Section 26B-6-210;

195 (vii) search the juvenile court records for substantiated findings of severe child abuse  
196 or neglect described in Section 80-3-404; and

197 (viii) search the juvenile court arrest, adjudication, and disposition records, as  
198 provided under Section 78A-6-209;

199 (b) may conduct all or portions of a background check in connection with determining  
200 whether an applicant is direct access qualified, as provided by rule, made by the

- 201 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:  
202 (i) for an annual renewal; or  
203 (ii) when the office determines that reasonable cause exists;
- 204 (c) may submit an applicant's personal identifying information, including fingerprints, to  
205 the bureau for checking, retaining, and monitoring of state and national criminal  
206 background databases and for notifying the office of new criminal activity associated  
207 with the applicant;
- 208 (d) shall track the status of an applicant under this section to ensure that the applicant is  
209 not required to duplicate the submission of the applicant's fingerprints if the applicant  
210 is associated with more than one certification, contract, or licensee with the  
211 department;
- 212 (e) shall notify the bureau when a direct access qualified individual has not been  
213 associated with a certification, contract, or licensee with the department for a period  
214 of 180 days;
- 215 (f) shall adopt measures to strictly limit access to personal identifying information solely  
216 to the individuals responsible for processing and entering the applications for  
217 background checks and to protect the security of the personal identifying information  
218 the office reviews under this Subsection (3);
- 219 (g) as necessary to comply with the federal requirement to check a state's child abuse  
220 and neglect registry regarding any applicant working in a congregate care program,  
221 shall:
- 222 (i) search the Division of Child and Family Services' Licensing Information System  
223 described in Section 80-2-1002; and
- 224 (ii) require the child abuse and neglect registry be checked in each state where an  
225 applicant resided at any time during the five years immediately preceding the day  
226 on which the application is submitted to the office; and
- 227 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
228 Rulemaking Act, to implement the provisions of this Subsection (3) relating to  
229 background checks.
- 230 (4)(a) With the personal identifying information the office submits to the bureau under  
231 Subsection (3), the bureau shall check against state and regional criminal background  
232 databases for the applicant's criminal history.
- 233 (b) With the personal identifying information and fingerprints the office submits to the  
234 bureau under Subsection (3), the bureau shall check against national criminal

- 235 background databases for the applicant's criminal history.
- 236 (c) Upon direction from the office, and with the personal identifying information and  
237 fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:
- 238 (i) maintain a separate file of the fingerprints for search by future submissions to the  
239 local and regional criminal records databases, including latent prints; and
- 240 (ii) monitor state and regional criminal background databases and identify criminal  
241 activity associated with the applicant.
- 242 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of  
243 Investigation Next Generation Identification System, to be retained in the Federal  
244 Bureau of Investigation Next Generation Identification System for the purpose of:
- 245 (i) being searched by future submissions to the national criminal records databases,  
246 including the Federal Bureau of Investigation Next Generation Identification  
247 System and latent prints; and
- 248 (ii) monitoring national criminal background databases and identifying criminal  
249 activity associated with the applicant.
- 250 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal  
251 activity associated with the applicant.
- 252 (f) Upon notice that an individual who has direct access qualified status will no longer  
253 be associated with a certification, contract, or licensee with the department, the  
254 bureau shall:
- 255 (i) discard and destroy any retained fingerprints; and
- 256 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
257 individual's direct access to a child or a vulnerable adult has ceased, so that the  
258 Federal Bureau of Investigation will discard and destroy the retained fingerprints  
259 from the Federal Bureau of Investigation Next Generation Identification System.
- 260 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access  
261 qualified status to an applicant who, within three years from the date on which the  
262 office conducts the background check, was convicted of:
- 263 (i) a felony or misdemeanor involving conduct that constitutes any of the following:
- 264 (A) an offense identified as domestic violence, lewdness, voyeurism, battery,  
265 cruelty to animals, or bestiality;
- 266 (B) a violation of any pornography law, including sexual exploitation of a minor  
267 or aggravated sexual exploitation of a minor;
- 268 (C) sexual solicitation or prostitution;



- 269 (D) a violent offense committed in the presence of a child, as described in Section  
270 76-3-203.10;
- 271 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;
- 272 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;
- 273 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;
- 274 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 275 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 276 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass  
277 Destruction;
- 278 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking  
279 Injunctions;
- 280 (L) aggravated arson, as described in Section 76-6-103;
- 281 (M) aggravated burglary, as described in Section 76-6-203;
- 282 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;
- 283 (O) aggravated robbery, as described in Section 76-6-302;
- 284 (P) endangering persons in a human services program, as described in Section  
285 26B-2-113;
- 286 (Q) failure to report, as described in Section 80-2-609;
- 287 (R) identity fraud crime, as described in Section 76-6-1102;
- 288 (S) leaving a child unattended in a motor vehicle, as described in Section  
289 76-10-2202;
- 290 (T) riot, as described in Section 76-9-101;
- 291 (U) sexual battery, as described in Section 76-9-702.1; or
- 292 (V) threatening with or using a dangerous weapon in a fight or quarrel, as  
293 described in Section 76-10-506; or
- 294 (ii) a felony or misdemeanor offense committed outside of the state that, if committed  
295 in the state, would constitute a violation of an offense described in Subsection  
296 (5)(a)(i).
- 297 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a  
298 peer support provider or a mental health professional, if the applicant provides  
299 services in a program that serves only adults with a primary mental health  
300 diagnosis, with or without a co-occurring substance use disorder.
- 301 (ii) The office shall conduct a comprehensive review of an applicant described in  
302 Subsection (5)(b)(i) in accordance with Subsection (7).

- 303 (c) The office shall deny direct access qualified status to an applicant if the office finds  
304 that a court order prohibits the applicant from having direct access to a child or  
305 vulnerable adult.
- 306 (6) The office shall conduct a comprehensive review of an applicant's background check if  
307 the applicant:
- 308 (a) has a felony or class A misdemeanor conviction that is more than three years from  
309 the date on which the office conducts the background check, for an offense described  
310 in Subsection (5)(a);
- 311 (b) has a felony charge or conviction that is no more than 10 years from the date on  
312 which the office conducts the background check for an offense not described in  
313 Subsection (5)(a);
- 314 (c) has a felony charge or conviction that is more than 10 years from the date on which  
315 the office conducts the background check, for an offense not described in Subsection  
316 (5)(a), with criminal or non-criminal findings after the date of the felony charge or  
317 conviction;
- 318 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than  
319 three years and no more than 10 years from the date on which the office conducts the  
320 background check for an offense described in Subsection (5)(a);
- 321 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10  
322 years from the date on which the office conducts the background check, for an  
323 offense described in Subsection (5)(a), with criminal or non-criminal findings after  
324 the date of conviction;
- 325 (f) has a misdemeanor charge or conviction that is no more than three years from the  
326 date on which the office conducts the background check for an offense not described  
327 in Subsection (5)(a);
- 328 (g) has a misdemeanor charge or conviction that is more than three years from the date  
329 on which the office conducts the background check, for an offense not described in  
330 Subsection (5)(a), with criminal or non-criminal findings after the date of charge or  
331 conviction;
- 332 (h) is currently subject to a plea in abeyance or diversion agreement for an offense  
333 described in Subsection (5)(a);
- 334 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title  
335 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex  
336 offender registry;

- 337 (j) has a record of an adjudication in juvenile court for an act that, if committed by an  
338 adult, would be a felony or misdemeanor, if the applicant is:
- 339 (i) under 28 years old; or  
340 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is  
341 currently subject to a plea in abeyance or diversion agreement for a felony or a  
342 misdemeanor offense described in Subsection (5)(a);
- 343 (k) has a pending charge for an offense described in Subsection (5)(a);
- 344 (l) has a listing that occurred no more than 15 years from the date on which the office  
345 conducts the background check in the Division of Child and Family Services'  
346 Licensing Information System described in Section ;
- 347 (m) has a listing that occurred more than 15 years from the date on which the office  
348 conducts the background check in the Division of Child and Family Services'  
349 Licensing Information System described in Section 80-2-1002, with criminal or  
350 non-criminal findings after the date of the listing;
- 351 (n) has a listing that occurred no more than 15 years from the date on which the office  
352 conducts the background check in the Division of Aging and Adult Services'  
353 vulnerable adult abuse, neglect, or exploitation database described in Section  
354 26B-6-210;
- 355 (o) has a listing that occurred more than 15 years from the date on which the office  
356 conducts the background check in the Division of Aging and Adult Services'  
357 vulnerable adult abuse, neglect, or exploitation database described in Section  
358 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 359 (p) has a substantiated finding that occurred no more than 15 years from the date on  
360 which the office conducts the background check of severe child abuse or neglect  
361 under Section 80-3-404 or 80-3-504[-]; or
- 362 (q) has a substantiated finding that occurred more than 15 years from the date on which  
363 the office conducts the background check of severe child abuse or neglect under  
364 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of  
365 the listing.
- 366 (7)(a) The comprehensive review shall include an examination of:
- 367 (i) the date of the offense or incident;  
368 (ii) the nature and seriousness of the offense or incident;  
369 (iii) the circumstances under which the offense or incident occurred;  
370 (iv) the age of the perpetrator when the offense or incident occurred;

- 371 (v) whether the offense or incident was an isolated or repeated incident;
- 372 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
373 adult, including:
- 374 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 375 (B) sexual abuse;
- 376 (C) sexual exploitation; or
- 377 (D) negligent treatment;
- 378 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric  
379 treatment received, or additional academic or vocational schooling completed;
- 380 (viii) the applicant's risk of harm to clientele in the program or in the capacity for  
381 which the applicant is applying; and
- 382 (ix) if the background check of an applicant is being conducted for the purpose of  
383 giving direct access qualified status to an applicant seeking a position in a  
384 congregate care program or to become a prospective foster or adoptive parent, any  
385 listing in the Division of Child and Family Services' Management Information  
386 System described in Section 80-2-1001.
- 387 (b) At the conclusion of the comprehensive review, the office shall deny direct access  
388 qualified status to an applicant if the office finds the approval would likely create a  
389 risk of harm to a child or vulnerable adult.
- 390 (8) The office shall grant direct access qualified status to an applicant who is not denied  
391 under this section.
- 392 (9)(a) The office may conditionally grant direct access qualified status to an applicant,  
393 for a maximum of 60 days after the day on which the office sends written notice,  
394 without requiring that the applicant be directly supervised, if the office:
- 395 (i) is awaiting the results of the criminal history search of national criminal  
396 background databases; and
- 397 (ii) would otherwise grant direct access qualified status to the applicant under this  
398 section.
- 399 (b) The office may conditionally grant direct access qualified status to an applicant, for a  
400 maximum of one year after the day on which the office sends written notice, without  
401 requiring that the applicant be directly supervised if the office:
- 402 (i) is awaiting the results of an out-of-state registry for providers other than foster and  
403 adoptive parents; and
- 404 (ii) would otherwise grant direct access qualified status to the applicant under this

- 405 section.
- 406 (c) Upon receiving the results of the criminal history search of a national criminal  
407 background database, the office shall grant or deny direct access qualified status to  
408 the applicant in accordance with this section.
- 409 (10)(a) Each time an applicant is associated with a licensee, the department shall review  
410 the current status of the applicant's background check to ensure the applicant is still  
411 eligible for direct access qualified status in accordance with this section.
- 412 (b) A licensee may not permit an individual to have direct access to a child or a  
413 vulnerable adult without being directly supervised unless:
- 414 (i) the individual is the parent or guardian of the child, or the guardian of the  
415 vulnerable adult;
- 416 (ii) the individual is approved by the parent or guardian of the child, or the guardian  
417 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 418 (iii) the individual is only permitted to have direct access to a vulnerable adult who  
419 voluntarily invites the individual to visit; or
- 420 (iv) the individual only provides incidental care for a foster child on behalf of a foster  
421 parent who has used reasonable and prudent judgment to select the individual to  
422 provide the incidental care for the foster child.
- 423 (c) Notwithstanding any other provision of this section, an applicant who is denied direct  
424 access qualified status shall not have direct access to a child or vulnerable adult  
425 unless the office grants direct access qualified status to the applicant through a  
426 subsequent application in accordance with this section.
- 427 (11) If the office denies direct access qualified status to an applicant, the applicant may  
428 request a hearing in the department's Office of Administrative Hearings to challenge the  
429 office's decision.
- 430 (12)(a) This Subsection (12) applies to an applicant associated with a certification,  
431 contract, or licensee serving adults only.
- 432 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee  
433 shall comply with this section.
- 434 (c) The office shall conduct a comprehensive review for an applicant if:
- 435 (i) the applicant is seeking a position:
- 436 (A) as a peer support provider;
- 437 (B) as a mental health professional; or
- 438 (C) in a program that serves only adults with a primary mental health diagnosis,

439 with or without a co-occurring substance use disorder; and

440 (ii) within three years from the date on which the office conducts the background  
441 check, the applicant has a felony or misdemeanor charge or conviction or a  
442 non-criminal finding.

443 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate  
444 care program, an applicant seeking to provide a prospective foster home, an applicant  
445 seeking to provide a prospective adoptive home, and each adult living in the home of  
446 the prospective foster or prospective adoptive home.

447 (b) As federally required, the office shall:

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

453 (ii) except for applicants seeking a position in a congregate care program, check the  
454 child abuse and neglect registry in each state where each adult living in the home  
455 of the prospective foster or adoptive home resided in the five years immediately  
456 preceding the day on which the applicant applied to be a foster or adoptive parent,  
457 to determine whether the adult is listed in the registry as having a substantiated or  
458 supported finding of child abuse or neglect.

459 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:

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

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

463 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

464 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,

464a

465 or 80-3-303, pending completion of the background check described in  
466 Subsections (5), (6), and (7).

467 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access  
468 qualified status if the applicant has been convicted of:

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

470 (A) child abuse, as described in ~~[Sections]~~ Section 76-5-109;

471 (B) ~~[, 76-5-109.2, and]~~ aggravated child abuse, as described in Section 76-5-109.2;

- 472            (C) child abandonment, as described in Section 76-5-109.3;
- 473            (D) child torture, as described in Section 76-5-109.4;
- 474            ~~(B)~~ (E) commission of domestic violence in the presence of a child, as described
- 475                 in Section 76-5-114;
- 476            ~~(C)~~ (F) abuse or neglect of a child with a disability, as described in Section
- 477                 76-5-110;
- 478            ~~(D)~~ (G) intentional aggravated abuse of a vulnerable adult, as described in
- 479                 Section 76-5-111;
- 480            ~~(E)~~ (H) endangerment of a child or vulnerable adult, as described in Section
- 481                 76-5-112.5;
- 482            ~~(F)~~ (I) aggravated murder, as described in Section 76-5-202;
- 483            ~~(G)~~ (J) murder, as described in Section 76-5-203;
- 484            ~~(H)~~ (K) manslaughter, as described in Section 76-5-205;
- 485            ~~(I)~~ (L) child abuse homicide, as described in Section 76-5-208;
- 486            ~~(J)~~ (M) homicide by assault, as described in Section 76-5-209;
- 487            ~~(K)~~ (N) kidnapping, as described in Section 76-5-301;
- 488            ~~(L)~~ (O) child kidnapping, as described in Section 76-5-301.1;
- 489            ~~(M)~~ (P) aggravated kidnapping, as described in Section 76-5-302;
- 490            ~~(N)~~ (Q) human trafficking of a child, as described in Section 76-5-308.5;
- 491            ~~(O)~~ (R) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 492            ~~(P)~~ (S) sexual exploitation of a minor, as described in Title 76, Chapter 5b,
- 493                 Sexual Exploitation Act;
- 494            ~~(Q)~~ (T) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 495            ~~(R)~~ (U) aggravated arson, as described in Section 76-6-103;
- 496            ~~(S)~~ (V) aggravated burglary, as described in Section 76-6-203;
- 497            ~~(T)~~ (W) aggravated robbery, as described in Section 76-6-302;
- 498            ~~(U)~~ (X) lewdness involving a child, as described in Section 76-9-702.5;
- 499            ~~(V)~~ (Y) incest, as described in Section 76-7-102; or
- 500            ~~(W)~~ (Z) domestic violence, as described in Section 77-36-1; or
- 501            (ii) an offense committed outside the state that, if committed in the state, would
- 502                 constitute a violation of an offense described in Subsection (13)(d)(i).
- 503            (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 504                 qualified status to an applicant if, within the five years from the date on which the
- 505                 office conducts the background check, the applicant was convicted of a felony

- 506 involving conduct that constitutes a violation of any of the following:
- 507 (i) aggravated assault, as described in Section 76-5-103;
- 508 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 509 (iii) mayhem, as described in Section 76-5-105;
- 510 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 511 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 512 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 513 Act;
- 514 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 515 Precursor Act; or
- 516 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 517 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
- 518 a comprehensive review of an applicant's background check under this section if the
- 519 applicant:
- 520 (i) has an offense described in Subsection (5)(a);
- 521 (ii) has an infraction conviction entered on a date that is no more than three years
- 522 before the date on which the office conducts the background check;
- 523 (iii) has a listing in the Division of Child and Family Services' Licensing Information
- 524 System described in Section 80-2-1002;
- 525 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
- 526 neglect, or exploitation database described in Section 26B-2-210;
- 527 (v) has a substantiated finding of severe child abuse or neglect under Section
- 528 80-3-404 or 80-3-504; or
- 529 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
- 530 substantiated or supported finding of a severe type of child abuse or neglect, as
- 531 defined in Section 80-1-102.
- 532 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 533 office may make rules, consistent with this part, to:
- 534 (a) establish procedures for, and information to be examined in, the comprehensive
- 535 review described in Subsections (6), (7), and (13); and
- 536 (b) determine whether to consider an offense or incident that occurred while an
- 537 individual was in the custody of the Division of Child and Family Services or the
- 538 Division of Juvenile Justice and Youth Services for purposes of granting or denying
- 539 direct access qualified status to an applicant.



540 Section 2. Section **53G-6-204** is amended to read:

541 **53G-6-204 . School-age children exempt from school attendance.**

542 (1)(a) A local school board or charter school governing board may excuse a school-age  
543 child from attendance for any of the following reasons:

544 (i) a school-age child over 16 years old may receive a partial release from school to  
545 enter employment, or attend a trade school, if the school-age child has completed  
546 grade 8; or

547 (ii) on an annual basis, a school-age child may receive a full release from attending a  
548 public, regularly established private, or part-time school or class if:

549 (A) the school-age child has already completed the work required for graduation  
550 from high school;

551 (B) the school-age child is in a physical or mental condition, certified by a  
552 competent physician or physician assistant if required by the local school board  
553 or charter school governing board, which renders attendance inexpedient and  
554 impracticable;

555 (C) proper influences and adequate opportunities for education are provided in  
556 connection with the school-age child's employment; or

557 (D) the district superintendent or charter school governing board has determined  
558 that a school-age child over 16 years old is unable to profit from attendance at  
559 school because of inability or a continuing negative attitude toward school  
560 regulations and discipline.

561 (b) A school-age child receiving a partial release from school under Subsection (1)(a)(i)  
562 is required to attend:

563 (i) school part time as prescribed by the local school board or charter school  
564 governing board; or

565 (ii) a home school part time.

566 (c) In each case, evidence of reasons for granting an exemption under Subsection (1)  
567 must be sufficient to satisfy the local school board or charter school governing board.

568 (d) A local school board or charter school governing board that excuses a school-age  
569 child from attendance as provided by this Subsection (1) shall issue a certificate that  
570 the child is excused from attendance during the time specified on the certificate.

571 (2)(a)(i) As used in this Subsection (2)(a), "child abuse" means a criminal felony or  
572 attempted felony offense of which an individual is convicted, or to which an  
573 individual pleads guilty or no contest, for conduct that constitutes any of the

574 following:

575 (A) child abuse under Section 76-5-109;

576 (B) aggravated child abuse under Section 76-5-109.2;

577 (C) child abandonment under Section 76-5-109.3;

578 (D) child torture under Section 76-5-109.4;

579 [~~(D)~~] (E) commission of domestic violence in the presence of a child under Section  
580 76-5-114;

581 [~~(E)~~] (F) child abuse homicide under Section 76-5-208;

582 [~~(F)~~] (G) child kidnapping under Section 76-5-301.1;

583 [~~(G)~~] (H) human trafficking of a child under Section 76-5-308.5;

584 [~~(H)~~] (I) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or in  
585 Title 76, Chapter 5b, Part 2, Sexual Exploitation, if the victim is under 18 years  
586 old;

587 [~~(I)~~] (J) sexual exploitation of a minor under Section 76-5b-201;

588 [~~(J)~~] (K) aggravated sexual exploitation of a minor under Section 76-5b-201.1; or

589 [~~(K)~~] (L) an offense in another state that, if committed in this state, would  
590 constitute an offense described in this Subsection (2)(a)(i).

591 (ii) Except as provided in Subsection (2)(a)(iii), a local school board shall excuse a  
592 school-age child from attendance, if the school-age child's parent or legal guardian  
593 files a signed affidavit with the school-age child's school district of residence, as  
594 defined in Section 53G-6-302, that:

595 (A) the school-age child will attend a home school; and

596 (B) the parent or legal guardian assumes sole responsibility for the education of  
597 the school-age child, except to the extent the school-age child is dual enrolled  
598 in a public school as provided in Section 53G-6-702.

599 (iii) If a parent or legal guardian has been convicted of child abuse or if a court of  
600 competent jurisdiction has made a substantiated finding of child abuse against the  
601 parent or legal guardian:

602 (A) the parent or legal guardian may not assume responsibility for the education  
603 of a school-age child under Subsection (2)(a)(ii); and

604 (B) the local school board may not accept the affidavit described in Subsection  
605 (2)(a)(ii) from the parent or legal guardian or otherwise exempt the school-age  
606 child from attendance under Subsection (2)(a)(ii) in relation to the parent's or  
607 legal guardian's intent to home school the child.

- 608 (iv) Nothing in this Subsection (2)(a) affects the ability of another of a child's parents  
609 or legal guardians who is not prohibited under Subsection (2)(a)(iii) to file the  
610 affidavit described in Subsection (2)(a)(ii).
- 611 (b) A signed affidavit filed in accordance with Subsection (2)(a) shall remain in effect as  
612 long as:
- 613 (i) the school-age child attends a home school;  
614 (ii) the school district where the affidavit was filed remains the school-age child's  
615 district of residence; and  
616 (iii) the parent or legal guardian who filed the signed affidavit has not been convicted  
617 of child abuse or been the subject of a substantiated finding of child abuse by a  
618 court of competent jurisdiction.
- 619 (c) A parent or legal guardian of a school-age child who attends a home school is solely  
620 responsible for:
- 621 (i) the selection of instructional materials and textbooks;  
622 (ii) the time, place, and method of instruction; and  
623 (iii) the evaluation of the home school instruction.
- 624 (d) A local school board may not:
- 625 (i) require a parent or legal guardian of a school-age child who attends a home school  
626 to maintain records of instruction or attendance;  
627 (ii) require credentials for individuals providing home school instruction;  
628 (iii) inspect home school facilities; or  
629 (iv) require standardized or other testing of home school students.
- 630 (e) Upon the request of a parent or legal guardian, a local school board shall identify the  
631 knowledge, skills, and competencies a student is recommended to attain by grade  
632 level and subject area to assist the parent or legal guardian in achieving college and  
633 career readiness through home schooling.
- 634 (f) A local school board that excuses a school-age child from attendance under this  
635 Subsection (2) shall annually issue a certificate stating that the school-age child is  
636 excused from attendance for the specified school year.
- 637 (g) A local school board shall issue a certificate excusing a school-age child from  
638 attendance:
- 639 (i) within 30 days after receipt of a signed affidavit filed by the school-age child's  
640 parent or legal guardian under this Subsection (2); and  
641 (ii) on or before August 1 each year thereafter unless:

- 642 (A) the school-age child enrolls in a school within the school district;  
 643 (B) the school-age child's parent or legal guardian notifies the school district that  
 644 the school-age child no longer attends a home school; or  
 645 (C) the school-age child's parent or legal guardian notifies the school district that  
 646 the school-age child's school district of residence has changed.

647 (3) A parent or legal guardian who is eligible to file and files a signed affidavit under  
 648 Subsection (2)(a) is exempt from the application of Subsections 53G-6-202(2), (5), and  
 649 (6).

650 (4)(a) Nothing in this section may be construed to prohibit or discourage voluntary  
 651 cooperation, resource sharing, or testing opportunities between a school or school  
 652 district and a parent or legal guardian of a child attending a home school.

653 (b) The exemptions in this section apply regardless of whether:

654 (i) a parent or legal guardian provides education instruction to the parent's or legal  
 655 guardian's child alone or in cooperation with other parents or legal guardians  
 656 similarly exempted under this section; or

657 (ii) the parent or legal guardian makes payment for educational services the parent's  
 658 or legal guardian's child receives.

659 Section 3. Section **76-2-401** is amended to read:

660 **76-2-401 . Justification as defense -- When allowed.**

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

663 (a) when the actor's conduct is in defense of persons or property under the circumstances  
 664 described in Sections 76-2-402 through 76-2-406 of this part;

665 (b) when the actor's conduct is reasonable and in fulfillment of his duties as a  
 666 governmental officer or employee;

667 (c) when the actor's conduct is reasonable discipline of minors by parents, guardians,  
 668 teachers, or other persons in loco parentis, as limited by Subsection (2);

669 (d) when the actor's conduct is reasonable discipline of persons in custody under the  
 670 laws of the state; or

671 (e) when the actor's conduct is justified for any other reason under the laws of this state.

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

675 Section 4. Section **76-3-203.5** is amended to read:

676 **76-3-203.5 . Habitual violent offender -- Definition -- Procedure -- Penalty.**

677 (1) As used in this section:

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

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

687 (c) "Violent felony" means:

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

690 (A) arson as described in Section 76-6-102;

691 (B) causing a catastrophe as described in Subsection 76-6-105(3)(a) or (3)(b);

692 (C) criminal mischief as described in Section 76-6-106;

693 (D) aggravated arson as described in Section 76-6-103;

694 (E) assault by prisoner as described in Section 76-5-102.5;

695 (F) disarming a police officer as described in Section 76-5-102.8;

696 (G) aggravated assault as described in Section 76-5-103;

697 (H) aggravated assault by prisoner as described in Section 76-5-103.5;

698 (I) mayhem as described in Section 76-5-105;

699 (J) stalking as described in Subsection 76-5-106.5(2);

700 (K) threat of terrorism as described in Section 76-5-107.3;

701 (L) aggravated child abuse as described in Subsection 76-5-109.2(3)(a) or (b);

702 (M) child torture as described in Section 76-5-109.4;

703 [~~(M)~~] (N) commission of domestic violence in the presence of a child as described  
704 in Section 76-5-114;

705 [~~(N)~~] (O) abuse or neglect of a child with a disability as described in Section  
706 76-5-110;

707 [~~(O)~~] (P) abuse or exploitation of a vulnerable adult as described in Section  
708 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;

709 [~~(P)~~] (Q) endangerment of a child or vulnerable adult as described in Section

710 76-5-112.5;  
 711 [~~(Q)~~] (R) an offense described in Chapter 5, Part 2, Criminal Homicide;  
 712 [~~(R)~~] (S) kidnapping as described in Section 76-5-301;  
 713 [~~(S)~~] (T) child kidnapping as described in Section 76-5-301.1;  
 714 [~~(T)~~] (U) aggravated kidnapping as described in Section 76-5-302;  
 715 [~~(U)~~] (V) rape as described in Section 76-5-402;  
 716 [~~(V)~~] (W) rape of a child as described in Section 76-5-402.1;  
 717 [~~(W)~~] (X) object rape as described in Section 76-5-402.2;  
 718 [~~(X)~~] (Y) object rape of a child as described in Section 76-5-402.3;  
 719 [~~(Y)~~] (Z) forcible sodomy as described in Section 76-5-403;  
 720 [~~(Z)~~] (AA) sodomy on a child as described in Section 76-5-403.1;  
 721 [~~(AA)~~] (BB) forcible sexual abuse as described in Section 76-5-404;  
 722 [~~(BB)~~] (CC) sexual abuse of a child as described in Section 76-5-404.1;  
 723 [~~(CC)~~] (DD) aggravated sexual abuse of a child as described in Section 76-5-404.3;  
 724 [~~(DD)~~] (EE) aggravated sexual assault as described in Section 76-5-405;  
 725 [~~(EE)~~] (FF) sexual exploitation of a minor as described in Section 76-5b-201;  
 726 [~~(FF)~~] (GG) aggravated sexual exploitation of a minor as described in Section  
 727 76-5b-201.1;  
 728 [~~(GG)~~] (HH) sexual exploitation of a vulnerable adult as described in Section  
 729 76-5b-202;  
 730 [~~(HH)~~] (II) burglary as described in Subsection 76-6-202(3)(b);  
 731 [~~(H)~~] (JJ) aggravated burglary as described in Section 76-6-203;  
 732 [~~(J)~~] (KK) robbery as described in Section 76-6-301;  
 733 [~~(K)~~] (LL) aggravated robbery as described in Section 76-6-302;  
 734 [~~(L)~~] (MM) theft by extortion as described in Subsection 76-6-406(1)(a)(i) or  
 735 (1)(a)(ii);  
 736 [~~(M)~~] (NN) tampering with a witness as described in Section 76-8-508;  
 737 [~~(N)~~] (OO) retaliation against a witness, victim, or informant as described in  
 738 Section 76-8-508.3;  
 739 [~~(O)~~] (PP) tampering or retaliating against a juror as described in Subsection  
 740 76-8-508.5(2)(a)(iii);  
 741 [~~(P)~~] (QQ) extortion to dismiss a criminal proceeding as described in Subsection  
 742 76-6-406(1)(a)(i), (ii), or (ix);  
 743 [~~(Q)~~] (RR) possession, use, or removal of explosive, chemical, or incendiary

- 744 devices as described in Subsections 76-10-306(3) through (6);  
 745 [~~RR~~] SS unlawful delivery of explosive, chemical, or incendiary devices as  
 746 described in Section 76-10-307;  
 747 [~~SS~~] TT purchase or possession of a dangerous weapon or handgun by a  
 748 restricted person as described in Section 76-10-503;  
 749 [~~TT~~] UU aggravated exploitation of prostitution as described in Subsection  
 750 76-10-1306(1)(a);  
 751 [~~UU~~] VV bus hijacking as described in Section 76-10-1504; and  
 752 [~~VV~~] WW discharging firearms and hurling missiles as described in Section  
 753 76-10-1505; or
- 754 (ii) any felony violation of a criminal statute of any other state, the United States, or  
 755 any district, possession, or territory of the United States which would constitute a  
 756 violent felony as defined in this Subsection (1) if committed in this state.
- 757 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier  
 758 of fact determines beyond a reasonable doubt that the person is a habitual violent  
 759 offender under this section, the penalty for a:
- 760 (a) third degree felony is as if the conviction were for a first degree felony;  
 761 (b) second degree felony is as if the conviction were for a first degree felony; or  
 762 (c) first degree felony remains the penalty for a first degree penalty except:  
 763 (i) the convicted person is not eligible for probation; and  
 764 (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
 765 habitual violent offender as an aggravating factor in determining the length of  
 766 incarceration.
- 767 (3)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide  
 768 notice in the information or indictment that the defendant is subject to punishment as  
 769 a habitual violent offender under this section. Notice shall include the case number,  
 770 court, and date of conviction or commitment of any case relied upon by the  
 771 prosecution.
- 772 (b)(i) The defendant shall serve notice in writing upon the prosecutor if the  
 773 defendant intends to deny that:
- 774 (A) the defendant is the person who was convicted or committed;  
 775 (B) the defendant was represented by counsel or had waived counsel; or  
 776 (C) the defendant's plea was understandingly or voluntarily entered.
- 777 (ii) The notice of denial shall be served not later than five days prior to trial and shall

- 778 state in detail the defendant's contention regarding the previous conviction and  
779 commitment.
- 780 (4)(a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a  
781 jury, the jury may not be told, until after it returns its verdict on the underlying felony  
782 charge, of the:
- 783 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
784 in the Utah Rules of Evidence; or
  - 785 (ii) allegation against the defendant of being a habitual violent offender.
- 786 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
787 being an habitual violent offender by the same jury, if practicable, unless the  
788 defendant waives the jury, in which case the allegation shall be tried immediately to  
789 the court.
- 790 (c)(i) Before or at the time of sentencing the trier of fact shall determine if this  
791 section applies.
- 792 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
793 and the defendant shall be afforded an opportunity to present any necessary  
794 additional evidence.
  - 795 (iii) Before sentencing under this section, the trier of fact shall determine whether this  
796 section is applicable beyond a reasonable doubt.
- 797 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
798 contest, there is a rebuttable presumption that the conviction and commitment were  
799 regular and lawful in all respects if the conviction and commitment occurred after  
800 January 1, 1970. If the conviction and commitment occurred prior to January 1,  
801 1970, the burden is on the prosecution to establish by a preponderance of the  
802 evidence that the defendant was then represented by counsel or had lawfully waived  
803 the right to have counsel present, and that the defendant's plea was understandingly  
804 and voluntarily entered.
- 805 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
806 finding on the record and shall indicate in the order of judgment and commitment  
807 that the defendant has been found by the trier of fact to be a habitual violent offender  
808 and is sentenced under this section.
- 809 (5)(a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
810 provisions of this section.
- 811 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in



812 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part  
813 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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

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

816 (i) a grievous sexual offense;

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

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

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

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

823 Section 5. Section **76-3-406** is amended to read:

824 **76-3-406 . Crimes for which probation, suspension of sentence, lower category of**  
825 **offense, or hospitalization may not be granted.**

826 (1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a,

827 Commitment and Treatment of Individuals with a Mental Condition, except as provided  
828 in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted,  
829 the execution or imposition of sentence may not be suspended, the court may not enter a  
830 judgment for a lower category of offense, and hospitalization may not be ordered, the  
831 effect of which would in any way shorten the prison sentence for an individual who  
832 commits a capital felony or a first degree felony involving:

833 (a) child torture as described in Section 76-5-109.4;

834 (b) aggravated murder as described in Section 76-5-202;

835 [~~(b)~~] (c) murder as described in Section 76-5-203;

836 [~~(e)~~] (d) child kidnapping as described in Section 76-5-301.1;

837 [~~(d)~~] (e) aggravated kidnapping as described in Subsection 76-5-302(3)(b);

838 [~~(e)~~] (f) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);

839 [~~(f)~~] (g) rape of a child as described in Section 76-5-402.1;

840 [~~(g)~~] (h) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);

841 [~~(h)~~] (i) object rape of a child as described in Section 76-5-402.3;

842 [~~(i)~~] (j) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);

843 [~~(j)~~] (k) sodomy on a child as described in Section 76-5-403.1;

844 [~~(k)~~] (l) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);

845 [~~(l)~~] (m) aggravated sexual abuse of a child as described in Section 76-5-404.3;

- 846        ~~[(m)]~~ (n) aggravated sexual assault as described in Section 76-5-405; or  
 847        ~~[(n)]~~ (o) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).  
 848        (2) Except for an offense before the district court in accordance with Section 80-6-502 or  
 849        80-6-504, the provisions of this section do not apply if the sentencing court finds that the  
 850        defendant:  
 851        (a) was under 18 years old at the time of the offense; and  
 852        (b) could have been adjudicated in the juvenile court but for the delayed reporting or  
 853        delayed filing of the information.

854        Section 6. Section **76-5-109** is amended to read:

855        **76-5-109 . Child abuse.**

- 856        (1)(a) As used in this section:
- 857            (i) "Child" means an individual who is younger than 18 years old.
- 858            (ii) ~~["Physical injury"]~~ "Injury" means ~~[an]~~ a physical or psychological injury to or  
 859            condition of a child which impairs the physical or psychological condition of the  
 860            child, including:  
 861            (A) a bruise or other contusion of the skin;  
 862            (B) a minor laceration or abrasion;  
 863            (C) failure to thrive or malnutrition; or  
 864            (D) any other condition ~~[which]~~ that imperils the child's physical or psychological  
 865            health or welfare and that is not a serious ~~[physical]~~ injury.
- 866            (iii) "Psychological injury" means an identifiable mental or emotional harm, damage,  
 867            impairment, or dysfunction.
- 868            ~~[(iii)]~~ (iv)(A) "Serious ~~[physical]~~ injury" means ~~[any physical]~~ an injury or set of  
 869            injuries that:  
 870            (I) seriously impairs the child's health, which includes the child's physical or  
 871            mental well-being or development;  
 872            ~~[(H)]~~ involves physical torture;  
 873            ~~[(H)]~~ (II) causes serious emotional harm to the child; or  
 874            ~~[(V)]~~ (III) involves a substantial risk of death to the child.
- 875            (B) "Serious ~~[physical]~~ injury" includes:  
 876            (I) fracture of any bone or bones;  
 877            (II) intracranial bleeding, swelling or contusion of the brain, whether caused by  
 878            blows, shaking, or causing the child's head to impact with an object or  
 879            surface;

- 880 (III) any burn, including burns inflicted by hot water, or those caused by  
 881 placing a hot object upon the skin or body of the child;
- 882 (IV) any injury caused by use of a dangerous weapon;
- 883 (V) any combination of two or more [~~physical~~]injuries inflicted by the same [  
 884 ~~person~~] individual, either at the same time or on different occasions;
- 885 (VI) any damage to internal organs of the body;
- 886 (VII) any conduct toward a child that results in severe emotional harm, severe  
 887 developmental delay or intellectual disability, or severe impairment of the  
 888 child's ability to function;
- 889 (VIII) any injury that creates a permanent disfigurement or protracted loss or  
 890 impairment of the function of a bodily member, limb, or organ;
- 891 (IX) any impediment of the breathing or the circulation of blood by application  
 892 of pressure to the neck, throat, or chest, or by the obstruction of the nose or  
 893 mouth, that is likely to produce a loss of consciousness;
- 894 (X) any conduct involving unreasonable forcible restriction of a child's  
 895 movements, including restraining or confining the child with restraints or in  
 896 an enclosed space or forcing the child to remain in a stress position;
- 897 (XI) any conduct involving forcing or coercing a child to injure the child's self,  
 898 an individual known to the child, or an animal known to the child;
- 899 (XII) any conduct involving a threat to harm or kill the child, an individual  
 900 known to the child, or an animal known to the child;
- 901 (XIII) any conduct involving unreasonably subjecting a child to excessive heat,  
 902 cold, darkness, solitary confinement, or sleep deprivation;
- 903 ~~(XIV)~~ (XIV) any conduct that results in starvation~~[-or-]~~ , dehydration, failure to  
 904 thrive, or malnutrition, that jeopardizes the child's life or seriously injures  
 905 the child's physical or mental well-being or development; or
- 906 ~~(XV)~~ (XV) unconsciousness caused by the unlawful infliction of a brain injury  
 907 or unlawfully causing any deprivation of oxygen to the brain.
- 908 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 909 (2) An actor commits child abuse if the actor:
- 910 (a) inflicts upon a child [~~physical~~] an injury; or
- 911 (b) having the care or custody of [~~such~~] a child, causes or permits another to inflict [  
 912 ~~physical~~] an injury upon [a the child].
- 913 (3)(a) A violation of Subsection (2) is a class A misdemeanor if done intentionally or

- 914 knowingly.
- 915 (b) A violation of Subsection (2) is a class B misdemeanor if done recklessly.
- 916 (c) A violation of Subsection (2) is a class C misdemeanor if done with criminal  
917 negligence.
- 918 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means  
919 alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
920 practices of an established church or religious denomination of which the parent or  
921 legal guardian is a member or adherent may not, for that reason alone, be considered  
922 to have committed an offense under this section.
- 923 (b) A parent or guardian of a child does not violate this section by selecting a treatment  
924 option for a medical condition of the child, if the treatment option is one that a  
925 reasonable parent or guardian would believe to be in the best interest of the child.
- 926 (c) An actor is not guilty of an offense under this section for conduct that constitutes:  
927 (i) reasonable discipline or management of a child, including withholding privileges;  
928 (ii) conduct described in Section 76-2-401; or  
929 (iii) the use of reasonable and necessary physical restraint or force on a child:  
930 (A) in self-defense;  
931 (B) in defense of others;  
932 (C) to protect the child; or  
933 (D) to remove a weapon in the possession of a child for any of the reasons  
934 described in Subsections (4)(c)(iii)(A) through (C).

935 Section 7. Section **76-5-109.2** is amended to read:

936 **76-5-109.2 . Aggravated child abuse.**

- 937 (1)(a) As used in this section:
- 938 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 939 (ii) "Serious [~~physical~~]injury" means the same as that term is defined in Section  
940 76-5-109.
- 941 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 942 (2) [~~An~~] Under circumstances not amounting to a violation of Section 76-5-109.4, Child  
943 torture, an actor commits aggravated child abuse if the actor:  
944 (a) inflicts upon a child a serious [~~physical~~]injury; or  
945 (b) having the care or custody of [~~such~~] a child, causes or permits another to inflict a  
946 serious [~~physical~~]injury upon [~~a~~] the child.
- 947 (3)(a) A violation of Subsection (2) is a second degree felony if done intentionally or

- 948 knowingly.
- 949 (b) A violation of Subsection (2) is a third degree felony if done recklessly.
- 950 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal  
951 negligence.
- 952 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means  
953 alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
954 practices of an established church or religious denomination of which the parent or  
955 legal guardian is a member or adherent may not, for that reason alone, be considered  
956 to have committed an offense under this section.
- 957 (b) A parent or guardian of a child does not violate this section by selecting a treatment  
958 option for the medical condition of the child, if the treatment option is one that a  
959 reasonable parent or guardian would believe to be in the best interest of the child.
- 960 (c) An actor is not guilty of an offense under this section for conduct that constitutes:  
961 (i) conduct described in Section 76-2-401; or  
962 (ii) the use of reasonable and necessary physical restraint or force on a child:  
963 (A) in self-defense;  
964 (B) in defense of others;  
965 (C) to protect the child; or  
966 (D) to remove a weapon in the possession of a child for any of the reasons  
967 described in Subsections (4)(c)(ii)(A) through (C).

968 Section 8. Section **76-5-109.3** is amended to read:

969 **76-5-109.3 . Child abandonment.**

- 970 (1)(a) As used in this section:
- 971 (i) "Child" means the same as that term is defined in Section 76-5-109.
- 972 (ii) "Enterprise" means the same as that term is defined in Section 76-10-1602.
- 973 (iii) "Serious [~~physical~~]injury" means the same as that term is defined in Section  
974 76-5-109.
- 975 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 976 (2)(a) Except as provided in Subsection (4), an actor commits child abandonment if the  
977 actor:
- 978 (i) is a parent or legal guardian of a child, and:  
979 (A) intentionally ceases to maintain physical custody of the child;  
980 (B) intentionally fails to make reasonable arrangements for the safety, care, and  
981 physical custody of the child; and

- 982 (C)(I) intentionally fails to provide the child with food, shelter, or clothing;  
983 (II) manifests an intent to permanently not resume physical custody of the  
984 child; or  
985 (III) for a period of at least 30 days, intentionally fails to resume physical  
986 custody of the child and fails to manifest a genuine intent to resume  
987 physical custody of the child; or  
988 (ii) encourages or causes the parent or legal guardian of a child to violate Subsection  
989 (2)(a)(i).
- 990 (b) Except as provided in Subsection (4), an enterprise commits child abandonment if  
991 the enterprise encourages, commands, induces by misrepresentation, or causes  
992 another to violate Subsection (2)(a).
- 993 (3)(a)(i) A violation of Subsection (2) is a third degree felony.  
994 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2) is a second  
995 degree felony if, as a result of the child abandonment:  
996 (A) the child suffers a serious ~~physical~~ injury; or  
997 (B) the actor or enterprise receives, directly or indirectly, any benefit.
- 998 (b)(i) In addition to the penalty described in Subsection (3)(a)(ii), the court may  
999 order the actor or enterprise described in Subsection (3)(a)(ii)(B) to pay the costs  
1000 of investigating and prosecuting the offense and the costs of securing any  
1001 forfeiture provided for under Subsection (3)(b)(ii).
- 1002 (ii) Any tangible or pecuniary benefit received under Subsection (3)(a)(ii)(B) is  
1003 subject to criminal or civil forfeiture pursuant to Title 77, Chapter 11b, Forfeiture  
1004 of Seized Property.
- 1005 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means  
1006 alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
1007 practices of an established church or religious denomination of which the parent or  
1008 legal guardian is a member or adherent may not, for that reason alone, be considered  
1009 to have committed an offense under this section.
- 1010 (b) An actor is not guilty of an offense under this section for conduct that constitutes:  
1011 (i) the safe relinquishment of a child pursuant to the provisions of Section 80-4-502;  
1012 (ii) giving legal consent to a court order for termination of parental rights:  
1013 (A) in a legal adoption proceeding; or  
1014 (B) in a case in which a petition for the termination of parental rights, or the  
1015 termination of a guardianship, has been filed;

- 1016 (iii) reasonable discipline or management of a child, including withholding  
 1017 privileges; or  
 1018 (iv) conduct described in Section 76-2-401.
- 1019 (c) It is a defense to prosecution under Subsection (2)(a)(i) that the actor committed  
 1020 child abandonment due to:  
 1021 (i) intimidation;  
 1022 (ii) isolation;  
 1023 (iii) harassment;  
 1024 (iv) coercion;  
 1025 (v) the actor's reasonable fear of bodily harm; or  
 1026 (vi) the reasonable actions of the actor to protect the safety and welfare of the actor or  
 1027 another individual.

1028 Section 9. Section **76-5-109.4** is enacted to read:

1029 **76-5-109.4 . Child torture.**

- 1030 (1)(a) As used in this section:  
 1031 (i) "Child" means the same as that term is defined in Section 76-5-109.  
 1032 (ii) "Course of conduct" means a pattern of conduct composed of two or more acts  
 1033 that evidence a continuity of purpose.  
 1034 (iii) "Serious injury" means the same as that term is defined in Section 76-5-109.
- 1035 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1036 (2) An actor commits child torture if the actor intentionally or knowingly inflicts upon a  
 1037 child, or having the care or custody of a child, intentionally or knowingly causes or  
 1038 permits another to inflict upon the child:  
 1039 (a) a serious injury that is inflicted in an exceptionally cruel or exceptionally depraved  
 1040 manner that causes the child to experience extreme physical or psychological pain or  
 1041 anguish; or  
 1042 (b) a serious injury, or more than one serious injury, as part of a course of conduct or  
 1043 over a prolonged period of time.
- 1044 (3) A violation of Subsection (2) is a first degree felony subject to a sentence of  
 1045 imprisonment of at least 10 years and which may be for life.
- 1046 (4) Imprisonment under Subsection (3) is mandatory in accordance with Section 76-3-406.
- 1047 (5) An actor's conduct is not subject to punishment under Subsection (2)(b) if the serious  
 1048 injury that forms the basis for the offense is based solely on the commission of two or  
 1049 more injuries by the same individual as described under Subsection 76-5-109(1)

1050 (a)(iii)(B)(V).

1051 Section 10. Section **76-5-110** is amended to read:

1052 **76-5-110 . Abuse or neglect of a child with a disability.**

1053 (1)(a) As used in this section:

1054 (i) "Abuse" means:

1055 (A) inflicting [~~physical~~]injury;

1056 (B) having the care or custody of a child with a disability, causing or permitting  
1057 another to inflict [~~physical~~]injury; or

1058 (C) unreasonable confinement.

1059 (ii) "Caretaker" means:

1060 (A) any parent, legal guardian, or other person having under that person's care and  
1061 custody a child with a disability; or

1062 (B) any person, corporation, or public institution that has assumed by contract or  
1063 court order the responsibility to provide food, shelter, clothing, medical, and  
1064 other necessities to a child with a disability.

1065 (iii) "Child with a disability" means an individual under 18 years old who is impaired  
1066 because of mental illness, mental deficiency, physical illness or disability, or other  
1067 cause, to the extent that the individual is unable to care for the individual's own  
1068 personal safety or to provide necessities such as food, shelter, clothing, and  
1069 medical care.

1070 (iv) "Injury" means the same as that term is defined in Section 76-5-109.

1071 [~~(iv)~~] (v) "Neglect" means failure by a caretaker to provide care, nutrition, clothing,  
1072 shelter, supervision, or medical care.

1073 [~~(v)~~ "Physical injury" means the same as that term is defined in Section 76-5-109.]

1074 (b) Terms defined in Section 76-1-101.5 apply to this section.

1075 (2) An actor commits abuse or neglect of a child with a disability if the actor is a caretaker  
1076 and intentionally, knowingly, or recklessly abuses or neglects a child with a disability.

1077 (3) A violation of Subsection (2) is a third degree felony.

1078 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means  
1079 alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
1080 practices of an established church or religious denomination of which the parent or  
1081 legal guardian is a member or adherent may not, for that reason alone, be considered  
1082 to be in violation under this section.

1083 (b) Subject to Section 80-3-109, the exception under Subsection (4)(a) does not preclude



1084 a court from ordering medical services from a physician licensed to engage in the  
 1085 practice of medicine to be provided to the child where there is substantial risk of  
 1086 harm to the child's health or welfare if the treatment is not provided.

1087 (c) A caretaker of a child with a disability does not violate this section by selecting a  
 1088 treatment option for a medical condition of a child with a disability, if the treatment  
 1089 option is one that a reasonable caretaker would believe to be in the best interest of the  
 1090 child with a disability.

1091 Section 11. Section **76-5-202** is amended to read:

1092 **76-5-202 . Aggravated murder -- Penalties -- Affirmative defense and special**  
 1093 **mitigation -- Separate offense.**

1094 (1)(a) As used in this section:

1095 (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.

1096 (ii) "Emergency responder" means the same as that term is defined in Section  
 1097 53-2b-102.

1098 (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.

1099 (iv) "Law enforcement officer" means the same as that term is defined in Section  
 1100 53-13-103.

1101 (v) "Peace officer" means:

1102 (A) a correctional officer, federal officer, law enforcement officer, or special  
 1103 function officer; or

1104 (B) any other person who may exercise peace officer authority in accordance with  
 1105 Title 53, Chapter 13, Peace Officer Classifications.

1106 (vi) "Special function officer" means the same as that term is defined in Section  
 1107 53-13-105.

1108 (vii) "Target a law enforcement officer" means an act:

1109 (A) involving the unlawful use of force and violence against a law enforcement  
 1110 officer;

1111 (B) that causes serious bodily injury or death; and

1112 (C) that is in furtherance of political or social objectives in order to intimidate or  
 1113 coerce a civilian population or to influence or affect the conduct of a  
 1114 government or a unit of government.

1115 (viii) "Weapon of mass destruction" means the same as that term is defined in Section  
 1116 76-10-401.

1117 (b) Terms defined in Section 76-1-101.5 apply to this section.

- 1118 (2)(a) An actor commits aggravated murder if the actor intentionally or knowingly  
1119 causes the death of another individual under any of the following circumstances:
- 1120 (i) the actor committed homicide while confined in a jail or other correctional  
1121 institution;
  - 1122 (ii)(A) the actor committed homicide incident to one act, scheme, course of  
1123 conduct, or criminal episode during which two or more individuals other than  
1124 the actor were killed; or
  - 1125 (B) the actor, during commission of the homicide, attempted to kill one or more  
1126 other individuals in addition to the deceased individual;
  - 1127 (iii) the actor knowingly created a great risk of death to another individual other than  
1128 the deceased individual and the actor;
  - 1129 (iv) the actor committed homicide incident to an act, scheme, course of conduct, or  
1130 criminal episode during which the actor committed or attempted to commit  
1131 aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a  
1132 child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse  
1133 of a child, aggravated sexual abuse of a child, aggravated child abuse as described  
1134 in Subsection 76-5-109.2(3)(a), child torture, or aggravated sexual assault,  
1135 aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or  
1136 kidnapping, or child kidnapping;
  - 1137 (v) the actor committed homicide incident to one act, scheme, course of conduct, or  
1138 criminal episode during which the actor committed the crime of abuse or  
1139 desecration of a dead human body as described in Subsection 76-9-704(2)(e);
  - 1140 (vi) the actor committed homicide for the purpose of avoiding or preventing an arrest  
1141 of the actor or another individual by a peace officer acting under color of legal  
1142 authority or for the purpose of effecting the actor's or another individual's escape  
1143 from lawful custody;
  - 1144 (vii) the actor committed homicide for pecuniary gain;
  - 1145 (viii) the actor committed, engaged, or employed another person to commit the  
1146 homicide subject to an agreement or contract for remuneration or the promise of  
1147 remuneration for commission of the homicide;
  - 1148 (ix) the actor previously committed or was convicted of:
    - 1149 (A) aggravated murder under this section;
    - 1150 (B) attempted aggravated murder under this section;
    - 1151 (C) murder, under Section 76-5-203;

- 1152 (D) attempted murder, under Section 76-5-203; or  
1153 (E) an offense committed in another jurisdiction which if committed in this state  
1154 would be a violation of a crime listed in this Subsection (2)(a)(ix);
- 1155 (x) the actor was previously convicted of:
- 1156 (A) aggravated assault, under Section 76-5-103;  
1157 (B) mayhem, under Section 76-5-105;  
1158 (C) kidnapping, under Section 76-5-301;  
1159 (D) child kidnapping, under Section 76-5-301.1;  
1160 (E) aggravated kidnapping, under Section 76-5-302;  
1161 (F) rape, under Section 76-5-402;  
1162 (G) rape of a child, under Section 76-5-402.1;  
1163 (H) object rape, under Section 76-5-402.2;  
1164 (I) object rape of a child, under Section 76-5-402.3;  
1165 (J) forcible sodomy, under Section 76-5-403;  
1166 (K) sodomy on a child, under Section 76-5-403.1;  
1167 (L) aggravated sexual abuse of a child, under Section 76-5-404.3;  
1168 (M) aggravated sexual assault, under Section 76-5-405;  
1169 (N) aggravated arson, under Section 76-6-103;  
1170 (O) aggravated burglary, under Section 76-6-203;  
1171 (P) aggravated robbery, under Section 76-6-302;  
1172 (Q) felony discharge of a firearm, under Section 76-10-508.1; or  
1173 (R) an offense committed in another jurisdiction which if committed in this state  
1174 would be a violation of a crime listed in this Subsection (2)(a)(x);
- 1175 (xi) the actor committed homicide for the purpose of:
- 1176 (A) preventing a witness from testifying;  
1177 (B) preventing a person from providing evidence or participating in any legal  
1178 proceedings or official investigation;  
1179 (C) retaliating against a person for testifying, providing evidence, or participating  
1180 in any legal proceedings or official investigation; or  
1181 (D) disrupting or hindering any lawful governmental function or enforcement of  
1182 laws;
- 1183 (xii) the deceased individual was a local, state, or federal public official, or a  
1184 candidate for public office, and the homicide is based on, is caused by, or is  
1185 related to that official position, act, capacity, or candidacy;

- 1186 (xiii) the deceased individual was on duty in a verified position or the homicide is  
1187 based on, is caused by, or is related to the deceased individual's position, and the  
1188 actor knew, or reasonably should have known, that the deceased individual holds  
1189 or has held the position of:
- 1190 (A) a peace officer;
  - 1191 (B) an executive officer, prosecuting officer, jailer, or prison official;
  - 1192 (C) a firefighter, search and rescue personnel, emergency medical personnel,  
1193 ambulance personnel, or any other emergency responder;
  - 1194 (D) a judge or other court official, juror, probation officer, or parole officer; or
  - 1195 (E) a security officer contracted to secure, guard, or otherwise protect tangible  
1196 personal property, real property, or the life and well-being of human or animal  
1197 life in the area of the offense;
- 1198 (xiv) the actor committed homicide:
- 1199 (A) by means of a destructive device, bomb, explosive, incendiary device, or  
1200 similar device which was planted, hidden, or concealed in any place, area,  
1201 dwelling, building, or structure, or was mailed or delivered;
  - 1202 (B) by means of any weapon of mass destruction; or
  - 1203 (C) to target a law enforcement officer;
- 1204 (xv) the actor committed homicide during the act of unlawfully assuming control of  
1205 an aircraft, train, or other public conveyance by use of threats or force with intent  
1206 to:
- 1207 (A) obtain any valuable consideration for the release of the public conveyance or  
1208 any passenger, crew member, or any other person aboard;
  - 1209 (B) direct the route or movement of the public conveyance; or
  - 1210 (C) otherwise exert control over the public conveyance;
- 1211 (xvi) the actor committed homicide by means of the administration of a poison or of  
1212 any lethal substance or of any substance administered in a lethal amount, dosage,  
1213 or quantity;
- 1214 (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or  
1215 for ransom;
- 1216 (xviii) the actor committed homicide in an especially heinous, atrocious, cruel, or  
1217 exceptionally depraved manner, any of which must be demonstrated by physical  
1218 torture, serious physical abuse, or serious bodily injury of the deceased individual  
1219 before death;

- 1220 (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body,  
 1221 whether before or after death, in a manner demonstrating the actor's depravity of  
 1222 mind; or
- 1223 (xx) the deceased individual, at the time of the death of the deceased individual:  
 1224 (A) was younger than 14 years old; and  
 1225 (B) was not an unborn child.
- 1226 (b) An actor commits aggravated murder if the actor, with reckless indifference to  
 1227 human life, causes the death of another individual incident to an act, scheme, course  
 1228 of conduct, or criminal episode during which the actor is a major participant in the  
 1229 commission or attempted commission of:
- 1230 (i) aggravated child abuse, punishable as a felony of the second degree under  
 1231 Subsection 76-5-109.2(3)(a);  
 1232 (ii) child torture under Section 76-5-109.4;  
 1233 [~~(iii)~~] (iii) child kidnapping[;] under Section 76-5-301.1;  
 1234 [~~(iii)~~] (iv) rape of a child[;] under Section 76-5-402.1;  
 1235 [~~(iv)~~] (v) object rape of a child[;] under Section 76-5-402.3;  
 1236 [~~(v)~~] (vi) sodomy on a child[;] under Section 76-5-403.1; or  
 1237 [~~(vi)~~] (vii) sexual abuse or aggravated sexual abuse of a child[;] under Section  
 1238 76-5-404.1.
- 1239 (3)(a) If a notice of intent to seek the death penalty has been filed, a violation of  
 1240 Subsection (2) is a capital felony.
- 1241 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is  
 1242 a noncapital first degree felony punishable as provided in Section 76-3-207.7.
- 1243 (c)(i) Within 60 days after arraignment of the defendant, the prosecutor may file  
 1244 notice of intent to seek the death penalty.
- 1245 (ii) The notice shall be served on the defendant or defense counsel and filed with the  
 1246 court.
- 1247 (iii) Notice of intent to seek the death penalty may be served and filed more than 60  
 1248 days after the arraignment upon written stipulation of the parties or upon a finding  
 1249 by the court of good cause.
- 1250 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to  
 1251 noncapital first degree felony aggravated murder during the period in which the  
 1252 prosecutor may file a notice of intent to seek the death penalty under Subsection  
 1253 (3)(c)(i).

- 1254 (e) If the defendant was younger than 18 years old at the time the offense was  
1255 committed, aggravated murder is a noncapital first degree felony punishable as  
1256 provided in Section 76-3-207.7.
- 1257 (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of  
1258 aggravated murder, or alternatively, attempted aggravated murder, as described in  
1259 this section, are proved beyond a reasonable doubt, and also finds that the existence  
1260 of special mitigation is established by a preponderance of the evidence and in  
1261 accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as  
1262 follows:
- 1263 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall  
1264 enter a judgment of conviction for murder; or
- 1265 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the  
1266 court shall enter a judgment of conviction for attempted murder.
- 1267 (4)(a) It is an affirmative defense to a charge of aggravated murder or attempted  
1268 aggravated murder that the actor caused the death of another or attempted to cause  
1269 the death of another under a reasonable belief that the circumstances provided a legal  
1270 justification or excuse for the conduct although the conduct was not legally justifiable  
1271 or excusable under the existing circumstances.
- 1272 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from  
1273 the viewpoint of a reasonable person under the then existing circumstances.
- 1274 (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of  
1275 aggravated murder, or alternatively, attempted aggravated murder, as described in  
1276 this section, are proved beyond a reasonable doubt, and also finds the affirmative  
1277 defense described in this Subsection (4) is not disproven beyond a reasonable doubt,  
1278 the court shall enter a judgment of conviction as follows:
- 1279 (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall  
1280 enter a judgment of conviction for murder; or
- 1281 (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the  
1282 court shall enter a judgment of conviction for attempted murder.
- 1283 (5)(a) Any aggravating circumstance described in Subsection (2) that constitutes a  
1284 separate offense does not merge with the crime of aggravated murder.
- 1285 (b) An actor who is convicted of aggravated murder, based on an aggravating  
1286 circumstance described in Subsection (2) that constitutes a separate offense, may also  
1287 be convicted of, and punished for, the separate offense.

1288 Section 12. Section **76-5-203** is amended to read:

1289 **76-5-203 . Murder -- Penalties-- Affirmative defense and special mitigation --**  
 1290 **Separate offenses.**

1291 (1)(a) As used in this section, "predicate offense" means:

- 1292 (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- 1293 (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused  
 1294 individual is younger than 18 years old;
- 1295 (iii) child torture under Section 76-5-109.4;
- 1296 [~~(iii)~~] (iv) kidnapping under Section 76-5-301;
- 1297 [~~(iv)~~] (v) child kidnapping under Section 76-5-301.1;
- 1298 [~~(v)~~] (vi) aggravated kidnapping under Section 76-5-302;
- 1299 [~~(vi)~~] (vii) rape under Section 76-5-402;
- 1300 [~~(vii)~~] (viii) rape of a child under Section 76-5-402.1;
- 1301 [~~(viii)~~] (ix) object rape under Section 76-5-402.2;
- 1302 [~~(ix)~~] (x) object rape of a child under Section 76-5-402.3;
- 1303 [~~(x)~~] (xi) forcible sodomy under Section 76-5-403;
- 1304 [~~(xi)~~] (xii) sodomy upon a child under Section 76-5-403.1;
- 1305 [~~(xii)~~] (xiii) forcible sexual abuse under Section 76-5-404;
- 1306 [~~(xiii)~~] (xiv) sexual abuse of a child under Section 76-5-404.1;
- 1307 [~~(xiv)~~] (xv) aggravated sexual abuse of a child under Section 76-5-404.3;
- 1308 [~~(xv)~~] (xvi) aggravated sexual assault under Section 76-5-405;
- 1309 [~~(xvi)~~] (xvii) arson under Section 76-6-102;
- 1310 [~~(xvii)~~] (xviii) aggravated arson under Section 76-6-103;
- 1311 [~~(xviii)~~] (xix) burglary under Section 76-6-202;
- 1312 [~~(xix)~~] (xx) aggravated burglary under Section 76-6-203;
- 1313 [~~(xx)~~] (xxi) robbery under Section 76-6-301;
- 1314 [~~(xxi)~~] (xxii) aggravated robbery under Section 76-6-302;
- 1315 [~~(xxii)~~] (xxiii) escape under Section 76-8-309;
- 1316 [~~(xxiii)~~] (xxiv) aggravated escape under Section 76-8-309.3; or
- 1317 [~~(xxiv)~~] (xxv) a felony violation of Section 76-10-508 or 76-10-508.1 regarding  
 1318 discharge of a firearm or dangerous weapon.

1319 (b) Terms defined in Section 76-1-101.5 apply to this section.

1320 (2) An actor commits murder if:

- 1321 (a) the actor intentionally or knowingly causes the death of another individual;

- 1322 (b) intending to cause serious bodily injury to another individual, the actor commits an  
1323 act clearly dangerous to human life that causes the death of the other individual;
- 1324 (c) acting under circumstances evidencing a depraved indifference to human life, the  
1325 actor knowingly engages in conduct that creates a grave risk of death to another  
1326 individual and thereby causes the death of the other individual;
- 1327 (d)(i) the actor is engaged in the commission, attempted commission, or immediate  
1328 flight from the commission or attempted commission of any predicate offense, or  
1329 is a party to the predicate offense;
- 1330 (ii) an individual other than a party described in Section 76-2-202 is killed in the  
1331 course of the commission, attempted commission, or immediate flight from the  
1332 commission or attempted commission of any predicate offense; and
- 1333 (iii) the actor acted with the intent required as an element of the predicate offense;
- 1334 (e) the actor recklessly causes the death of a peace officer or military service member in  
1335 uniform while in the commission or attempted commission of:
- 1336 (i) an assault against a peace officer under Section 76-5-102.4;
- 1337 (ii) interference with a peace officer while making a lawful arrest under Section  
1338 76-8-305 if the actor uses force against the peace officer; or
- 1339 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 1339a
- 1340 or
- 1341 (f) the actor commits a homicide that would be aggravated murder, but the offense is  
1342 reduced in accordance with Subsection 76-5-202(4).
- 1343 (3)(a)(i) A violation of Subsection (2) is a first degree felony.
- 1344 (ii) A defendant who is convicted of murder shall be sentenced to imprisonment for  
1345 an indeterminate term of not less than 15 years and which may be for life.
- 1346 (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder,  
1347 or alternatively, attempted murder, as described in this section are proved beyond a  
1348 reasonable doubt, and also finds that the existence of special mitigation is established  
1349 by a preponderance of the evidence and in accordance with Section 76-5-205.5, the  
1350 court shall enter a judgment of conviction as follows:
- 1351 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a  
1352 judgment of conviction for manslaughter; or
- 1353 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall,  
1354 notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment



- 1355 of conviction for attempted manslaughter.
- 1356 (4)(a) It is an affirmative defense to a charge of murder or attempted murder that the  
 1357 defendant caused the death of another individual or attempted to cause the death of  
 1358 another individual under a reasonable belief that the circumstances provided a legal  
 1359 justification or excuse for the conduct although the conduct was not legally justifiable  
 1360 or excusable under the existing circumstances.
- 1361 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from  
 1362 the viewpoint of a reasonable person under the then existing circumstances.
- 1363 (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or  
 1364 alternatively, attempted murder, as described in this section are proved beyond a  
 1365 reasonable doubt, and also finds the affirmative defense described in this Subsection  
 1366 (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of  
 1367 conviction as follows:
- 1368 (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a  
 1369 judgment of conviction for manslaughter; or
- 1370 (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall  
 1371 enter a judgment of conviction for attempted manslaughter.
- 1372 (5)(a) Any predicate offense that constitutes a separate offense does not merge with the  
 1373 crime of murder.
- 1374 (b) An actor who is convicted of murder, based on a predicate offense that constitutes a  
 1375 separate offense, may also be convicted of, and punished for, the separate offense.
- 1376 Section 13. Section **76-5-208** is amended to read:
- 1377 **76-5-208 . Child abuse homicide -- Penalties.**
- 1378 (1)(a) As used in this section, "child abuse" means an offense described in [~~Sections~~  
 1379 Section 76-5-109, 76-5-109.2, 76-5-109.3, [~~and~~] 76-5-109.4, or 76-5-114.
- 1380 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 1381 (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an  
 1382 actor commits child abuse homicide if:
- 1383 (a)(i) the actor causes the death of another individual who is younger than 18 years  
 1384 old; and
- 1385 (ii) the individual's death results from child abuse; and
- 1386 (b)(i) the child abuse is based on a violation of Section 76-5-109.4, Child Torture;  
 1387 (ii) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);  
 1388 [(ii)] (iii) the child abuse is done with criminal negligence under Subsection

1389 76-5-109.2(3)(c); or  
 1390 [~~(iii)~~] (iv) under circumstances not amounting to the type of child abuse homicide  
 1391 described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly,  
 1392 recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or  
 1393 (c).

1394 (3)(a) A violation of Subsection (2) under the circumstances described in Subsection  
 1395 (2)(b)(i) is a first degree felony.

1396 (b) A violation of Subsection (2) under the circumstances described in Subsection  
 1397 (2)(b)(ii) or (iii) is a second degree felony.

1398 Section 14. Section **76-7-101** is amended to read:

1399 **76-7-101 . Bigamy -- Penalty -- Defense.**

1400 (1) An individual is guilty of bigamy if:

1401 (a) the individual purports to marry another individual; and

1402 (b) knows or reasonably should know that one or both of the individuals described in  
 1403 Subsection (1)(a) are legally married to another individual.

1404 (2) An individual who violates Subsection (1) is guilty of an infraction.

1405 (3) An individual is guilty of a third degree felony if the individual induces bigamy:

1406 (a) under fraudulent or false pretenses; or

1407 (b) by threat or coercion.

1408 (4) An individual is guilty of a second degree felony if the individual:

1409 (a) cohabitates with another individual with whom the individual is engaged in bigamy  
 1410 as described in Subsection (1); and

1411 (b) in furtherance of the conduct described in Subsection (4)(a), commits a felony  
 1412 offense, or for Subsection [~~(4)(b)(xiii)~~] (4)(b)(xiv), a misdemeanor offense, in  
 1413 violation of one or more of the following:

1414 (i) Section 76-5-109, child abuse;

1415 (ii) Section 76-5-109.2, aggravated child abuse;

1416 (iii) Section 76-5-109.3, child abandonment;

1417 (iv) Section 76-5-109.4, child torture;

1418 [~~(iv)~~] (v) Section 76-5-111, abuse of a vulnerable adult;

1419 [~~(v)~~] (vi) Section 76-5-111.2, aggravated abuse of a vulnerable adult;

1420 [~~(vi)~~] (vii) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;

1421 [~~(vii)~~] (viii) Section 76-5-111.4, financial exploitation of a vulnerable adult;

1422 [~~(viii)~~] (ix) Chapter 5, Part 2, Criminal Homicide;

1423            [~~(ix)~~] (x) Section 76-5-208, child abuse homicide;  
 1424            [~~(x)~~] (xi) Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;  
 1425            [~~(xi)~~] (xii) Chapter 5, Part 4, Sexual Offenses;  
 1426            [~~(xii)~~] (xiii) Section 76-7-201, criminal nonsupport;  
 1427            [~~(xiii)~~] (xiv) Section 76-9-702.1, sexual battery;  
 1428            [~~(xiv)~~] (xv) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or  
 1429            [~~(xv)~~] (xvi) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

1430 (5) It is a defense to prosecution under Subsection (2) that:

- 1431            (a) the individual ceased the practice of bigamy as described in Subsection (1) under  
 1432                 reasonable fear of coercion or bodily harm;  
 1433            (b) the individual entered the practice of bigamy, as described in Subsection (1), as a  
 1434                 minor and ceased the practice of bigamy at any time after the individual entered the  
 1435                 practice of bigamy; or  
 1436            (c) law enforcement discovers that the individual practices bigamy, as described in  
 1437                 Subsection (1), as a result of the individual's efforts to protect the safety and welfare  
 1438                 of another individual.

1439            Section 15. Section **77-41-102** is amended to read:

1440            **77-41-102 . Definitions.**

1441            As used in this chapter:

1442 (1) "Child abuse offender" means an individual:

- 1443            (a) who has been convicted in this state of a violation of:  
 1444                 (i)(A) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b); or  
 1445                 [~~(ii)~~] (B) attempting, soliciting, or conspiring to commit aggravated child abuse  
 1446                 under Subsection 76-5-109.2(3)(a) or (b); or  
 1447                 (ii)(A) child torture under Section 76-5-109.4; or  
 1448                 (B) attempting, soliciting, or conspiring to commit child torture under Section  
 1449                 76-5-109.4;  
 1450            (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to  
 1451                 commit a crime in another jurisdiction, including a state, federal, or military court,  
 1452                 that is substantially equivalent to the offense listed in Subsection (1)(a); and  
 1453                 (ii)(A) who is a Utah resident; or  
 1454                 (B) who is not a Utah resident but is in this state for a total of 10 days in a  
 1455                 12-month period, regardless of whether the offender intends to permanently  
 1456                 reside in this state;

- 1457 (c)(i)(A) who is required to register as a child abuse offender in another  
1458 jurisdiction of original conviction;
- 1459 (B) who is required to register as a child abuse offender by a state, a federal, or a  
1460 military court; or
- 1461 (C) who would be required to register as a child abuse offender if residing in the  
1462 jurisdiction of the conviction regardless of the date of the conviction or a  
1463 previous registration requirement; and
- 1464 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of  
1465 whether the offender intends to permanently reside in this state;
- 1466 (d)(i)(A) who is a nonresident regularly employed or working in this state; or  
1467 (B) who is a student in this state; and
- 1468 (ii)(A) who was convicted of the offense listed in Subsection (1)(a) or a  
1469 substantially equivalent offense in another jurisdiction; or  
1470 (B) who is required to register in the individual's state of residence based on a  
1471 conviction for an offense that is not substantially equivalent to an offense listed  
1472 in Subsection (1)(a);
- 1473 (e) who is found not guilty by reason of insanity in this state or in another jurisdiction of  
1474 the offense listed in Subsection (1)(a); or
- 1475 (f)(i) who is adjudicated under Section 80-6-701 for the offense listed in Subsection  
1476 (1)(a); and
- 1477 (ii) who has been committed to the division for secure care, as defined in Section  
1478 80-1-102, for that offense if:
- 1479 (A) the individual remains in the division's custody until 30 days before the  
1480 individual's 21st birthday;
- 1481 (B) the juvenile court extended the juvenile court's jurisdiction over the individual  
1482 under Section 80-6-605 and the individual remains in the division's custody  
1483 until 30 days before the individual's 25th birthday; or
- 1484 (C) the individual is moved from the division's custody to the custody of the  
1485 department before expiration of the division's jurisdiction over the individual.
- 1486 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
1487 Safety established in ~~[section]~~ Section 53-10-201.
- 1488 (3) "Business day" means a day on which state offices are open for regular business.
- 1489 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
1490 Identification showing that the offender has met the requirements of Section 77-41-112.

- 1491 (5)(a) "Convicted" means a plea or conviction of:
- 1492 (i) guilty;
- 1493 (ii) guilty with a mental illness; or
- 1494 (iii) no contest.
- 1495 (b) "Convicted" includes, unless otherwise specified, the period a plea is held in
- 1496 abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.
- 1497 (c) "Convicted" does not include:
- 1498 (i) a withdrawn or dismissed plea in abeyance;
- 1499 (ii) a diversion agreement; or
- 1500 (iii) an adjudication of a minor for an offense under Section 80-6-701.
- 1501 (6) "Department" means the Department of Public Safety.
- 1502 (7) "Division" means the Division of Juvenile Justice and Youth Services.
- 1503 (8) "Employed" or "carries on a vocation" includes employment that is full time or part
- 1504 time, whether financially compensated, volunteered, or for the purpose of government or
- 1505 educational benefit.
- 1506 (9) "Indian Country" means:
- 1507 (a) all land within the limits of any Indian reservation under the jurisdiction of the
- 1508 United States government, regardless of the issuance of any patent, and includes
- 1509 rights-of-way running through the reservation;
- 1510 (b) all dependent Indian communities within the borders of the United States whether
- 1511 within the original or subsequently acquired territory, and whether or not within the
- 1512 limits of a state; and
- 1513 (c) all Indian allotments, including the Indian allotments to which the Indian titles have
- 1514 not been extinguished, including rights-of-way running through the allotments.
- 1515 (10) "Jurisdiction" means any state, Indian Country, United States Territory, or property
- 1516 under the jurisdiction of the United States military, Canada, the United Kingdom,
- 1517 Australia, or New Zealand.
- 1518 (11) "Kidnap offender" means an individual, other than a natural parent of the victim:
- 1519 (a) who has been convicted in this state of a violation of:
- 1520 (i) kidnapping under Subsection 76-5-301(2)(c) or (d);
- 1521 (ii) child kidnapping under Section 76-5-301.1;
- 1522 (iii) aggravated kidnapping under Section 76-5-302;
- 1523 (iv) human trafficking for labor under Section 76-5-308;
- 1524 (v) human smuggling under Section 76-5-308.3;

- 1525 (vi) human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);  
1526 (vii) aggravated human trafficking under Section 76-5-310;  
1527 (viii) aggravated human smuggling under Section 76-5-310.1;  
1528 (ix) human trafficking of a vulnerable adult for labor under Section 76-5-311; or  
1529 (x) attempting, soliciting, or conspiring to commit a felony offense listed in  
1530 Subsections (11)(a)(i) through (ix);
- 1531 (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to  
1532 commit a crime in another jurisdiction, including a state, federal, or military court,  
1533 that is substantially equivalent to the offenses listed in Subsection (11)(a); and  
1534 (ii)(A) who is a Utah resident; or  
1535 (B) who is not a Utah resident but is in this state for a total of 10 days in a  
1536 12-month period, regardless of whether the offender intends to permanently  
1537 reside in this state;
- 1538 (c)(i)(A) who is required to register as a kidnap offender in another jurisdiction  
1539 of original conviction;  
1540 (B) who is required to register as a kidnap offender by a state, federal, or military  
1541 court; or  
1542 (C) who would be required to register as a kidnap offender if residing in the  
1543 jurisdiction of the conviction regardless of the date of the conviction or a  
1544 previous registration requirement; and  
1545 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of  
1546 whether the offender intends to permanently reside in this state;
- 1547 (d)(i)(A) who is a nonresident regularly employed or working in this state; or  
1548 (B) who is a student in this state; and  
1549 (ii)(A) who was convicted of one or more offenses listed in Subsection (11)(a) or  
1550 any substantially equivalent offense in another jurisdiction; or  
1551 (B) who is required to register in the individual's state of residence based on a  
1552 conviction for an offense that is not substantially equivalent to an offense listed  
1553 in Subsection (11)(a);
- 1554 (e) who is found not guilty by reason of insanity in this state or in any other jurisdiction  
1555 of one or more offenses listed in Subsection (11)(a); or  
1556 (f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in  
1557 Subsection (11)(a); and  
1558 (ii) who has been committed to the division for secure care, as defined in Section

- 1559 80-1-102, for that offense if:
- 1560 (A) the individual remains in the division's custody until 30 days before the
- 1561 individual's 21st birthday;
- 1562 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
- 1563 under Section 80-6-605 and the individual remains in the division's custody
- 1564 until 30 days before the individual's 25th birthday; or
- 1565 (C) the individual is moved from the division's custody to the custody of the
- 1566 department before expiration of the division's jurisdiction over the individual.
- 1567 (12) "Natural parent" means a minor's biological or adoptive parent, including the minor's
- 1568 noncustodial parent.
- 1569 (13) "Offender" means a child abuse offender, kidnap offender, or sex offender.
- 1570 (14) "Online identifier" or "Internet identifier":
- 1571 (a) means any electronic mail, chat, instant messenger, social networking, or similar
- 1572 name used for Internet communication; and
- 1573 (b) does not include date of birth, social security number, PIN number, or Internet
- 1574 passwords.
- 1575 (15) "Primary residence" means the location where the offender regularly resides, even if
- 1576 the offender intends to move to another location or return to another location at a future
- 1577 date.
- 1578 (16) "Register" means to comply with the requirements of this chapter and administrative
- 1579 rules of the department made under this chapter.
- 1580 (17) "Registration website" means the Sex, Kidnap, and Child Abuse Offender Notification
- 1581 and Registration website described in Section 77-41-110 and the information on the
- 1582 website.
- 1583 (18) "Secondary residence" means real property that the offender owns or has a financial
- 1584 interest in, or a location where the offender stays overnight a total of 10 or more nights
- 1585 in a 12-month period when not staying at the offender's primary residence.
- 1586 (19) "Sex offender" means an individual:
- 1587 (a) convicted in this state of:
- 1588 (i) a felony or class A misdemeanor violation of enticing a minor under Section
- 1589 76-4-401;
- 1590 (ii) sexual exploitation of a vulnerable adult under Section 76-5b-202;
- 1591 (iii) human trafficking for sexual exploitation under Section 76-5-308.1;
- 1592 (iv) human trafficking of a child for sexual exploitation under Subsection 76-5-308.5

- 1593 (4)(b);
- 1594 (v) aggravated human trafficking for sexual exploitation under Section 76-5-310;
- 1595 (vi) human trafficking of a vulnerable adult for sexual exploitation under Section
- 1596 76-5-311;
- 1597 (vii) unlawful sexual activity with a minor under Section 76-5-401, except as
- 1598 provided in Subsection 76-5-401(3)(b) or (c);
- 1599 (viii) sexual abuse of a minor under Section 76-5-401.1, except as provided in
- 1600 Subsection 76-5-401.1(3);
- 1601 (ix) unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- 1602 (x) rape under Section 76-5-402;
- 1603 (xi) rape of a child under Section 76-5-402.1;
- 1604 (xii) object rape under Section 76-5-402.2;
- 1605 (xiii) object rape of a child under Section 76-5-402.3;
- 1606 (xiv) a felony violation of forcible sodomy under Section 76-5-403;
- 1607 (xv) sodomy on a child under Section 76-5-403.1;
- 1608 (xvi) forcible sexual abuse under Section 76-5-404;
- 1609 (xvii) sexual abuse of a child under Section 76-5-404.1;
- 1610 (xviii) aggravated sexual abuse of a child under Section 76-5-404.3;
- 1611 (xix) aggravated sexual assault under Section 76-5-405;
- 1612 (xx) custodial sexual relations under Section 76-5-412, when the individual in
- 1613 custody is younger than 18 years old, if the offense is committed on or after May
- 1614 10, 2011;
- 1615 (xxi) sexual exploitation of a minor under Section 76-5b-201;
- 1616 (xxii) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 1617 (xxiii) sexual extortion or aggravated sexual extortion under Section 76-5b-204;
- 1618 (xxiv) incest under Section 76-7-102;
- 1619 (xxv) lewdness under Section 76-9-702, if the individual has been convicted of the
- 1620 offense four or more times;
- 1621 (xxvi) sexual battery under Section 76-9-702.1, if the individual has been convicted
- 1622 of the offense four or more times;
- 1623 (xxvii) any combination of convictions of lewdness under Section 76-9-702, and of
- 1624 sexual battery under Section 76-9-702.1, that total four or more convictions;
- 1625 (xxviii) lewdness involving a child under Section 76-9-702.5;
- 1626 (xxix) a felony or class A misdemeanor violation of voyeurism under Section



- 1627 76-9-702.7;
- 1628 (xxx) aggravated exploitation of prostitution under Section 76-10-1306; or
- 1629 (xxx) attempting, soliciting, or conspiring to commit a felony offense listed in this
- 1630 Subsection (19)(a);
- 1631 (b)(i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to
- 1632 commit a crime in another jurisdiction, including a state, federal, or military court,
- 1633 that is substantially equivalent to the offenses listed in Subsection (19)(a); and
- 1634 (ii)(A) who is a Utah resident; or
- 1635 (B) who is not a Utah resident but is in this state for a total of 10 days in a
- 1636 12-month period, regardless of whether the offender intends to permanently
- 1637 reside in this state;
- 1638 (c)(i)(A) who is required to register as a sex offender in another jurisdiction of
- 1639 original conviction;
- 1640 (B) who is required to register as a sex offender by a state, federal, or military
- 1641 court; or
- 1642 (C) who would be required to register as a sex offender if residing in the
- 1643 jurisdiction of the original conviction regardless of the date of the conviction or
- 1644 a previous registration requirement; and
- 1645 (ii) who is in this state for a total of 10 days in a 12-month period, regardless of
- 1646 whether the offender intends to permanently reside in this state;
- 1647 (d)(i)(A) who is a nonresident regularly employed or working in this state; or
- 1648 (B) who is a student in this state; and
- 1649 (ii)(A) who was convicted of one or more offenses listed in Subsection (19)(a) or
- 1650 a substantially equivalent offense in another jurisdiction; or
- 1651 (B) who is required to register in the individual's jurisdiction of residence based
- 1652 on a conviction for an offense that is not substantially equivalent to an offense
- 1653 listed in Subsection (19)(a);
- 1654 (e) who is found not guilty by reason of insanity in this state, or in another jurisdiction of
- 1655 one or more offenses listed in Subsection (19)(a); or
- 1656 (f)(i) who is adjudicated under Section 80-6-701 for one or more offenses listed in
- 1657 Subsection (19)(a); and
- 1658 (ii) who has been committed to the division for secure care, as defined in Section
- 1659 80-1-102, for that offense if:
- 1660 (A) the individual remains in the division's custody until 30 days before the

- 1661 individual's 21st birthday;
- 1662 (B) the juvenile court extended the juvenile court's jurisdiction over the individual
- 1663 under Section 80-6-605 and the individual remains in the division's custody
- 1664 until 30 days before the individual's 25th birthday; or
- 1665 (C) the individual is moved from the division's custody to the custody of the
- 1666 department before expiration of the division's jurisdiction over the individual.
- 1667 (20) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving
- 1668 Under the Influence and Reckless Driving.
- 1669 (21) "Vehicle" means a motor vehicle, an aircraft, or a watercraft subject to registration in
- 1670 any jurisdiction.
- 1671 Section 16. Section **78B-6-117** is amended to read:
- 1672 **78B-6-117 . Who may adopt -- Adoption of minor.**
- 1673 (1) A minor child may be adopted by an adult individual, in accordance with this section
- 1674 and this part.
- 1675 (2) A child may be adopted by:
- 1676 (a) adults who are legally married to each other in accordance with the laws of this state,
- 1677 including adoption by a stepparent; or
- 1678 (b) subject to Subsections (3) and (4), a single adult.
- 1679 (3) A child may not be adopted by an individual who is cohabiting in a relationship that is
- 1680 not a legally valid and binding marriage under the laws of this state unless the individual
- 1681 is a relative of the child or a recognized placement under the Indian Child Welfare Act,
- 1682 25 U.S.C. Sec. 1901 et seq.
- 1683 (4) To provide a child who is in the custody of the division with the most beneficial family
- 1684 structure, when a child in the custody of the division is placed for adoption, the division
- 1685 or child-placing agency shall place the child with a married couple, unless:
- 1686 (a) there are no qualified married couples who:
- 1687 (i) have applied to adopt a child;
- 1688 (ii) are willing to adopt the child; and
- 1689 (iii) are an appropriate placement for the child;
- 1690 (b) the child is placed with a relative of the child;
- 1691 (c) the child is placed with an individual who has already developed a substantial
- 1692 relationship with the child;
- 1693 (d) the child is placed with an individual who:
- 1694 (i) is selected by a parent or former parent of the child, if the parent or former parent

- 1695 consented to the adoption of the child; and
- 1696 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 1697 (A) knew the individual with whom the child is placed before the parent
- 1698 consented to the adoption; or
- 1699 (B) became aware of the individual with whom the child is placed through a
- 1700 source other than the division or the child-placing agency that assists with the
- 1701 adoption of the child; or
- 1702 (e) it is in the best interests of the child to place the child with a single adult.
- 1703 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption
- 1704 is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a
- 1705 felony or attempted felony involving conduct that constitutes any of the following:
- 1706 (a) child abuse, as described in Section 76-5-109;
- 1707 (b) aggravated child abuse, as described in Section 76-5-109.2;
- 1708 (c) child abandonment, as described in Section 76-5-109.3;
- 1709 (d) child torture, as described in Section 76-5-109.4;
- 1710 (e) commission of domestic violence in the presence of a child, as described in Section
- 1711 76-5-114;
- 1712 [~~(b)~~] (f) child abuse homicide, as described in Section 76-5-208;
- 1713 [~~(e)~~] (g) child kidnapping, as described in Section 76-5-301.1;
- 1714 [~~(d)~~] (h) human trafficking of a child, as described in Section 76-5-308.5;
- 1715 [~~(e)~~] (i) sexual abuse of a minor, as described in Section 76-5-401.1;
- 1716 [~~(f)~~] (j) rape of a child, as described in Section 76-5-402.1;
- 1717 [~~(g)~~] (k) object rape of a child, as described in Section 76-5-402.3;
- 1718 [~~(h)~~] (l) sodomy on a child, as described in Section 76-5-403.1;
- 1719 [~~(i)~~] (m) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual
- 1720 abuse of a child, as described in Section 76-5-404.3;
- 1721 [~~(j)~~] (n) sexual exploitation of a minor, as described in Section 76-5b-201;
- 1722 [~~(k)~~] (o) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;
- 1723 or
- 1724 [~~(l)~~] aggravated child abuse, as described in Section 76-5-109.2;
- 1725 [~~(m)~~] child abandonment, as described in Section 76-5-109.3;
- 1726 [~~(n)~~] commission of domestic violence in the presence of a child, as described in Section
- 1727 76-5-114; or]
- 1728 [~~(o)~~] (p) an offense in another state that, if committed in this state, would constitute an

- 1729 offense described in this Subsection (5).
- 1730 (6)(a) For purpose of this Subsection (6), "disqualifying offense" means an offense  
1731 listed in Subsection (5) that prevents a court from considering an individual for  
1732 adoption of a child except as provided in this Subsection (6).
- 1733 (b) An individual described in Subsection (5) may only be considered for adoption of a  
1734 child if the following criteria are met by clear and convincing evidence:
- 1735 (i) at least 10 years have elapsed from the day on which the individual is successfully  
1736 released from prison, jail, parole, or probation related to a disqualifying offense;
- 1737 (ii) during the 10 years before the day on which the individual files a petition with the  
1738 court seeking adoption, the individual has not been convicted, pleaded guilty, or  
1739 pleaded no contest to an offense greater than an infraction or traffic violation that  
1740 would likely impact the health, safety, or well-being of the child;
- 1741 (iii) the individual can provide evidence of successful treatment or rehabilitation  
1742 directly related to the disqualifying offense;
- 1743 (iv) the court determines that the risk related to the disqualifying offense is unlikely  
1744 to cause harm, as defined in Section 80-1-102, or potential harm to the child  
1745 currently or at any time in the future when considering all of the following:
- 1746 (A) the child's age;
- 1747 (B) the child's gender;
- 1748 (C) the child's development;
- 1749 (D) the nature and seriousness of the disqualifying offense;
- 1750 (E) the preferences of a child 12 years old or older;
- 1751 (F) any available assessments, including custody evaluations, home studies,  
1752 pre-placement adoptive evaluations, parenting assessments, psychological or  
1753 mental health assessments, and bonding assessments; and
- 1754 (G) any other relevant information;
- 1755 (v) the individual can provide evidence of all of the following:
- 1756 (A) the relationship with the child is of long duration;
- 1757 (B) that an emotional bond exists with the child; and
- 1758 (C) that adoption by the individual who has committed the disqualifying offense  
1759 ensures the best interests of the child are met; and
- 1760 (vi) the adoption is by:
- 1761 (A) a stepparent whose spouse is the adoptee's parent and consents to the  
1762 adoption; or

- 1763 (B) subject to Subsection (6)(d), a relative of the child as defined in Section  
1764 80-3-102 and there is not another relative without a disqualifying offense filing  
1765 an adoption petition.
- 1766 (c) The individual with the disqualifying offense bears the burden of proof regarding  
1767 why adoption with that individual is in the best interest of the child over another  
1768 responsible relative or equally situated individual who does not have a disqualifying  
1769 offense.
- 1770 (d) If there is an alternative responsible relative who does not have a disqualifying  
1771 offense filing an adoption petition, the following applies:
- 1772 (i) preference for adoption shall be given to a relative who does not have a  
1773 disqualifying offense; and
- 1774 (ii) before the court may grant adoption to the individual who has the disqualifying  
1775 offense over another responsible, willing, and able relative:
- 1776 (A) an impartial custody evaluation shall be completed; and  
1777 (B) a guardian ad litem shall be assigned.
- 1778 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final  
1779 decision on adoption has not been made and to a case filed on or after March 25, 2017.  
1780 Section 17. Section **78B-7-801** is amended to read:
- 1781 **78B-7-801 . Definitions.**
- 1782 As used in this part:
- 1783 (1)(a) "Jail release agreement" means a written agreement that is entered into by an  
1784 individual who is arrested or issued a citation, regardless of whether the individual is  
1785 booked into jail:
- 1786 (i) under which the arrested or cited individual agrees to not engage in any of the  
1787 following:
- 1788 (A) telephoning, contacting, or otherwise communicating with the alleged victim,  
1789 directly or indirectly;
- 1790 (B) threatening or harassing the alleged victim; or
- 1791 (C) knowingly entering onto the premises of the alleged victim's residence or on  
1792 premises temporarily occupied by the alleged victim, unless, after a law  
1793 enforcement officer or the law enforcement officer's employing agency notifies  
1794 or attempts to notify the alleged victim, the individual enters the premises  
1795 while accompanied by a law enforcement officer for the purpose of retrieving  
1796 the individual's personal belongings; and

- 1797 (ii) that specifies other conditions of release from jail or arrest.
- 1798 (b) "Jail release agreement" includes a written agreement that includes the conditions  
1799 described in Section (1)(a) entered into by a minor who is taken into custody or  
1800 placed in detention or a shelter facility under Section 80-6-201.
- 1801 (2) "Jail release court order" means a written court order that:
- 1802 (a) orders an arrested or cited individual not to engage in any of the following:
- 1803 (i) telephoning, contacting, or otherwise communicating with the alleged victim,  
1804 directly or indirectly;
- 1805 (ii) threatening or harassing the alleged victim; or
- 1806 (iii) knowingly entering onto the premises of the alleged victim's residence or on  
1807 premises temporarily occupied by the alleged victim, unless, after a law  
1808 enforcement officer or the law enforcement officer's employing agency notifies or  
1809 attempts to notify the alleged victim, the individual enters the premises while  
1810 accompanied by a law enforcement officer for the purpose of retrieving the  
1811 individual's personal belongings; and
- 1812 (b) specifies other conditions of release from jail.
- 1813 (3) "Minor" means the same as that term is defined in Section 80-1-102.
- 1814 (4) "Offense against a child or vulnerable adult" means the commission or attempted  
1815 commission of an offense described in:
- 1816 (a) Section 76-5-109, child abuse;
- 1817 (b) Section 76-5-109.2, aggravated child abuse;
- 1818 (c) Section 76-5-109.3, child abandonment;
- 1819 (d) Section 76-5-109.4, child torture;
- 1820 [~~(d)~~] (e) Section 76-5-110, abuse or neglect of a child with a disability;
- 1821 [~~(e)~~] (f) Section 76-5-111, abuse of a vulnerable adult;
- 1822 [~~(f)~~] (g) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 1823 [~~(g)~~] (h) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 1824 [~~(h)~~] (i) Section 76-5-111.4, financial exploitation of a vulnerable adult;
- 1825 [~~(i)~~] (j) Section 76-5-114, commission of domestic violence in the presence of a child; or
- 1826 [~~(j)~~] (k) Section 76-9-702.1, sexual battery.
- 1827 (5) "Qualifying offense" means:
- 1828 (a) domestic violence;
- 1829 (b) an offense against a child or vulnerable adult; or
- 1830 (c) the commission or attempted commission of an offense described in Section

1831 76-9-702.1 or Title 76, Chapter 5, Part 4, Sexual Offenses.

1832 Section 18. Section **80-1-102** is amended to read:

1833 **80-1-102 . Juvenile Code definitions.**

1834 Except as provided in Section 80-6-1103, as used in this title:

1835 (1)(a) "Abuse" means:

1836 (i)(A) nonaccidental harm of a child;

1837 (B) threatened harm of a child;

1838 (C) sexual exploitation;

1839 (D) sexual abuse; or

1840 (E) human trafficking of a child in violation of Section 76-5-308.5; or

1841 (ii) that a child's natural parent:

1842 (A) intentionally, knowingly, or recklessly causes the death of another parent of  
1843 the child;

1844 (B) is identified by a law enforcement agency as the primary suspect in an  
1845 investigation for intentionally, knowingly, or recklessly causing the death of  
1846 another parent of the child; or

1847 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
1848 recklessly causing the death of another parent of the child.

1849 (b) "Abuse" does not include:

1850 (i) reasonable discipline or management of a child, including withholding privileges;

1851 (ii) conduct described in Section 76-2-401; or

1852 (iii) the use of reasonable and necessary physical restraint or force on a child:

1853 (A) in self-defense;

1854 (B) in defense of others;

1855 (C) to protect the child; or

1856 (D) to remove a weapon in the possession of a child for any of the reasons  
1857 described in Subsections (1)(b)(iii)(A) through (C).

1858 (2) "Abused child" means a child who has been subjected to abuse.

1859 (3)(a) "Adjudication" means, except as provided in Subsection (3)(b):

1860 (i) for a delinquency petition or criminal information under Chapter 6, Juvenile  
1861 Justice:

1862 (A) a finding by the juvenile court that the facts alleged in a delinquency petition  
1863 or criminal information alleging that a minor committed an offense have been  
1864 proved;

- 1865 (B) an admission by a minor in the juvenile court as described in Section 80-6-306;  
1865a  
1866 or  
1867 (C) a plea of no contest by minor in the juvenile court; or  
1868 (ii) for all other proceedings under this title, a finding by the juvenile court that the  
1869 facts alleged in the petition have been proved.
- 1870 (b) "Adjudication" does not include:  
1871 (i) an admission by a minor described in Section 80-6-306 until the juvenile court  
1872 enters the minor's admission; or  
1873 (ii) a finding of not competent to proceed in accordance with Section 80-6-402.
- 1874 (4)(a) "Adult" means an individual who is 18 years old or older.  
1875 (b) "Adult" does not include an individual:  
1876 (i) who is 18 years old or older; and  
1877 (ii) who is a minor.
- 1878 (5) "Attorney guardian ad litem" means the same as that term is defined in Section  
1879 78A-2-801.
- 1880 (6) "Board" means the Board of Juvenile Court Judges.
- 1881 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18  
1882 years old.
- 1883 (8) "Child and family plan" means a written agreement between a child's parents or  
1884 guardian and the Division of Child and Family Services as described in Section 80-3-307.
- 1885 (9) "Child placing" means the same as that term is defined in Section 26B-2-101.
- 1886 (10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.
- 1887 (11) "Child protection team" means a team consisting of:  
1888 (a) the child welfare caseworker assigned to the case;  
1889 (b) if applicable, the child welfare caseworker who made the decision to remove the  
1890 child;  
1891 (c) a representative of the school or school district where the child attends school;  
1892 (d) if applicable, the law enforcement officer who removed the child from the home;  
1893 (e) a representative of the appropriate Children's Justice Center, if one is established  
1894 within the county where the child resides;  
1895 (f) if appropriate, and known to the division, a therapist or counselor who is familiar  
1896 with the child's circumstances;  
1897 (g) if appropriate, a representative of law enforcement selected by the chief of police or



- 1898 sheriff in the city or county where the child resides; and
- 1899 (h) any other individuals determined appropriate and necessary by the team coordinator
- 1900 and chair.
- 1901 (12)(a) "Chronic abuse" means repeated or patterned abuse.
- 1902 (b) "Chronic abuse" does not mean an isolated incident of abuse.
- 1903 (13)(a) "Chronic neglect" means repeated or patterned neglect.
- 1904 (b) "Chronic neglect" does not mean an isolated incident of neglect.
- 1905 (14) "Clandestine laboratory operation" means the same as that term is defined in Section
- 1906 58-37d-3.
- 1907 (15) "Commit" or "committed" means, unless specified otherwise:
- 1908 (a) with respect to a child, to transfer legal custody; and
- 1909 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 1910 (16) "Community-based program" means a nonsecure residential or nonresidential program,
- 1911 designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
- 1912 restrictive setting, consistent with public safety, and operated by or under contract with
- 1913 the Division of Juvenile Justice and Youth Services.
- 1914 (17) "Community placement" means placement of a minor in a community-based program
- 1915 described in Section 80-5-402.
- 1916 (18) "Correctional facility" means:
- 1917 (a) a county jail; or
- 1918 (b) a secure correctional facility as defined in Section 64-13-1.
- 1919 (19) "Criminogenic risk factors" means evidence-based factors that are associated with a
- 1920 minor's likelihood of reoffending.
- 1921 (20) "Department" means the Department of Health and Human Services created in Section
- 1922 26B-1-201.
- 1923 (21) "Dependent child" or "dependency" means a child who is without proper care through
- 1924 no fault of the child's parent, guardian, or custodian.
- 1925 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a
- 1926 parent or a previous custodian to another person, agency, or institution.
- 1927 (23) "Detention" means home detention or secure detention.
- 1928 (24) "Detention facility" means a facility, established by the Division of Juvenile Justice
- 1929 and Youth Services in accordance with Section 80-5-501, for minors held in detention.
- 1930 (25) "Detention risk assessment tool" means an evidence-based tool established under
- 1931 Section 80-5-203 that:

- 1932 (a) assesses a minor's risk of failing to appear in court or reoffending before  
1933 adjudication; and
- 1934 (b) is designed to assist in making a determination of whether a minor shall be held in  
1935 detention.
- 1936 (26) "Developmental immaturity" means incomplete development in one or more domains  
1937 that manifests as a functional limitation in the minor's present ability to:
- 1938 (a) consult with counsel with a reasonable degree of rational understanding; and  
1939 (b) have a rational as well as factual understanding of the proceedings.
- 1940 (27) "Disposition" means an order by a juvenile court, after the adjudication of a minor,  
1941 under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.
- 1942 (28) "Educational neglect" means that, after receiving a notice of compulsory education  
1943 violation under Section 53G-6-202, the parent or guardian fails to make a good faith  
1944 effort to ensure that the child receives an appropriate education.
- 1945 (29) "Educational series" means an evidence-based instructional series:
- 1946 (a) obtained at a substance abuse program that is approved by the Division of Integrated  
1947 Healthcare in accordance with Section 26B-5-104; and
- 1948 (b) designed to prevent substance use or the onset of a mental health disorder.
- 1949 (30) "Emancipated" means the same as that term is defined in Section 80-7-102.
- 1950 (31) "Evidence-based" means a program or practice that has had multiple randomized  
1951 control studies or a meta-analysis demonstrating that the program or practice is effective  
1952 for a specific population or has been rated as effective by a standardized program  
1953 evaluation tool.
- 1954 (32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- 1955 (33) "Formal probation" means a minor is:
- 1956 (a) supervised in the community by, and reports to, a juvenile probation officer or an  
1957 agency designated by the juvenile court; and
- 1958 (b) subject to return to the juvenile court in accordance with Section 80-6-607.
- 1959 (34) "Group rehabilitation therapy" means psychological and social counseling of one or  
1960 more individuals in the group, depending upon the recommendation of the therapist.
- 1961 (35) "Guardian" means a person appointed by a court to make decisions regarding a minor,  
1962 including the authority to consent to:
- 1963 (a) marriage;
- 1964 (b) enlistment in the armed forces;
- 1965 (c) major medical, surgical, or psychiatric treatment; or

- 1966 (d) legal custody, if legal custody is not vested in another individual, agency, or  
1967 institution.
- 1968 (36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.
- 1969 (37) "Harm" means:
- 1970 (a) physical or developmental injury or damage;
- 1971 (b) emotional damage that results in a serious impairment in the child's growth,  
1972 development, behavior, or psychological functioning;
- 1973 (c) sexual abuse; or
- 1974 (d) sexual exploitation.
- 1975 (38) "Home detention" means placement of a minor:
- 1976 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent  
1977 of the minor's parent, guardian, or custodian, under terms and conditions established  
1978 by the Division of Juvenile Justice and Youth Services or the juvenile court; or
- 1979 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the  
1980 minor's home, or in a surrogate home with the consent of the minor's parent,  
1981 guardian, or custodian, under terms and conditions established by the Division of  
1982 Juvenile Justice and Youth Services or the juvenile court.
- 1983 (39)(a) "Incest" means engaging in sexual intercourse with an individual whom the  
1984 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle,  
1985 aunt, nephew, niece, or first cousin.
- 1986 (b) "Incest" includes:
- 1987 (i) blood relationships of the whole or half blood, regardless of whether the  
1988 relationship is legally recognized;
- 1989 (ii) relationships of parent and child by adoption; and
- 1990 (iii) relationships of stepparent and stepchild while the marriage creating the  
1991 relationship of a stepparent and stepchild exists.
- 1992 (40) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 1993 (41) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 1994 (42) "Indigent defense service provider" means the same as that term is defined in Section  
1995 78B-22-102.
- 1996 (43) "Indigent defense services" means the same as that term is defined in Section  
1997 78B-22-102.
- 1998 (44) "Indigent individual" means the same as that term is defined in Section 78B-22-102.
- 1999 (45)(a) "Intake probation" means a minor is:

- 2000 (i) monitored by a juvenile probation officer; and
- 2001 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.
- 2002 (b) "Intake probation" does not include formal probation.
- 2003 (46) "Intellectual disability" means a significant subaverage general intellectual functioning
- 2004 existing concurrently with deficits in adaptive behavior that constitutes a substantial
- 2005 limitation to the individual's ability to function in society.
- 2006 (47) "Juvenile offender" means:
- 2007 (a) a serious youth offender; or
- 2008 (b) a youth offender.
- 2009 (48) "Juvenile probation officer" means a probation officer appointed under Section
- 2010 78A-6-205.
- 2011 (49) "Juvenile receiving center" means a nonsecure, nonresidential program established by
- 2012 the Division of Juvenile Justice and Youth Services, or under contract with the Division
- 2013 of Juvenile Justice and Youth Services, that is responsible for minors taken into
- 2014 temporary custody under Section 80-6-201.
- 2015 (50) "Legal custody" means a relationship embodying:
- 2016 (a) the right to physical custody of the minor;
- 2017 (b) the right and duty to protect, train, and discipline the minor;
- 2018 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
- 2019 medical care;
- 2020 (d) the right to determine where and with whom the minor shall live; and
- 2021 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 2022 (51) "Licensing Information System" means the Licensing Information System maintained
- 2023 by the Division of Child and Family Services under Section 80-2-1002.
- 2024 (52) "Management Information System" means the Management Information System
- 2025 developed by the Division of Child and Family Services under Section 80-2-1001.
- 2026 (53) "Mental illness" means:
- 2027 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
- 2028 behavioral, or related functioning; or
- 2029 (b) the same as that term is defined in:
- 2030 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
- 2031 published by the American Psychiatric Association; or
- 2032 (ii) the current edition of the International Statistical Classification of Diseases and
- 2033 Related Health Problems.

- 2034 (54) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:
- 2035 (a) a child; or
- 2036 (b) an individual:
- 2037 (i)(A) who is at least 18 years old and younger than 21 years old; and
- 2038 (B) for whom the Division of Child and Family Services has been specifically
- 2039 ordered by the juvenile court to provide services because the individual was an
- 2040 abused, neglected, or dependent child or because the individual was
- 2041 adjudicated for an offense;
- 2042 (ii)(A) who is at least 18 years old and younger than 25 years old; and
- 2043 (B) whose case is under the jurisdiction of the juvenile court in accordance with
- 2044 Subsection 78A-6-103(1)(b); or
- 2045 (iii)(A) who is at least 18 years old and younger than 21 years old; and
- 2046 (B) whose case is under the jurisdiction of the juvenile court in accordance with
- 2047 Subsection 78A-6-103(1)(c).
- 2048 (55) "Mobile crisis outreach team" means the same as that term is defined in Section
- 2049 26B-5-101.
- 2050 (56) "Molestation" means that an individual, with the intent to arouse or gratify the sexual
- 2051 desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
- 2052 or the breast of a female child, or takes indecent liberties with a child as defined in
- 2053 Section 76-5-401.1.
- 2054 (57)(a) "Natural parent" means, except as provided in Section 80-3-302, a minor's
- 2055 biological or adoptive parent.
- 2056 (b) "Natural parent" includes the minor's noncustodial parent.
- 2057 (58)(a) "Neglect" means action or inaction causing:
- 2058 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe
- 2059 Relinquishment of a Newborn Child;
- 2060 (ii) lack of proper parental care of a child by reason of the fault or habits of the
- 2061 parent, guardian, or custodian;
- 2062 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or
- 2063 necessary subsistence or medical care, or any other care necessary for the child's
- 2064 health, safety, morals, or well-being;
- 2065 (iv) a child to be at risk of being neglected or abused because another child in the
- 2066 same home is neglected or abused;
- 2067 (v) abandonment of a child through an unregulated child custody transfer under

- 2068 Section 78B-24-203; or
- 2069 (vi) educational neglect.
- 2070 (b) "Neglect" does not include:
- 2071 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
- 2072 reason, does not provide specified medical treatment for a child;
- 2073 (ii) a health care decision made for a child by the child's parent or guardian, unless
- 2074 the state or other party to a proceeding shows, by clear and convincing evidence,
- 2075 that the health care decision is not reasonable and informed;
- 2076 (iii) a parent or guardian exercising the right described in Section 80-3-304; or
- 2077 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
- 2078 maturity to avoid harm or unreasonable risk of harm, to engage in independent
- 2079 activities, including:
- 2080 (A) traveling to and from school, including by walking, running, or bicycling;
- 2081 (B) traveling to and from nearby commercial or recreational facilities;
- 2082 (C) engaging in outdoor play;
- 2083 (D) remaining in a vehicle unattended, except under the conditions described in
- 2084 Subsection 76-10-2202(2);
- 2085 (E) remaining at home unattended; or
- 2086 (F) engaging in a similar independent activity.
- 2087 (59) "Neglected child" means a child who has been subjected to neglect.
- 2088 (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation
- 2089 officer, without an adjudication of the minor's case under Section 80-6-701, upon the
- 2090 consent in writing of:
- 2091 (a) the assigned juvenile probation officer; and
- 2092 (b)(i) the minor; or
- 2093 (ii) the minor and the minor's parent, guardian, or custodian.
- 2094 (61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual
- 2095 disability or related condition, or developmental immaturity, lacks the ability to:
- 2096 (a) understand the nature of the proceedings against the minor or of the potential
- 2097 disposition for the offense charged; or
- 2098 (b) consult with counsel and participate in the proceedings against the minor with a
- 2099 reasonable degree of rational understanding.
- 2100 (62) "Parole" means a conditional release of a juvenile offender from residency in secure
- 2101 care to live outside of secure care under the supervision of the Division of Juvenile

- 2102 Justice and Youth Services, or another person designated by the Division of Juvenile  
2103 Justice and Youth Services.
- 2104 (63) "Physical abuse" means abuse that results in physical injury or damage to a child.
- 2105 (64)(a) "Probation" means a legal status created by court order, following an  
2106 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the  
2107 minor's home under prescribed conditions.
- 2108 (b) "Probation" includes intake probation or formal probation.
- 2109 (65) "Prosecuting attorney" means:
- 2110 (a) the attorney general and any assistant attorney general;
- 2111 (b) any district attorney or deputy district attorney;
- 2112 (c) any county attorney or assistant county attorney; and
- 2113 (d) any other attorney authorized to commence an action on behalf of the state.
- 2114 (66) "Protective custody" means the shelter of a child by the Division of Child and Family  
2115 Services from the time the child is removed from the home until the earlier of:
- 2116 (a) the day on which the shelter hearing is held under Section 80-3-301; or
- 2117 (b) the day on which the child is returned home.
- 2118 (67) "Protective services" means expedited services that are provided:
- 2119 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 2120 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 2121 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the  
2122 causes of neglect or abuse; and
- 2123 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 2124 (c) in cases where the child's welfare is endangered:
- 2125 (i) to bring the situation to the attention of the appropriate juvenile court and law  
2126 enforcement agency;
- 2127 (ii) to cause a protective order to be issued for the protection of the child, when  
2128 appropriate; and
- 2129 (iii) to protect the child from the circumstances that endanger the child's welfare  
2130 including, when appropriate:
- 2131 (A) removal from the child's home;
- 2132 (B) placement in substitute care; and
- 2133 (C) petitioning the court for termination of parental rights.
- 2134 (68) "Protective supervision" means a legal status created by court order, following an  
2135 adjudication on the ground of abuse, neglect, or dependency, whereby:

- 2136 (a) the minor is permitted to remain in the minor's home; and  
2137 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided  
2138 by an agency designated by the juvenile court.
- 2139 (69)(a) "Related condition" means a condition that:  
2140 (i) is found to be closely related to intellectual disability;  
2141 (ii) results in impairment of general intellectual functioning or adaptive behavior  
2142 similar to that of an intellectually disabled individual;  
2143 (iii) is likely to continue indefinitely; and  
2144 (iv) constitutes a substantial limitation to the individual's ability to function in society.
- 2145 (b) "Related condition" does not include mental illness, psychiatric impairment, or  
2146 serious emotional or behavioral disturbance.
- 2147 (70)(a) "Residual parental rights and duties" means the rights and duties remaining with  
2148 a parent after legal custody or guardianship, or both, have been vested in another  
2149 person or agency, including:  
2150 (i) the responsibility for support;  
2151 (ii) the right to consent to adoption;  
2152 (iii) the right to determine the child's religious affiliation; and  
2153 (iv) the right to reasonable parent-time unless restricted by the court.
- 2154 (b) If no guardian has been appointed, "residual parental rights and duties" includes the  
2155 right to consent to:  
2156 (i) marriage;  
2157 (ii) enlistment; and  
2158 (iii) major medical, surgical, or psychiatric treatment.
- 2159 (71) "Runaway" means a child, other than an emancipated child, who willfully leaves the  
2160 home of the child's parent or guardian, or the lawfully prescribed residence of the child,  
2161 without permission.
- 2162 (72) "Secure care" means placement of a minor, who is committed to the Division of  
2163 Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under  
2164 contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour  
2165 supervision and confinement of the minor.
- 2166 (73) "Secure care facility" means a facility, established in accordance with Section 80-5-503,  
2166a  
2167 for juvenile offenders in secure care.
- 2168 (74) "Secure detention" means temporary care of a minor who requires secure custody in a



- 2169 physically restricting facility operated by, or under contract with, the Division of  
 2170 Juvenile Justice and Youth Services:
- 2171 (a) before disposition of an offense that is alleged to have been committed by the minor;  
 2172 or  
 2173 (b) under Section 80-6-704.
- 2174 (75) "Serious youth offender" means an individual who:
- 2175 (a) is at least 14 years old, but under 25 years old;  
 2176 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction  
 2177 of the juvenile court was extended over the individual's case until the individual was  
 2178 25 years old in accordance with Section 80-6-605; and  
 2179 (c) is committed by the juvenile court to the Division of Juvenile Justice and Youth  
 2180 Services for secure care under Sections 80-6-703 and 80-6-705.
- 2181 (76) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
- 2182 (77) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
 2183 child.
- 2184 (78)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection  
 2185 (78)(b):
- 2186 (i) if committed by an individual who is 18 years old or older:
- 2187 (A) chronic abuse;  
 2188 (B) severe abuse;  
 2189 (C) sexual abuse;  
 2190 (D) sexual exploitation;  
 2191 (E) abandonment;  
 2192 (F) chronic neglect; or  
 2193 (G) severe neglect; or
- 2194 (ii) if committed by an individual who is under 18 years old:
- 2195 (A) causing serious [~~physical~~]injury, as defined in Subsection 76-5-109(1), to  
 2196 another child that indicates a significant risk to other children; or  
 2197 (B) sexual behavior with or upon another child that indicates a significant risk to  
 2198 other children.
- 2199 (b) "Severe type of child abuse or neglect" does not include:
- 2200 (i) the use of reasonable and necessary physical restraint by an educator in  
 2201 accordance with Subsection 53G-8-302(2) or Section 76-2-401;  
 2202 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the

- 2203 use of reasonable and necessary physical restraint or force in self-defense or  
2204 otherwise appropriate to the circumstances to obtain possession of a weapon or  
2205 other dangerous object in the possession or under the control of a child or to  
2206 protect the child or another individual from physical injury; or
- 2207 (iii) a health care decision made for a child by a child's parent or guardian, unless,  
2208 subject to Subsection (78)(c), the state or other party to the proceeding shows, by  
2209 clear and convincing evidence, that the health care decision is not reasonable and  
2210 informed.
- 2211 (c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the  
2212 right to obtain a second health care opinion.
- 2213 (79) "Sexual abuse" means:
- 2214 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an  
2215 adult directed towards a child;
- 2216 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation  
2217 committed by a child towards another child if:
- 2218 (i) there is an indication of force or coercion;
- 2219 (ii) the children are related, as described in Subsection (39), including siblings by  
2220 marriage while the marriage exists or by adoption;
- 2221 (iii) there have been repeated incidents of sexual contact between the two children,  
2222 unless the children are 14 years old or older; or
- 2223 (iv) there is a disparity in chronological age of four or more years between the two  
2224 children;
- 2225 (c) engaging in any conduct with a child that would constitute an offense under any of  
2226 the following, regardless of whether the individual who engages in the conduct is  
2227 actually charged with, or convicted of, the offense:
- 2228 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the  
2229 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 2230 (ii) child bigamy, Section 76-7-101.5;
- 2231 (iii) incest, Section 76-7-102;
- 2232 (iv) lewdness, Section 76-9-702;
- 2233 (v) sexual battery, Section 76-9-702.1;
- 2234 (vi) lewdness involving a child, Section 76-9-702.5; or
- 2235 (vii) voyeurism, Section 76-9-702.7; or
- 2236 (d) subjecting a child to participate in or threatening to subject a child to participate in a

2237 sexual relationship, regardless of whether that sexual relationship is part of a legal or  
2238 cultural marriage.

2239 (80) "Sexual exploitation" means knowingly:

2240 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

2241 (i) pose in the nude for the purpose of sexual arousal of any individual; or

2242 (ii) engage in any sexual or simulated sexual conduct for the purpose of  
2243 photographing, filming, recording, or displaying in any way the sexual or  
2244 simulated sexual conduct;

2245 (b) displaying, distributing, possessing for the purpose of distribution, or selling material  
2246 depicting a child:

2247 (i) in the nude, for the purpose of sexual arousal of any individual; or

2248 (ii) engaging in sexual or simulated sexual conduct; or

2249 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,  
2250 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual  
2251 exploitation of a minor, regardless of whether the individual who engages in the  
2252 conduct is actually charged with, or convicted of, the offense.

2253 (81) "Shelter" means the temporary care of a child in a physically unrestricted facility  
2254 pending a disposition or transfer to another jurisdiction.

2255 (82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.

2256 (83) "Significant risk" means a risk of harm that is determined to be significant in  
2257 accordance with risk assessment tools and rules established by the Division of Child and  
2258 Family Services in accordance with Title 63G, Chapter 3, Utah Administrative  
2259 Rulemaking Act, that focus on:

2260 (a) age;

2261 (b) social factors;

2262 (c) emotional factors;

2263 (d) sexual factors;

2264 (e) intellectual factors;

2265 (f) family risk factors; and

2266 (g) other related considerations.

2267 (84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

2268 (85) "Status offense" means an offense that would not be an offense but for the age of the  
2269 offender.

2270 (86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or

- 2271 excessive use of alcohol or other drugs or substances.
- 2272 (87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance  
2273 of the evidence, and separate consideration of each allegation made or identified in the  
2274 case, that abuse, neglect, or dependency occurred .
- 2275 (88) "Substitute care" means:
- 2276 (a) the placement of a minor in a family home, group care facility, or other placement  
2277 outside the minor's own home, either at the request of a parent or other responsible  
2278 relative, or upon court order, when it is determined that continuation of care in the  
2279 minor's own home would be contrary to the minor's welfare;
- 2280 (b) services provided for a minor in the protective custody of the Division of Child and  
2281 Family Services, or a minor in the temporary custody or custody of the Division of  
2282 Child and Family Services, as those terms are defined in Section 80-2-102; or
- 2283 (c) the licensing and supervision of a substitute care facility.
- 2284 (89) "Supported" means a finding by the Division of Child and Family Services based on  
2285 the evidence available at the completion of an investigation, and separate consideration  
2286 of each allegation made or identified during the investigation, that there is a reasonable  
2287 basis to conclude that abuse, neglect, or dependency occurred.
- 2288 (90) "Termination of parental rights" means the permanent elimination of all parental rights  
2289 and duties, including residual parental rights and duties, by court order.
- 2290 (91) "Therapist" means:
- 2291 (a) an individual employed by a state division or agency for the purpose of conducting  
2292 psychological treatment and counseling of a minor in the division's or agency's  
2293 custody; or
- 2294 (b) any other individual licensed or approved by the state for the purpose of conducting  
2295 psychological treatment and counseling.
- 2296 (92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that  
2297 the child is at an unreasonable risk of harm or neglect.
- 2298 (93) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:
- 2299 (a) results in behavior that is beyond the control or ability of the child, or the parent or  
2300 guardian, to manage effectively;
- 2301 (b) poses a threat to the safety or well-being of the child, the child's family, or others; or
- 2302 (c) results in the situations described in Subsections (93)(a) and (b).
- 2303 (94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to  
2304 conclude that abuse, neglect, or dependency occurred.

2305 (95) "Unsupported" means a finding by the Division of Child and Family Services at the  
 2306 completion of an investigation, after the day on which the Division of Child and Family  
 2307 Services concludes the alleged abuse, neglect, or dependency is not without merit, that  
 2308 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

2309 (96) "Validated risk and needs assessment" means an evidence-based tool that assesses a  
 2310 minor's risk of reoffending and a minor's criminogenic needs.

2311 (97) "Without merit" means a finding at the completion of an investigation by the Division  
 2312 of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or  
 2313 dependency did not occur, or that the alleged perpetrator was not responsible for the  
 2314 abuse, neglect, or dependency.

2315 (98) "Youth offender" means an individual who is:

2316 (a) at least 12 years old, but under 21 years old; and

2317 (b) committed by the juvenile court to the Division of Juvenile Justice and Youth  
 2318 Services for secure care under Sections 80-6-703 and 80-6-705.

2319 Section 19. Section **81-9-202** is amended to read:

2320 **81-9-202 . Advisory guidelines for a custody and parent-time arrangement.**

2321 (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304,  
 2322 the following advisory guidelines are suggested to govern a custody and parent-time  
 2323 arrangement between parents.

2324 (2) A parent-time schedule mutually agreed upon by both parents is preferable to a  
 2325 court-imposed solution.

2326 (3) A parent-time schedule shall be used to maximize the continuity and stability of the  
 2327 minor child's life.

2328 (4) Each parent shall give special consideration to make the minor child available to attend  
 2329 family functions including funerals, weddings, family reunions, religious holidays,  
 2330 important ceremonies, and other significant events in the life of the minor child or in the  
 2331 life of either parent which may inadvertently conflict with the parent-time schedule.

2332 (5)(a) The court shall determine the responsibility for the pick up, delivery, and return  
 2333 of the minor child when the parent-time order is entered.

2334 (b) The court may change the responsibility described in Subsection (5)(a) at any time a  
 2335 subsequent modification is made to the parent-time order.

2336 (c) If the noncustodial parent will be providing transportation, the custodial parent shall:

2337 (i) have the minor child ready for parent-time at the time the minor child is to be  
 2338 picked up ; and

- 2339 (ii) be present at the custodial home or make reasonable alternate arrangements to  
2340 receive the minor child at the time the minor child is returned.
- 2341 (d) If the custodial parent will be transporting the minor child, the noncustodial parent  
2342 shall:
- 2343 (i) be at the appointed place at the time the noncustodial parent is to receive the  
2344 minor child; and
- 2345 (ii) have the minor child ready to be picked up at the appointed time and place or  
2346 have made reasonable alternate arrangements for the custodial parent to pick up  
2347 the minor child.
- 2348 (6) A parent may not interrupt regular school hours for a school-age minor child for the  
2349 exercise of parent-time.
- 2350 (7) The court may:
- 2351 (a) make alterations in the parent-time schedule to reasonably accommodate the work  
2352 schedule of both parents; and
- 2353 (b) increase the parent-time allowed to the noncustodial parent but may not diminish the  
2354 standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- 2355 (8) The court may make alterations in the parent-time schedule to reasonably accommodate  
2356 the distance between the parties and the expense of exercising parent-time.
- 2357 (9) A parent may not withhold parent-time or child support due to the other parent's failure  
2358 to comply with a court-ordered parent-time schedule.
- 2359 (10)(a) The custodial parent shall notify the noncustodial parent within 24 hours of  
2360 receiving notice of all significant school, social, sports, and community functions in  
2361 which the minor child is participating or being honored.
- 2362 (b) The noncustodial parent is entitled to attend and participate fully in the functions  
2363 described in Subsection (10)(a).
- 2364 (c) The noncustodial parent shall have access directly to all school reports including  
2365 preschool and daycare reports and medical records.
- 2366 (d) A parent shall immediately notify the other parent in the event of a medical  
2367 emergency.
- 2368 (11) Each parent shall provide the other with the parent's current address and telephone  
2369 number, email address, and other virtual parent-time access information within 24 hours  
2370 of any change.
- 2371 (12)(a) Each parent shall permit and encourage, during reasonable hours, reasonable  
2372 and uncensored communications with the minor child, in the form of mail privileges

- 2373 and virtual parent-time if the equipment is reasonably available.
- 2374 (b) If the parents cannot agree on whether the equipment is reasonably available, the  
2375 court shall decide whether the equipment for virtual parent-time is reasonably  
2376 available by taking into consideration:
- 2377 (i) the best interests of the minor child;
- 2378 (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
- 2379 (iii) any other factors the court considers material.
- 2380 (13)(a) Parental care is presumed to be better care for the minor child than surrogate  
2381 care.
- 2382 (b) The court shall encourage the parties to cooperate in allowing the noncustodial  
2383 parent, if willing and able to transport the minor child, to provide the child care.
- 2384 (c) Child care arrangements existing during the marriage are preferred as are child care  
2385 arrangements with nominal or no charge.
- 2386 (14) Each parent shall:
- 2387 (a) provide all surrogate care providers with the name, current address, and telephone  
2388 number of the other parent; and
- 2389 (b) provide the noncustodial parent with the name, current address, and telephone  
2390 number of all surrogate care providers unless the court for good cause orders  
2391 otherwise.
- 2392 (15)(a) Each parent is entitled to an equal division of major religious holidays  
2393 celebrated by the parents.
- 2394 (b) The parent who celebrates a religious holiday that the other parent does not celebrate  
2395 shall have the right to be together with the minor child on the religious holiday.
- 2396 (16) If the minor child is on a different parent-time schedule than a sibling, based on  
2397 Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for  
2398 parent-time with all the minor children so that parent-time is uniform between school  
2399 aged and nonschool aged children, is appropriate.
- 2400 (17)(a) When one or both parents are servicemembers or contemplating joining a  
2401 uniformed service, the parents should resolve issues of custodial responsibility in the  
2402 event of deployment as soon as practicable through reaching a voluntary agreement  
2403 pursuant to Section 78B-20-201 or through court order obtained pursuant to this part.
- 2404 (b) Service members shall ensure their family care plan reflects orders and agreements  
2405 entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents  
2406 Custody, Parent-time, and Visitation Act.

- 2407 (18) A parent shall immediately notify the other parent if:
- 2408 (a) the parent resides with an individual or provides an individual with access to the
- 2409 minor child; and
- 2410 (b) the parent knows that the individual:
- 2411 (i) is required to register as a sex offender or a kidnap offender for an offense against
- 2412 a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
- 2413 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child
- 2414 Abuse Offender Registry; or
- 2415 (iii) has been convicted of:
- 2416 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,
- 2417 76-5-109.4, 76-5-114, or 76-5-208;
- 2418 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
- 2419 Offenses;
- 2420 (C) an offense for kidnapping or human trafficking of a minor child under Title
- 2421 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 2422 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
- 2423 Sexual Exploitation Act; or
- 2424 (E) an offense that is substantially similar to an offense under Subsections
- 2425 (18)(b)(iii)(A) through (D).
- 2426 (19)(a) For emergency purposes, whenever the minor child travels with a parent, the
- 2427 parent shall provide the following information to the other parent:
- 2428 (i) an itinerary of travel dates;
- 2429 (ii) destinations;
- 2430 (iii) places where the minor child or traveling parent can be reached; and
- 2431 (iv) the name and telephone number of an available third person who would be
- 2432 knowledgeable of the minor child's location.
- 2433 (b) Unchaperoned travel of a minor child under the age of five years is not
- 2434 recommended.
- 2435 Section 20. Section **81-9-207** is amended to read:
- 2436 **81-9-207 . Supervised parent-time.**
- 2437 (1) If it is necessary to protect a minor child and there is no less restrictive means
- 2438 reasonably available, and in accordance with Section 81-9-104, a court may order
- 2439 supervised parent-time if the court finds evidence that the minor child would be subject
- 2440 to physical or emotional harm or child abuse, as described in Sections 76-5-109,



- 2441 76-5-109.2, 76-5-109.3, 76-5-109.4, 76-5-114, and 80-1-102, from the noncustodial  
2442 parent if left unsupervised with the noncustodial parent.
- 2443 (2) If the court finds evidence of domestic violence, child abuse, or an ongoing risk to a  
2444 child, and orders supervised parent-time, the court shall give preference to supervision  
2445 by a professional individual or private agency trained in child abuse reporting laws, the  
2446 developmental needs of a child, and the dynamics of domestic violence, child abuse,  
2447 sexual abuse, and substance abuse.
- 2448 (3) If a professional individual or private agency described in Subsection (2) is not  
2449 available, affordable, or practicable under the circumstances, a court shall give  
2450 preference to supervision by an individual who is:
- 2451 (a) capable and willing to provide physical and psychological safety and security to the  
2452 minor child, and to assist in the avoidance and prevention of domestic and family  
2453 violence; and
- 2454 (b) is trained in child abuse reporting laws, the developmental needs of a child, and the  
2455 dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
- 2456 (4) If an individual described in Subsection (2) or (3) is not available, affordable, or  
2457 practicable under the circumstances, or if the court does not find evidence of domestic  
2458 violence, child abuse, or an ongoing risk to a minor child, a court may order supervised  
2459 parent-time that is supervised by an individual who is willing to supervise, and is  
2460 capable of protecting the minor child from physical or emotional harm, or child abuse,  
2461 and the court shall give preference to individuals suggested by the parties, including  
2462 relatives.
- 2463 (5) At the time supervised parent-time is imposed, the court shall consider:
- 2464 (a) whether the cost of professional or agency services is likely to prevent the  
2465 noncustodial parent from exercising parent-time; and
- 2466 (b) whether the requirement for supervised parent-time should expire after a set period  
2467 of time.
- 2468 (6)(a) Except when the court makes a finding that, due to abuse by or the incapacity of  
2469 the noncustodial parent, supervised parent-time will be necessary indefinitely to  
2470 ensure the physical or psychological safety and protection of the minor child, the  
2471 court shall, in its order for supervised parent-time, provide specific goals and  
2472 expectations for the noncustodial parent to accomplish before unsupervised  
2473 parent-time may be granted.
- 2474 (b) The court shall schedule one or more follow-up hearings to revisit the issue of

2475 supervised parent-time.

2476 (7) A noncustodial parent may, at any time, petition the court to modify the order for  
2477 supervised parent-time if the noncustodial parent can demonstrate that the specific goals  
2478 and expectations set by the court as described in Subsection (6) have been accomplished.

2479 Section 21. Section **81-9-208** is amended to read:

2480 **81-9-208 . Modification or termination of a custody or parent-time order --**

2481 **Noncompliance with a parent-time order.**

2482 (1) The court has continuing jurisdiction to make subsequent changes to modify:

2483 (a) custody of a minor child if there is a showing of a substantial and material change in  
2484 circumstances since the entry of the order; and

2485 (b) parent-time for a minor child if there is a showing that there is a change in  
2486 circumstances since the entry of the order.

2487 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a  
2488 showing by a parent that the other parent:

2489 (a) resides with an individual or provides an individual with access to the minor child;  
2490 and

2491 (b) knows that the individual:

2492 (i) is required to register as a sex offender or a kidnap offender for an offense against  
2493 a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;

2494 (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child  
2495 Abuse Offender Registry; or

2496 (iii) has been convicted of:

2497 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,  
2498 76-5-109.4, 76-5-114, or 76-5-208;

2499 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual  
2500 Offenses;

2501 (C) an offense for kidnapping or human trafficking of a minor child under Title  
2502 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

2503 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,  
2504 Sexual Exploitation Act; or

2505 (E) an offense that is substantially similar to an offense under Subsections  
2506 (2)(b)(iii)(A) through (D).

2507 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if  
2508 they are not the parents, the court may, after a hearing, modify or terminate an order that

- 2509 established joint legal custody or joint physical custody if:
- 2510 (a) the verified petition or accompanying affidavit initially alleges that admissible
- 2511 evidence will show that there has been a substantial and material change in the
- 2512 circumstances of the minor child or one or both parents or joint legal or physical
- 2513 custodians since the entry of the order to be modified;
- 2514 (b) a modification of the terms and conditions of the order would be an improvement for
- 2515 and in the best interest of the minor child; and
- 2516 (c)(i) both parents have complied in good faith with the dispute resolution procedure
- 2517 in accordance with Subsection 81-9-205(8); or
- 2518 (ii) if no dispute resolution procedure is contained in the order that established joint
- 2519 legal custody or joint physical custody, the court orders the parents to participate
- 2520 in a dispute resolution procedure in accordance with Subsection 81-9-205(13)
- 2521 unless the parents certify that, in good faith, they have used a dispute resolution
- 2522 procedure to resolve their dispute.
- 2523 (4)(a) In determining whether the best interest of a minor child will be served by either
- 2524 modifying or terminating the joint legal custody or joint physical custody order, the
- 2525 court shall, in addition to other factors the court considers relevant, consider the
- 2526 factors described in Sections 81-9-204 and 81-9-205.
- 2527 (b) A court order modifying or terminating an existing joint legal custody or joint
- 2528 physical custody order shall contain written findings that:
- 2529 (i) a substantial and material change of circumstance has occurred; and
- 2530 (ii) a modification of the terms and conditions of the order would be an improvement
- 2531 for and in the best interest of the minor child.
- 2532 (c) The court shall give substantial weight to the existing joint legal custody or joint
- 2533 physical custody order when the minor child is thriving, happy, and well-adjusted.
- 2534 (5) The court shall, in every case regarding a petition for termination of a joint legal
- 2535 custody or joint physical custody order, consider reasonable alternatives to preserve the
- 2536 existing order in accordance with Section 81-9-204.
- 2537 (6) The court may modify the terms and conditions of the existing order in accordance with
- 2538 this chapter and may order the parents to file a parenting plan in accordance with
- 2539 Section 81-9-203.
- 2540 (7) A parent requesting a modification from sole custody to joint legal custody or joint
- 2541 physical custody or both, or any other type of shared parenting arrangement, shall file
- 2542 and serve a proposed parenting plan with the petition to modify in accordance with

2543 Section 81-9-203.

2544 (8) If an issue before the court involves custodial responsibility in the event of deployment  
2545 of one or both parents who are service members, and the service member has not yet  
2546 been notified of deployment, the court shall resolve the issue based on the standards in  
2547 Sections 78B-20-306 through 78B-20-309.

2548 (9) If the court finds that an action to modify custody or parent-time is filed or answered  
2549 frivolously and, in a manner, designed to harass the other party, the court shall assess  
2550 attorney fees as costs against the offending party.

2551 (10) If a petition to modify custody or parent-time provisions of a court order is made and  
2552 denied, the court shall order the petitioner to pay the reasonable attorney fees expended  
2553 by the prevailing party in that action if the court determines that the petition was without  
2554 merit and not asserted or defended against in good faith.

2555 (11) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a  
2556 visitation order by a grandparent or other member of the immediate family where a  
2557 visitation or parent-time right has been previously granted by the court, the court:

2558 (a) may award to the prevailing party:

2559 (i) actual attorney fees incurred;

2560 (ii) the costs incurred by the prevailing party because of the other party's failure to  
2561 provide or exercise court-ordered visitation or parent-time, including:

2562 (A) court costs;

2563 (B) child care expenses;

2564 (C) transportation expenses actually incurred;

2565 (D) lost wages, if ascertainable; or

2566 (E) counseling for a parent or a minor child if ordered or approved by the court; or

2567 (iii) any other appropriate equitable remedy; and

2568 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up  
2569 parent-time is not in the best interest of the minor child.

2570 Section 22. Section **81-9-402** is amended to read:

2571 **81-9-402 . Custody and visitation for individuals other than a parent -- Venue.**

2572 (1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a  
2573 parent retain the fundamental right and duty to exercise primary control over the care,  
2574 supervision, upbringing, and education of a minor child of the parent.

2575 (b) There is a rebuttable presumption that a parent's decisions are in the minor child's  
2576 best interests.

- 2577 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or  
2578 visitation rights to an individual other than a parent who, by clear and convincing  
2579 evidence, establishes that:
- 2580 (a) the individual has intentionally assumed the role and obligations of a parent;
  - 2581 (b) the individual and the minor child have formed a substantial emotional bond and  
2582 created a parent-child type relationship;
  - 2583 (c) the individual substantially contributed emotionally or financially to the minor child's  
2584 well being;
  - 2585 (d) the assumption of the parental role is not the result of a financially compensated  
2586 surrogate care arrangement;
  - 2587 (e) the continuation of the relationship between the individual and the minor child is in  
2588 the minor child's best interest;
  - 2589 (f) the loss or cessation of the relationship between the individual and the minor child  
2590 would substantially harm the minor child; and
  - 2591 (g) the parent:
    - 2592 (i) is absent; or
    - 2593 (ii) is found by a court to have abused or neglected the minor child.
- 2594 (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350,  
2595 an individual shall file a verified petition, or a petition supported by an affidavit, for  
2596 custodial or visitation rights to the minor child in the juvenile court if a matter is pending  
2597 in the juvenile court, or in the district court in the county where the minor child:  
2598 (a) currently resides; or  
2599 (b) lived with a parent or an individual other than a parent who acted as a parent within  
2600 six months before the commencement of the action.
- 2601 (4) An individual may file a petition under this section in a pending divorce, parentage  
2602 action, or other proceeding, including a proceeding in the juvenile court involving  
2603 custody of or visitation with a minor child.
- 2604 (5) The petition shall include detailed facts supporting the petitioner's right to file the  
2605 petition including the criteria set forth in Subsection (2) and residency information  
2606 described in Section 78B-13-209.
- 2607 (6) An individual may not file a petition under this section against a parent who is actively  
2608 serving outside the state in any branch of the military.
- 2609 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the  
2610 Utah Rules of Civil Procedure on all of the following:

- 2611 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
- 2612 (b) any individual who has court-ordered custody or visitation rights;
- 2613 (c) the minor child's guardian;
- 2614 (d) the guardian ad litem, if one has been appointed;
- 2615 (e) an individual or agency that has physical custody of the minor child or that claims to
- 2616 have custody or visitation rights; and
- 2617 (f) any other individual or agency that has previously appeared in any action regarding
- 2618 custody of or visitation with the minor child.
- 2619 (8) The court may order a custody evaluation to be conducted in any proceeding brought
- 2620 under this section.
- 2621 (9) The court may enter temporary orders in a proceeding brought under this section
- 2622 pending the entry of final orders.
- 2623 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child
- 2624 under this section to an individual:
- 2625 (a) who is not the parent of the minor child; and
- 2626 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no
- 2627 contest to a felony or attempted felony involving conduct that constitutes any of the
- 2628 following:
- 2629 (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-109.4,
- ~~2629~~ and 76-5-114;
- 2631 (ii) child abuse homicide, as described in Section 76-5-208;
- 2632 (iii) child kidnapping, as described in Section 76-5-301.1;
- 2633 (iv) human trafficking of a child, as described in Section 76-5-308.5;
- 2634 (v) sexual abuse of a minor, as described in Section 76-5-401.1;
- 2635 (vi) rape of a child, as described in Section 76-5-402.1;
- 2636 (vii) object rape of a child, as described in Section 76-5-402.3;
- 2637 (viii) sodomy on a child, as described in Section 76-5-403.1;
- 2638 (ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual
- 2639 abuse of a child, as described in Section 76-5-404.3;
- 2640 (x) sexual exploitation of a minor, as described in Section 76-5b-201;
- 2641 (xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- 2642 (xii) an offense in another state that, if committed in this state, would constitute an
- 2643 offense described in this Subsection (10).
- 2644 (11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed

- 2645 in Subsection (10) that prevents a court from granting custody except as provided in  
2646 this Subsection (11).
- 2647 (b) An individual described in Subsection (10) may only be considered for custody of a  
2648 minor child if the following criteria are met by clear and convincing evidence:
- 2649 (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;
- 2650 (ii) at least 10 years have elapsed from the day on which the individual is  
2651 successfully released from prison, jail, parole, or probation related to a  
2652 disqualifying offense;
- 2653 (iii) during the 10 years before the day on which the individual files a petition with  
2654 the court seeking custody the individual has not been convicted, plead guilty, or  
2655 plead no contest to an offense greater than an infraction or traffic violation that  
2656 would likely impact the health, safety, or well-being of the minor child;
- 2657 (iv) the individual can provide evidence of successful treatment or rehabilitation  
2658 directly related to the disqualifying offense;
- 2659 (v) the court determines that the risk related to the disqualifying offense is unlikely to  
2660 cause harm, as defined in Section 80-1-102, or potential harm to the minor child  
2661 currently or at any time in the future when considering all of the following:
- 2662 (A) the minor child's age;
- 2663 (B) the minor child's gender;
- 2664 (C) the minor child's development;
- 2665 (D) the nature and seriousness of the disqualifying offense;
- 2666 (E) the preferences of a minor child who is 12 years old or older;
- 2667 (F) any available assessments, including custody evaluations, parenting  
2668 assessments, psychological or mental health assessments, and bonding  
2669 assessments; and
- 2670 (G) any other relevant information;
- 2671 (vi) the individual can provide evidence of the following:
- 2672 (A) the relationship with the minor child is of long duration;
- 2673 (B) that an emotional bond exists with the minor child; and
- 2674 (C) that custody by the individual who has committed the disqualifying offense  
2675 ensures the best interests of the minor child are met;
- 2676 (vii)(A) there is no other responsible relative known to the court who has or likely  
2677 could develop an emotional bond with the minor child and does not have a  
2678 disqualifying offense; or

- 2679 (B) if there is a responsible relative known to the court that does not have a  
2680 disqualifying offense, Subsection (11)(d) applies; and  
2681 (viii) that the continuation of the relationship between the individual with the  
2682 disqualifying offense and the minor child could not be sufficiently maintained  
2683 through any type of visitation if custody were given to the relative with no  
2684 disqualifying offense described in Subsection (11)(d).
- 2685 (c) The individual with the disqualifying offense bears the burden of proof regarding  
2686 why placement with that individual is in the best interest of the minor child over  
2687 another responsible relative or equally situated individual who does not have a  
2688 disqualifying offense.
- 2689 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to  
2690 the court who does not have a disqualifying offense:
- 2691 (i) preference for custody is given to a relative who does not have a disqualifying  
2692 offense; and  
2693 (ii) before the court may place custody with the individual who has the disqualifying  
2694 offense over another responsible, willing, and able relative:  
2695 (A) an impartial custody evaluation shall be completed; and  
2696 (B) a guardian ad litem shall be assigned.
- 2697 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final  
2698 decision on custody has not been made and to a case filed on or after March 25, 2017.

2699 Section 23. **Effective date.**

2700 This bill takes effect on May 7, 2025.