

Karen Kwan proposes the following substitute bill:

**Sexual Crimes Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Kwan**

House Sponsor:

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**LONG TITLE**

**General Description:**

This bill addresses sexual crimes.

**Highlighted Provisions:**

This bill:

▸ provides a definition of a female breast for certain sexual and sexual exploitation offenses that includes a breast that is undeveloped or partially developed;

▸ expands the definition of "child sexual abuse material" to include a minor observing or being used for sexually explicit conduct;

▸ expands the definition of "sexually explicit conduct" concerning certain bodily functions;

▸ changes the mental state necessary to commit the offense of sexual exploitation of a minor;

▸ expands the offense of sexual exploitation of a minor to include when an actor accesses child sexual abuse material with the intent to view;

▸ provides a safe harbor provision for certain employees and independent contractors who access child sexual abuse material within the scope of employment;

▸ changes the mental state necessary to commit the offense of aggravated sexual exploitation of a minor;

▸ amends the offense of aggravated sexual exploitation of a minor to remove a lesser penalty for circumstances when the child sexual abuse material depicts an individual who is 14 years old or older or pubescent; and

▸ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **76-3-203.13**, as last amended by Laws of Utah 2022, Chapter 18132 **76-5-401.1**, as last amended by Laws of Utah 2024, Chapter 23433 **76-5-401.2**, as last amended by Laws of Utah 2022, Chapter 18134 **76-5-404**, as last amended by Laws of Utah 2022, Chapter 18135 **76-5-404.1**, as last amended by Laws of Utah 2024, Chapters 96, 9736 **76-5-412.2**, as enacted by Laws of Utah 2022, Chapter 18137 **76-5-413.2**, as enacted by Laws of Utah 2022, Chapter 18138 **76-5b-103**, as last amended by Laws of Utah 2024, Chapters 127, 14239 **76-5b-201**, as last amended by Laws of Utah 2024, Chapter 14240 **76-5b-201.1**, as last amended by Laws of Utah 2024, Chapter 142

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42 *Be it enacted by the Legislature of the state of Utah:*43 Section 1. Section **76-3-203.13** is amended to read:44 **76-3-203.13 . Enhanced penalty for unlawful sexual contact with a student.**45 (1) [~~A person~~] An actor convicted of a sexual offense described in Section 76-5-401.1 or  
46 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of  
47 the sexual offense, the actor:

48 (a) was 18 years old or older;

49 (b) held a position of special trust as a teacher, employee, or volunteer at a school, as  
50 that position is defined in Subsection [~~76-5-404.1(1)(a)(iv)(S)~~] 76-5-404.1(1)(a)(v)(S);  
51 and52 (c) committed the offense against an individual who at the time of the offense was  
53 enrolled as a student at the school where the actor was employed or was acting as a  
54 volunteer.55 (2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of  
56 one classification higher than the offense of which the [~~person~~] actor was convicted.57 Section 2. Section **76-5-401.1** is amended to read:58 **76-5-401.1 . Sexual abuse of a minor -- Penalties -- Limitations.**

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

60 (i) "Female breast" means the undeveloped, partially developed, or developed breast  
61 of a female individual.62 (ii) "Indecent liberties" means:

- 63 (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or  
64 female breast;
- 65 (B) causing any part of an individual's body to touch the actor's or another's  
66 genitals, pubic area, anus, buttocks, or female breast;
- 67 (C) simulating or pretending to engage in sexual intercourse with another  
68 individual, including genital-genital, oral-genital, anal-genital, or oral-anal  
69 intercourse; or
- 70 (D) causing an individual to simulate or pretend to engage in sexual intercourse  
71 with the actor or another, including genital-genital, oral-genital, anal-genital, or  
72 oral-anal intercourse.
- 73 [(~~ii~~)] (iii) "Minor" means an individual who is 14 years old or older, but younger than  
74 16 years old, at the time the sexual activity described in Subsection (2) occurred.
- 75 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 76 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor  
77 commits sexual abuse of a minor if the actor:
- 78 (i) is four years or more older than the minor; and
- 79 (ii) with the intent to cause substantial emotional or bodily pain to any individual, or  
80 with the intent to arouse or gratify the sexual desire of any individual:
- 81 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
- 82 (B) touches the female breast of a [~~female~~]minor; or
- 83 (C) otherwise takes indecent liberties with the minor.
- 84 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the  
85 relevant element of a violation of Subsection (2)(a).
- 86 (3) A violation of Subsection (2)(a) is:
- 87 (a) a class A misdemeanor; and
- 88 (b) not subject to registration under Subsection 77-41-102(19)(a)(viii) on a first offense  
89 if the offender was younger than 21 years old at the time of the offense.
- 90 (4) The offenses referred to in Subsection (2)(a) are:
- 91 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;
- 92 (b) rape, in violation of Section 76-5-402;
- 93 (c) object rape, in violation of Section 76-5-402.2;
- 94 (d) forcible sodomy, in violation of Section 76-5-403;
- 95 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 96 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

97 Section 3. Section **76-5-401.2** is amended to read:

98 **76-5-401.2 . Unlawful sexual conduct with a 16- or 17-year-old -- Penalties --**

99 **Limitations.**

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

101 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.

102 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

103 [(ii)] (iii) "Minor" means an individual who is 16 years old or older, but younger than  
104 18 years old, at the time the sexual conduct described in Subsection (2) occurred.

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

106 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor  
107 commits unlawful sexual conduct with a minor if the actor:

108 (i)(A) is seven or more years older but less than 10 years older than the minor at  
109 the time of the sexual conduct;

110 (B) engages in any conduct listed in Subsection (2)(b); and

111 (C) knew or reasonably should have known the age of the minor; or

112 (ii)(A) is 10 or more years older than the minor at the time of the sexual conduct;  
113 and

114 (B) engages in any conduct listed in Subsection (2)(b).

115 (b) As used in Subsection (2)(a), "sexual conduct" refers to when the actor:

116 (i) has sexual intercourse with the minor;

117 (ii) engages in any sexual act with the minor involving the genitals of one individual  
118 and the mouth or anus of another individual;

119 (iii)(A) causes the penetration, however slight, of the genital or anal opening of  
120 the minor by any foreign object, substance, instrument, or device, including a  
121 part of the human body; and

122 (B) causes the penetration with the intent to cause substantial emotional or bodily  
123 pain to any individual or with the intent to arouse or gratify the sexual desire of  
124 any individual; or

125 (iv) with the intent to cause substantial emotional or bodily pain to any individual or  
126 with the intent to arouse or gratify the sexual desire of any individual:

127 (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;

128 (B) touches the female breast of a [~~female~~]minor; or

129 (C) otherwise takes indecent liberties with the minor.

130 (c)(i) Any touching, even if accomplished through clothing, is sufficient to constitute

- 131 the relevant element of a violation of Subsection (2)(a).
- 132 (ii) Any penetration, however slight, is sufficient to constitute the relevant element
- 133 under Subsection (2)(b)(i).
- 134 (iii) Any touching, however slight, is sufficient to constitute the relevant element
- 135 under Subsection (2)(b)(ii).
- 136 (3)(a) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.
- 137 (b) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.
- 138 (4) The offenses referred to in Subsection (2)(a) are:
- 139 (a) rape, in violation of Section 76-5-402;
- 140 (b) object rape, in violation of Section 76-5-402.2;
- 141 (c) forcible sodomy, in violation of Section 76-5-403;
- 142 (d) forcible sexual abuse, in violation of Section 76-5-404;
- 143 (e) aggravated sexual assault, in violation of Section 76-5-405; or
- 144 (f) an attempt to commit an offense listed in Subsections (4)(a) through (e).
- 145 Section 4. Section **76-5-404** is amended to read:
- 146 **76-5-404 . Forcible sexual abuse -- Penalties -- Limitations.**
- 147 (1)(a) As used in this section[~~,"indecent"~~] :
- 148 (i) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 149 (ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
- 150 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 151 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
- 152 commits forcible sexual abuse if:
- 153 (i) without the consent of the individual, the actor:
- 154 (A) touches the anus, buttocks, pubic area, or any part of the genitals of another
- 155 individual;
- 156 (B) touches the female breast of another individual[~~who is female~~]; or
- 157 (C) otherwise takes indecent liberties with another individual;
- 158 (ii) the actor intends to:
- 159 (A) cause substantial emotional or bodily pain to any individual; or
- 160 (B) arouse or gratify the sexual desire of any individual; and
- 161 (iii) the individual described in Subsection (2)(a)(i)(A), (B), or (C) is 14 years old or
- 162 older.
- 163 (b) Any touching, even if accomplished through clothing, is sufficient to constitute the
- 164 relevant element of a violation of Subsection (2)(a).

- 165 (3)(a) A violation of Subsection (2) is a second degree felony~~[-of the second degree]~~,  
 166 punishable by a term of imprisonment of not less than one year nor more than 15  
 167 years.
- 168 (b)(i) Notwithstanding Subsection (3)(a) and except as provided in Subsection  
 169 (3)(b)(ii), a violation of Subsection (2) is a first degree felony~~[-of the first degree]~~,  
 170 punishable by a term of imprisonment for 15 years and which may be for life, if  
 171 the trier of fact finds that during the course of the commission of the forcible  
 172 sexual abuse the ~~[defendant]~~ actor caused serious bodily injury to the victim.
- 173 (ii) If, when imposing a sentence under Subsection (3)(b)(i), a court finds that a lesser  
 174 term than the term described in Subsection (3)(b)(i) is in the interests of justice  
 175 and states the reasons for this finding on the record, the court may impose a term  
 176 of imprisonment of not less than:
- 177 (A) 10 years and which may be for life; or  
 178 (B) six years and which may be for life.
- 179 (4) The offenses referred to in Subsection (2)(a) are:
- 180 (a) rape, in violation of Section 76-5-402;  
 181 (b) object rape, in violation of Section 76-5-402.2;  
 182 (c) forcible sodomy, in violation of Section 76-5-403; or  
 183 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 184 (5) Imprisonment under Subsection (3)(b) or (4) is mandatory in accordance with Section  
 185 76-3-406.

186 Section 5. Section **76-5-404.1** is amended to read:

187 **76-5-404.1 . Sexual abuse of a child -- Penalties -- Limitations.**

- 188 (1)(a) As used in this section:
- 189 (i) "Adult" means an individual 18 years old or older.  
 190 (ii) "Child" means an individual younger than 14 years old.  
 191 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.  
 192 ~~[(iii)]~~ (iv) "Indecent liberties" means the same as that term is defined in Section  
 193 76-5-401.1.
- 194 ~~[(iv)]~~ (v) "Position of special trust" means:
- 195 (A) an adoptive parent;  
 196 (B) an athletic manager who is an adult;  
 197 (C) an aunt;  
 198 (D) a babysitter;

- 199 (E) a coach;
- 200 (F) a cohabitant of a parent if the cohabitant is an adult;
- 201 (G) a counselor;
- 202 (H) a doctor or physician;
- 203 (I) an employer;
- 204 (J) a foster parent;
- 205 (K) a grandparent;
- 206 (L) a legal guardian;
- 207 (M) a natural parent;
- 208 (N) a recreational leader who is an adult;
- 209 (O) a religious leader;
- 210 (P) a sibling or a stepsibling who is an adult;
- 211 (Q) a scout leader who is an adult;
- 212 (R) a stepparent;
- 213 (S) a teacher or any other individual employed by or volunteering at a public or
- 214 private elementary school or secondary school, and who is 18 years old or
- 215 older;
- 216 (T) an instructor, professor, or teaching assistant at a public or private institution
- 217 of higher education;
- 218 (U) an uncle;
- 219 (V) a youth leader who is an adult; or
- 220 (W) any individual in a position of authority, other than those individuals listed in
- 221 Subsections [~~(1)(a)(iv)(A)~~] (1)(a)(v)(A) through (V), which enables the
- 222 individual to exercise undue influence over the child.
- 223 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 224 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor
- 225 commits sexual abuse of a child if the actor:
- 226 (i)(A) touches, whether over or under the clothing, the buttocks or pubic area of a
- 227 child;
- 228 (B) touches, whether over or under the clothing, the female breast of a [~~female~~]
- 229 child;
- 230 (C) touches the anus or genitals of a child over the clothing; or
- 231 (D) otherwise takes indecent liberties with a child whether over or under the
- 232 clothing; and

- 233 (ii) the actor's conduct is with intent to:
- 234 (A) cause substantial emotional or bodily pain to any individual; or
- 235 (B) arouse or gratify the sexual desire of any individual.
- 236 (b) Any touching, however slight, is sufficient to constitute the relevant element of a
- 237 violation of Subsection (2)(a).
- 238 (3) A violation of Subsection (2) is a second degree felony.
- 239 (4) The offenses referred to in Subsection (2)(a) are:
- 240 (a) rape of a child, in violation of Section 76-5-402.1;
- 241 (b) object rape of a child, in violation of Section 76-5-402.3;
- 242 (c) sodomy on a child, in violation of Section 76-5-403.1; or
- 243 (d) an attempt to commit an offense listed in Subsections (4)(a) through (4)(c).
- 244 Section 6. Section **76-5-412.2** is amended to read:
- 245 **76-5-412.2 . Custodial sexual misconduct -- Penalties -- Defenses.**
- 246 (1)(a) As used in this section:
- 247 (i) "Actor" means the same as that term is defined in Section 76-5-412.
- 248 (ii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 249 [~~(ii)~~] (iii) "Indecent liberties" means the same as that term is defined in Section
- 250 76-5-401.1.
- 251 [~~(iii)~~] (iv) "Person in custody" means the same as that term is defined in Section
- 252 76-5-412.
- 253 [~~(iv)~~] (v) "Private provider or contractor" means the same as that term is defined in
- 254 Section 76-5-412.
- 255 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 256 (2)(a) An actor commits custodial sexual misconduct if:
- 257 (i) the actor commits any of the acts under Subsection (2)(b) under circumstances not
- 258 amounting to commission of, or an attempt to commit, an offense under
- 259 Subsection 76-5-412(4); and
- 260 (ii)(A) the actor knows that the individual is a person in custody; or
- 261 (B) a reasonable person in the actor's position should have known under the
- 262 circumstances that the individual was a person in custody.
- 263 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the
- 264 intent to cause substantial emotional or bodily pain to another individual or with the
- 265 intent to arouse or gratify the sexual desire of any individual:
- 266 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a person in



- 267 custody;
- 268 (ii) touching the female breast of a[~~female~~] person in custody; or
- 269 (iii) otherwise taking indecent liberties with a person in custody.
- 270 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 271 (b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years
- 272 old, a violation of Subsection (2) is a third degree felony.
- 273 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater
- 274 penalty under another provision of state law than is provided under this Subsection (3),
- 275 this Subsection (3) does not prohibit prosecution and sentencing for the more serious
- 276 offense.
- 277 (4)(a) It is not a defense to the commission of, or attempt to commit, the offense
- 278 described in Subsection (2) if the person in custody is younger than 18 years old, that
- 279 the actor:
- 280 (i) mistakenly believed the person in custody to be 18 years old or older at the time of
- 281 the alleged offense; or
- 282 (ii) was unaware of the true age of the person in custody.
- 283 (b) Consent of the person in custody is not a defense to any violation or attempted
- 284 violation of Subsection (2).
- 285 (5) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 286 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 287 Section 7. Section **76-5-413.2** is amended to read:
- 288 **76-5-413.2 . Custodial sexual misconduct with a youth receiving state services --**
- 289 **Penalties -- Defenses and limitations.**
- 290 (1)(a) As used in this section:
- 291 (i) "Actor" means the same as that term is defined in Section 76-5-413.
- 292 (ii) "Department" means the same as that term is defined in Section 76-5-413.
- 293 (iii) "Female breast" means the same as that term is defined in Section 76-5-401.1.
- 294 [~~(iii)~~] (iv) "Indecent liberties" means the same as that term is defined in Section
- 295 76-5-401.1.
- 296 [~~(iv)~~] (v) "Juvenile court" means the same as that term is defined in Section 76-5-413.
- 297 [~~(v)~~] (vi) "Private provider or contractor" means the same as that term is defined in
- 298 Section 76-5-413.
- 299 [~~(vi)~~] (vii) "Youth receiving state services" means the same as that term is defined in
- 300 Section 76-5-413.

- 301 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 302 (2)(a) Under circumstances not amounting to an offense listed in Subsection (4), an actor  
303 commits custodial sexual misconduct with a youth receiving state services if:
- 304 (i) the actor commits any of the acts described in Subsection (2)(b); and  
305 (ii)(A) the actor knows that the individual is a youth receiving state services; or  
306 (B) a reasonable person in the actor's position should have known under the  
307 circumstances that the individual was a youth receiving state services.
- 308 (b) Acts referred to in Subsection (2)(a) are the following acts when committed with the  
309 intent to cause substantial emotional or bodily pain to any individual or with the  
310 intent to arouse or gratify the sexual desire of any individual:
- 311 (i) touching the anus, buttocks, pubic area, or any part of the genitals of a youth  
312 receiving state services;  
313 (ii) touching the female breast of a [~~female~~] youth receiving state services; or  
314 (iii) otherwise taking indecent liberties with a youth receiving state services.
- 315 (c) Any touching, even if accomplished through clothing, is sufficient to constitute the  
316 relevant element of a violation of Subsection (2)(a).
- 317 (3)(a) A violation of Subsection (2) is a class A misdemeanor.
- 318 (b) Notwithstanding Subsection (3)(a), if the youth receiving state services is younger  
319 than 18 years old, a violation of Subsection (2) is a third degree felony.
- 320 (c) If the act committed under Subsection (2) amounts to an offense subject to a greater  
321 penalty under another provision of state law than is provided under this Subsection (3),  
322 this Subsection (3) does not prohibit prosecution and sentencing for the more serious  
323 offense.
- 324 (4) The offenses referred to in Subsection (2) are:
- 325 (a) unlawful sexual activity with a minor, in violation of Section 76-5-401;  
326 (b) rape, in violation of Section 76-5-402;  
327 (c) rape of a child, in violation of Section 76-5-402.1;  
328 (d) object rape, in violation of Section 76-5-402.2;  
329 (e) object rape of a child, in violation of Section 76-5-402.3;  
330 (f) forcible sodomy, in violation of Section 76-5-403;  
331 (g) sodomy on a child, in violation of Section 76-5-403.1;  
332 (h) forcible sexual abuse, in violation of Section 76-5-404;  
333 (i) sexual abuse of a child, in violation of Section 76-5-404.1;  
334 (j) aggravated sexual abuse of a child, in violation of Section 76-5-404.3;

- 335 (k) aggravated sexual assault, in violation of Section 76-5-405; or
- 336 (l) an attempt to commit an offense listed in Subsections (4)(a) through (4)(k).
- 337 (5)(a) It is not a defense to the commission of, or an attempt to commit, the offense
- 338 described in Subsection (2) if the youth receiving state services is younger than 18
- 339 years old, that the actor:
- 340 (i) mistakenly believed the youth receiving state services to be 18 years old or older
- 341 at the time of the alleged offense; or
- 342 (ii) was unaware of the true age of the youth receiving state services.
- 343 (b) Consent of the youth receiving state services is not a defense to any violation or
- 344 attempted violation of Subsection (2).
- 345 (6) It is a defense that the commission by the actor of an act under Subsection (2) is the
- 346 result of compulsion, as the defense is described in Subsection 76-2-302(1).
- 347 Section 8. Section **76-5b-103** is amended to read:
- 348 **76-5b-103 . Definitions.**
- 349 As used in this chapter:
- 350 (1) "Child sexual abuse material" means any visual depiction, including any live
- 351 performance, photograph, film, video, picture, or computer or computer-generated
- 352 image, picture, or video, whether made or produced by electronic, mechanical, or other
- 353 means, of sexually explicit conduct, where:
- 354 (a) the production of the visual depiction involves the use of a minor engaging in,
- 355 observing, or being used for sexually explicit conduct;
- 356 (b) the visual depiction is:
- 357 (i) of a minor engaging in, observing, or being used for sexually explicit conduct; or
- 358 (ii) artificially generated and depicts an individual with substantial characteristics of a
- 359 minor engaging in, observing, or being used for sexually explicit conduct; or
- 360 (c) the visual depiction has been created, adapted, or modified to appear that an
- 361 identifiable minor is engaging in, observing, or being used for sexually explicit
- 362 conduct.
- 363 (2) "Children's Justice Center" means a facility or satellite office established under the
- 364 Children's Justice Center Program described in Section 67-5b-102.
- 365 (3) "Distribute" means, with or without consideration, to sell, exhibit, display, provide,
- 366 give, grant admission to, provide access to, or otherwise transfer.
- 367 (4) "Female breast" means the undeveloped, partially developed, or developed breast of a
- 368 female individual.

369 [~~(3)~~] (5) "Identifiable minor" means an individual:

370 (a)(i) who was a minor at the time the visual depiction was created, adapted, or  
371 modified; or

372 (ii) whose image as a minor was used in creating, adapting, or modifying the visual  
373 depiction; and

374 (b) who is recognizable as an actual individual by the individual's face, likeness, or other  
375 distinguishing characteristic, such as a birthmark, or other recognizable feature.

376 [~~(4)~~] (6) "Identifiable vulnerable adult" means an individual:

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

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

381 (b) who is recognizable as an actual individual by the individual's face, likeness, or other  
382 distinguishing characteristic, such as a birthmark, or other recognizable feature.

383 [~~(5)~~] (7) "Lacks capacity to consent" means the same as that term is defined in Section  
384 76-5-111.4.

385 [~~(6)~~] (8) "Live performance" means any act, play, dance, pantomime, song, or other activity  
386 performed by live actors in person.

387 [~~(7)~~] (9) "Minor" means an individual who is younger than 18 years old.

388 [~~(8)~~] (10) "Nudity or partial nudity" means any state of dress or undress in which the human  
389 genitals, pubic region, buttocks, or the female breast, at a point below the top of the  
390 areola, is less than completely and opaquely covered.

391 [~~(9)~~] (11) "Produce" means:

392 (a) the photographing, filming, taping, directing, producing, creating, designing, or  
393 composing of child sexual abuse material or vulnerable adult sexual abuse material; or

394 (b) the securing or hiring of individuals to engage in the photographing, filming, taping,  
395 directing, producing, creating, designing, or composing of child sexual abuse  
396 material or vulnerable adult sexual abuse material.

397 [~~(10)~~] (12) "Sexually explicit conduct" means actual or simulated:

398 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,  
399 whether between individuals of the same or opposite sex;

400 (b) masturbation;

401 (c) bestiality;

402 (d) sadistic or masochistic activities;

- 403 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any  
 404 individual;
- 405 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual  
 406 arousal of any individual;
- 407 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or  
 408 (h) the ~~[explicit representation of the]~~ visual depiction of defecation or urination [  
 409 functions] for the purpose of causing sexual arousal of any individual.
- 410 [(11)] (13) "Simulated sexually explicit conduct" means a feigned or pretended act of  
 411 sexually explicit conduct which duplicates, within the perception of an average person,  
 412 the appearance of an actual act of sexually explicit conduct.
- 413 [(12)] (14) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111  
 414 (1).
- 415 [(13)] (15) "Vulnerable adult sexual abuse material" means any visual depiction, including  
 416 any live performance, photograph, film, video, picture, or computer or  
 417 computer-generated image or picture, whether made or produced by electronic,  
 418 mechanical, or other means, of sexually explicit conduct, where:
- 419 (a) the production of the visual depiction involves the use of a vulnerable adult engaging  
 420 in sexually explicit conduct;
- 421 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or  
 422 (c) the visual depiction has been created, adapted, or modified to appear that an  
 423 identifiable vulnerable adult is engaging in sexually explicit conduct.
- 424 Section 9. Section **76-5b-201** is amended to read:
- 425 **76-5b-201 . Sexual exploitation of a minor -- Offenses.**
- 426 (1) Terms defined in Section 76-1-101.5 apply to this section.
- 427 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses[  
 428 ~~or intentionally]~~ , views, accesses with the intent to view, or maintains access with the  
 429 intent to view, child sexual abuse material.
- 430 (3)(a) A violation of Subsection (2) is a second degree felony.
- 431 (b) It is a separate offense under this section:
- 432 (i) for each minor depicted in the child sexual abuse material; and  
 433 (ii) for each time the same minor is depicted in different child sexual abuse material.
- 434 (4) For a charge of violating this section, it is an affirmative defense that:
- 435 (a) the defendant:
- 436 (i) did not solicit the child sexual abuse material from the minor depicted in the child

- 437 sexual abuse material;
- 438 (ii) is not more than two years older than the minor depicted in the child sexual abuse  
439 material; and
- 440 (iii) upon request of a law enforcement agent or the minor depicted in the child  
441 sexual abuse material, removes from an electronic device or destroys the child  
442 sexual abuse material and all copies of the child sexual abuse material in the  
443 defendant's possession; and
- 444 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4,  
445 Sexual Offenses.
- 446 (5) In proving a violation of this section in relation to an identifiable minor, proof of the  
447 actual identity of the identifiable minor is not required.
- 448 (6) The following are not criminally or civilly liable under this section when acting in good  
449 faith compliance with Section 77-4-201:
- 450 (a) an entity or an employee, director, officer, or agent of an entity when acting within  
451 the scope of employment, for the good faith performance of:
- 452 (i) reporting or data preservation duties required under federal or state law; or  
453 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse  
454 material on tangible or intangible property, or of detecting and reporting the  
455 presence of child sexual abuse material on the property;
- 456 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an  
457 independent contractor who is contracted with a law enforcement agency, acting  
458 within the scope of a criminal investigation;
- 459 (c) an employee of a court who may be required to view child sexual abuse material  
460 during the course of and within the scope of the employee's employment;
- 461 (d) a juror who may be required to view child sexual abuse material during the course of  
462 the individual's service as a juror;
- 463 (e) an attorney or employee of an attorney who is required to view child sexual abuse  
464 material during the course of a judicial process and while acting within the scope of  
465 employment;
- 466 (f) an employee of the Department of Health and Human Services who is required to  
467 view child sexual abuse material within the scope of the employee's employment;[~~or~~]
- 468 (g) an employee, independent contractor, or designated interviewer of a Children's  
469 Justice Center, within the scope of the employee's, independent contractor's, or  
470 designated interviewer's scope of employment or assignment; or

471 ~~[(g)]~~ (h) an attorney who is required to view child sexual abuse material within the scope  
 472 of the attorney's responsibility to represent the Department of Health and Human  
 473 Services, including the divisions and offices within the Department of Health and  
 474 Human Services.

475 Section 10. Section **76-5b-201.1** is amended to read:

476 **76-5b-201.1 . Aggravated sexual exploitation of a minor.**

477 ~~[(1) As used in this section:]~~

478 ~~[(a) "Physical abuse" or "physically abused" means the same as the term "physical~~  
 479 ~~abuse" is defined in Section 80-1-102.]~~

480 ~~[(b)]~~ (1) ~~[The terms]~~ Terms defined in Section 76-1-101.5 apply to this section.

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

482 (a) ~~[intentionally]~~ knowingly distributes or produces child sexual abuse material; or

483 ~~[(b) knowingly produces child sexual abuse material; or]~~

484 ~~[(e)]~~ (b) is the minor's parent or legal guardian and knowingly consents to or permits the  
 485 minor to be sexually exploited as described in Subsection (2)(a)~~[-or (b)]~~ or Section  
 486 76-5b-201.

487 (3)(a) Except as provided in Subsection (3)(b)~~[-or (e)]~~, a violation of Subsection (2) is a  
 488 first degree felony.

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

491 ~~[(e) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse~~  
 492 ~~material depicts an individual who is:]~~

493 ~~[(i) 14 years old or older; or]~~

494 ~~[(ii) pubescent.]~~

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

496 (a) for each minor depicted in the child sexual abuse material; and

497 (b) for each time the same minor is depicted in different child sexual abuse material.

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

500 (6) The following are not criminally or civilly liable under this section when acting in good  
 501 faith compliance with Section 77-4-201:

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

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

- 505 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse  
506 material on tangible or intangible property, or of detecting and reporting the  
507 presence of child sexual abuse material on the property;
- 508 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an  
509 independent contractor who is contracted with a law enforcement agency, acting  
510 within the scope of a criminal investigation;
- 511 (c) an employee of a court who may be required to view child sexual abuse material  
512 during the course of and within the scope of the employee's employment;
- 513 (d) a juror who may be required to view child sexual abuse material during the course of  
514 the individual's service as a juror;
- 515 (e) an attorney or employee of an attorney who is required to view child sexual abuse  
516 material during the course of a judicial process and while acting within the scope of  
517 employment;
- 518 (f) an employee of the Department of Health and Human Services who is required to  
519 view child sexual abuse material within the scope of the employee's employment;[-or]
- 520 (g) an employee, independent contractor, or designated interviewer of a Children's  
521 Justice Center, within the scope of the employee's, independent contractor's, or  
522 designated interviewer's scope of employment or assignment; or
- 523 [~~g~~] (h) an attorney who is required to view child sexual abuse material within the scope  
524 of the attorney's responsibility to represent the Department of Health and Human  
525 Services, including the divisions and offices within the Department of Health and  
526 Human Services.

527 Section 1. **Effective Date.**

528 This bill takes effect on May 7, 2025.