

1 **AMENDMENTS TO CRIMINAL PROVISIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Karen Mayne

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies criminal offenses and penalties in the Utah Code.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ modifies the definition of "health professional" as the term relates to certain sexual
13 offenses;

14 ▶ modifies certain criminal offenses and penalties relating to:

- 15 • dealing in material harmful to minors between a young adult and adolescent;
- 16 • obstruction of alcoholic beverage control investigations;
- 17 • registration as a sex offender;
- 18 • rendering a dead body unavailable for postmortem investigation;
- 19 • repeated violations of the Minimum Wage Act; and
- 20 • theft;

21 ▶ repeals the criminal offenses of adultery and sodomy;

22 ▶ provides immunity from prosecution for the offenses of prostitution and sexual
23 solicitation under certain circumstances; and

24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **26-2-18.5**, as enacted by Laws of Utah 2009, Chapter 223
- 32 **31A-22-726**, as last amended by Laws of Utah 2015, Chapter 283
- 33 **32B-4-505**, as enacted by Laws of Utah 2010, Chapter 276
- 34 **34-40-204**, as last amended by Laws of Utah 1997, Chapter 375
- 35 **53G-6-707**, as renumbered and amended by Laws of Utah 2018, Chapter 3
- 36 **62A-15-602**, as last amended by Laws of Utah 2018, Chapter 322
- 37 **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397
- 38 **76-5-403**, as last amended by Laws of Utah 2013, Chapter 81
- 39 **76-5-404**, as last amended by Laws of Utah 2018, Chapter 192
- 40 **76-5-406**, as last amended by Laws of Utah 2018, Chapter 176
- 41 **76-5-407**, as last amended by Laws of Utah 2000, Chapter 128
- 42 **76-6-412**, as last amended by Laws of Utah 2018, Chapter 265
- 43 **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282
- 44 **76-7-305**, as last amended by Laws of Utah 2018, Chapter 282
- 45 **76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345
- 46 **76-10-1302**, as last amended by Laws of Utah 2017, Chapter 433
- 47 **76-10-1313**, as last amended by Laws of Utah 2018, Chapter 308
- 48 **77-41-107**, as last amended by Laws of Utah 2015, Chapter 210

49 REPEALS:

- 50 **76-7-103**, as last amended by Laws of Utah 1991, Chapter 241



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

53 Section 1. Section **26-2-18.5** is amended to read:

54 **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

55 (1) As used in this section:

56 (a) "Medical examiner" [~~is as~~] means the same as that term is defined in Section

57 **26-4-2.**

58 (b) "Unavailable for postmortem investigation" [~~is as~~] means the same as that term is
59 defined in Section 26-4-2.

60 (2) It is unlawful for a person to engage in any conduct that makes a dead body
61 unavailable for postmortem investigation, unless, before engaging in that conduct, the person
62 obtains a permit from the medical examiner to render the dead body unavailable for
63 postmortem investigation, under Section 26-4-29[~~;~~], if the person intends to make the body
64 unavailable for postmortem investigation.

65 (3) A person who violates Subsection (2) is guilty of a [~~class B misdemeanor~~] third
66 degree felony.

67 (4) If a person engages in conduct that constitutes both a violation of this section and a
68 violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 [~~supersede~~]
69 supersede the provisions and penalties of this section.

70 Section 2. Section 31A-22-726 is amended to read:

71 **31A-22-726. Abortion coverage restriction in health benefit plan and on health**
72 **insurance exchange.**

73 (1) As used in this section, "permitted abortion coverage" means coverage for abortion:

74 (a) that is necessary to avert:

75 (i) the death of the woman on whom the abortion is performed; or

76 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
77 of the woman on whom the abortion is performed;

78 (b) of a fetus that has a defect that is documented by a physician or physicians to be
79 uniformly diagnosable and uniformly lethal; or

80 (c) where the woman is pregnant as a result of:

81 (i) rape, as described in Section 76-5-402;

82 (ii) rape of a child, as described in Section 76-5-402.1; or

83 (iii) incest, as described in Subsection 76-5-406[~~(10)~~] (2)(j) or Section 76-7-102.

84 (2) A person may not offer coverage for an abortion in a health benefit plan, unless the
85 coverage is a type of permitted abortion coverage.

86 ~~[(3) A person may not offer a health benefit plan that provides coverage for an abortion~~
87 ~~in a health insurance exchange created under Title 63N, Chapter 11, Health System Reform~~
88 ~~Act, unless the coverage is a type of permitted abortion coverage.]~~

89 [(4)] (3) A person may not offer a health benefit plan that provides coverage for an
90 abortion in a health insurance exchange created under the federal Patient Protection and
91 Affordable Care Act, 111 P.L. 148, unless the coverage is a type of permitted abortion
92 coverage.

93 Section 3. Section **32B-4-505** is amended to read:

94 **32B-4-505. Obstructing a search, official proceeding, or investigation.**

95 (1) A person who is in the premises or has charge over premises may not refuse or fail
96 to admit to the premises or obstruct the entry of any of the following who demands entry when
97 acting under this title:

- 98 (a) a commissioner;
- 99 (b) an authorized representative of the commission or department; or
- 100 (c) a law enforcement officer.

101 (2) A person who is in the premises or has charge of the premises may not interfere
102 with any of the following who is conducting an investigation under this title at the premises:

- 103 (a) a commissioner;
- 104 (b) an authorized representative of the commission or department; or
- 105 (c) a law enforcement officer.

106 (3) A person is guilty of a ~~[second degree felony]~~ class A misdemeanor if, believing
107 that an official proceeding or investigation is pending or about to be instituted under this title,
108 that person:

- 109 (a) alters, destroys, conceals, or removes a record with a purpose to impair [its] the
110 record's verity or availability in the proceeding or investigation; or
- 111 (b) makes, presents, or uses anything that the person knows to be false with a purpose
112 to deceive any of the following who may be engaged in a proceeding or investigation under this
113 title:

- 114 (i) a commissioner;
- 115 (ii) an authorized representative of the commission or department;
- 116 (iii) a law enforcement officer; or
- 117 (iv) other person.

118 Section 4. Section **34-40-204** is amended to read:

119 **34-40-204. Criminal penalty -- Enforcement.**

120 (1) [~~(a) Repeated violation of this chapter is a class B misdemeanor.~~]
 121 [~~(b) "Repeated violations" does not include~~] As used in this section, "violation"
 122 includes separate violations as to individual employees arising out of the same investigation or
 123 enforcement action.

124 (2) (a) A violation of this chapter is an infraction.

125 (b) A second violation of this chapter is a class C misdemeanor.

126 (c) A third or subsequent violation of this chapter is a class B misdemeanor.

127 [~~(2) Upon the third violation by the same employer within a three-year period, the~~]

128 (3) Upon an employer's violation of this section, the commission may prosecute a
 129 criminal action in the name of the state.

130 [~~(3)~~] (4) The county attorney, district attorney, or attorney general shall provide
 131 assistance in prosecutions under this section at the request of the commission.

132 Section 5. Section **53G-6-707** is amended to read:

133 **53G-6-707. Interstate compact students -- Inclusion in attendance count --**
 134 **Foreign exchange students -- Annual report -- Requirements for exchange student**
 135 **agencies.**

136 (1) A school district or charter school may include the following students in the
 137 district's or school's membership and attendance count for the purpose of apportionment of
 138 state money:

- 139 (a) a student enrolled under an interstate compact, established between the State Board
 140 of Education and the state education authority of another state, under which a student from one
 141 compact state would be permitted to enroll in a public school in the other compact state on the

142 same basis as a resident student of the receiving state; or

143 (b) a student receiving services under Title 62A, Chapter 4a, Part 7, Interstate Compact
144 on Placement of Children.

145 (2) A school district or charter school may:

146 (a) enroll foreign exchange students that do not qualify for state money; and

147 (b) pay for the costs of those students with other funds available to the school district
148 or charter school.

149 (3) Due to the benefits to all students of having the opportunity to become familiar
150 with individuals from diverse backgrounds and cultures, school districts are encouraged to
151 enroll foreign exchange students, as provided in Subsection (2), particularly in schools with
152 declining or stable enrollments where the incremental cost of enrolling the foreign exchange
153 student may be minimal.

154 (4) The board shall make an annual report to the Legislature on the number of
155 exchange students and the number of interstate compact students sent to or received from
156 public schools outside the state.

157 (5) (a) A local school board or charter school governing board shall require each
158 approved exchange student agency to provide it with a sworn affidavit of compliance prior to
159 the beginning of each school year.

160 (b) The affidavit shall include the following assurances:

161 (i) that the agency has complied with all applicable policies of the board;

162 (ii) that a household study, including a background check of all adult residents, has
163 been made of each household where an exchange student is to reside, and that the study was of
164 sufficient scope to provide reasonable assurance that the exchange student will receive proper
165 care and supervision in a safe environment;

166 (iii) that host parents have received training appropriate to their positions, including
167 information about enhanced criminal penalties under Subsection 76-5-406~~(10)~~(2)(j) for
168 persons who are in a position of special trust;

169 (iv) that a representative of the exchange student agency shall visit each student's place

170 of residence at least once each month during the student's stay in Utah;

171 (v) that the agency will cooperate with school and other public authorities to ensure
172 that no exchange student becomes an unreasonable burden upon the public schools or other
173 public agencies;

174 (vi) that each exchange student will be given in the exchange student's native language
175 names and telephone numbers of agency representatives and others who could be called at any
176 time if a serious problem occurs; and

177 (vii) that alternate placements are readily available so that no student is required to
178 remain in a household if conditions appear to exist which unreasonably endanger the student's
179 welfare.

180 (6) (a) A local school board or charter school governing board shall provide each
181 approved exchange student agency with a list of names and telephone numbers of individuals
182 not associated with the agency who could be called by an exchange student in the event of a
183 serious problem.

184 (b) The agency shall make a copy of the list available to each of its exchange students
185 in the exchange student's native language.

186 (7) Notwithstanding Subsection 53F-2-303(3)(a), a school district or charter school
187 shall enroll a foreign exchange student if the foreign exchange student:

188 (a) is sponsored by an agency approved by the State Board of Education;

189 (b) attends the same school during the same time period that another student from the
190 school is:

191 (i) sponsored by the same agency; and

192 (ii) enrolled in a school in a foreign country; and

193 (c) is enrolled in the school for one year or less.

194 Section 6. Section 62A-15-602 is amended to read:

195 **62A-15-602. Definitions.**

196 As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of
197 Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah

198 Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part
199 12, Essential Treatment and Intervention Act:

200 (1) "Adult" means an individual 18 years of age or older.

201 (2) "Approved treatment facility or program" means a treatment provider that meets the
202 standards described in Subsection [62A-15-103\(2\)\(a\)\(v\)](#).

203 (3) "Commitment to the custody of a local mental health authority" means that an adult
204 is committed to the custody of the local mental health authority that governs the mental health
205 catchment area where the adult resides or is found.

206 (4) "Community mental health center" means an entity that provides treatment and
207 services to a resident of a designated geographical area, that operates by or under contract with
208 a local mental health authority, and that complies with state standards for community mental
209 health centers.

210 (5) "Designated examiner" means:

211 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
212 specially qualified by training or experience in the diagnosis of mental or related illness; or

213 (b) a licensed mental health professional designated by the division as specially
214 qualified by training and who has at least five years' continual experience in the treatment of
215 mental illness.

216 (6) "Designee" means a physician who has responsibility for medical functions
217 including admission and discharge, an employee of a local mental health authority, or an
218 employee of a person that has contracted with a local mental health authority to provide mental
219 health services under Section [17-43-304](#).

220 (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered
221 treatment at a local substance abuse authority or an approved treatment facility or program for
222 the treatment of an adult's substance use disorder.

223 (8) "Harmful sexual conduct" means the following conduct upon an individual without
224 the individual's consent, including the nonconsensual circumstances described in Subsections
225 [76-5-406](#)~~[(1) through (12)]~~ (2)(a) through (l):

- 226 (a) sexual intercourse;
- 227 (b) penetration, however slight, of the genital or anal opening of the individual;
- 228 (c) any sexual act involving the genitals or anus of the actor or the individual and the
229 mouth or anus of either individual, regardless of the gender of either participant; or
- 230 (d) any sexual act causing substantial emotional injury or bodily pain.
- 231 (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.
- 232 (10) "Local substance abuse authority" means the same as that term is defined in
233 Section 62A-15-102 and described in Section 17-43-201.
- 234 (11) "Mental health facility" means the Utah State Hospital or other facility that
235 provides mental health services under contract with the division, a local mental health
236 authority, a person that contracts with a local mental health authority, or a person that provides
237 acute inpatient psychiatric services to a patient.
- 238 (12) "Mental health officer" means an individual who is designated by a local mental
239 health authority as qualified by training and experience in the recognition and identification of
240 mental illness, to:
 - 241 (a) apply for and provide certification for a temporary commitment; or
 - 242 (b) assist in the arrangement of transportation to a designated mental health facility.
- 243 (13) "Mental illness" means:
 - 244 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
245 behavioral, or related functioning; or
 - 246 (b) the same as that term is defined in:
 - 247 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
248 published by the American Psychiatric Association; or
 - 249 (ii) the current edition of the International Statistical Classification of Diseases and
250 Related Health Problems.
- 251 (14) "Patient" means an individual who is:
 - 252 (a) under commitment to the custody or to the treatment services of a local mental
253 health authority; or

254 (b) undergoing essential treatment and intervention.

255 (15) "Physician" means an individual who is:

256 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

257 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical

258 Practice Act.

259 (16) "Serious bodily injury" means bodily injury that involves a substantial risk of

260 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or

261 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

262 (17) "Substantial danger" means that due to mental illness, an individual is at serious

263 risk of:

264 (a) suicide;

265 (b) serious bodily self-injury;

266 (c) serious bodily injury because the individual is incapable of providing the basic

267 necessities of life, including food, clothing, or shelter;

268 (d) causing or attempting to cause serious bodily injury to another individual; or

269 (e) engaging in harmful sexual conduct.

270 (18) "Treatment" means psychotherapy, medication, including the administration of

271 psychotropic medication, or other medical treatments that are generally accepted medical or

272 psychosocial interventions for the purpose of restoring the patient to an optimal level of

273 functioning in the least restrictive environment.

274 Section 7. Section **76-3-406** is amended to read:

275 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**

276 **offense, or hospitalization may not be granted.**

277 (1) Notwithstanding Sections [76-3-201](#) and [77-18-1](#) and Title 77, Chapter 16a,

278 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section

279 [76-5-406.5](#), probation may not be granted, the execution or imposition of sentence may not be

280 suspended, the court may not enter a judgment for a lower category of offense, and

281 hospitalization may not be ordered, the effect of which would in any way shorten the prison

282 sentence for ~~[any person]~~ an individual who commits a capital felony or a first degree felony
 283 involving:

- 284 (a) Section 76-5-202, aggravated murder;
- 285 (b) Section 76-5-203, murder;
- 286 (c) Section 76-5-301.1, child kidnaping;
- 287 (d) Section 76-5-302, aggravated kidnaping;
- 288 (e) Section 76-5-402, rape, if the ~~[person]~~ individual is sentenced under Subsection
 289 76-5-402(3)(b), (3)(c), or (4);
- 290 (f) Section 76-5-402.1, rape of a child;
- 291 (g) Section 76-5-402.2, object rape, if the ~~[person]~~ individual is sentenced under
 292 Subsection 76-5-402.2(1)(b), (1)(c), or (2);
- 293 (h) Section 76-5-402.3, object rape of a child;
- 294 (i) Section 76-5-403, forcible sodomy, if the ~~[person]~~ individual is sentenced under
 295 Subsection 76-5-403~~(4)~~ (3)(b), ~~(4)~~ (3)(c), or ~~(5)~~ (4);
- 296 (j) Section 76-5-403.1, sodomy on a child;
- 297 (k) Section 76-5-404, forcible sexual abuse, if the ~~[person]~~ individual is sentenced
 298 under Subsection 76-5-404(2)(b) or (3);
- 299 (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 300 (m) Section 76-5-405, aggravated sexual assault; or
- 301 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

302 (2) The provisions of this section do not apply if the sentencing court finds that the
 303 defendant was under the age of 18 at the time of the offense and could have been adjudicated in
 304 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the
 305 offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

306 Section 8. Section 76-5-403 is amended to read:

307 **76-5-403. Forcible sodomy.**

308 (1) ~~[A person commits sodomy when the actor engages in any sexual act with a person~~
 309 ~~who is 14 years of age or older involving the genitals of one person and mouth or anus of~~

310 ~~another person, regardless of the sex of either participant.]~~ As used in this section, "sodomy"
311 means engaging in any sexual act with an individual who is 14 years of age or older involving
312 the genitals of one individual and the mouth or anus of another individual, regardless of the sex
313 of either participant.

314 (2) ~~[A person]~~ An individual commits forcible sodomy when the actor commits
315 sodomy upon another without the other's consent.

316 ~~[(3) Sodomy is a class B misdemeanor.]~~

317 ~~[(4)]~~ (3) Forcible sodomy is a first degree felony, punishable by a term of
318 imprisonment of:

319 (a) except as provided in Subsection ~~[(4)]~~ (3)(b) or (c), not less than five years and
320 which may be for life;

321 (b) except as provided in Subsection ~~[(4)]~~ (3)(c) or ~~[(5)]~~ (4), 15 years and which may
322 be for life, if the trier of fact finds that:

323 (i) during the course of the commission of the forcible sodomy the defendant caused
324 serious bodily injury to another; or

325 (ii) at the time of the commission of the rape, the defendant was younger than 18 years
326 of age and was previously convicted of a grievous sexual offense; or

327 (c) life without parole, if the trier of fact finds that at the time of the commission of the
328 forcible sodomy the defendant was previously convicted of a grievous sexual offense.

329 ~~[(5)]~~ (4) If, when imposing a sentence under Subsection ~~[(4)]~~ (3)(b), a court finds that a
330 lesser term than the term described in Subsection ~~[(4)]~~ (3)(b) is in the interests of justice and
331 states the reasons for this finding on the record, the court may impose a term of imprisonment
332 of not less than:

333 (a) 10 years and which may be for life; or

334 (b) six years and which may be for life.

335 ~~[(6)]~~ (5) The provisions of Subsection ~~[(5)]~~ (4) do not apply when ~~[a person]~~ an
336 individual is sentenced under Subsection ~~[(4)]~~ (3)(a) or (c).

337 ~~[(7)]~~ (6) Imprisonment under Subsection ~~[(4)]~~ (3)(b), ~~[(4)]~~ (3)(c), or ~~[(5)]~~ (4) is

338 mandatory in accordance with Section 76-3-406.

339 Section 9. Section 76-5-404 is amended to read:

340 **76-5-404. Forcible sexual abuse.**

341 (1) An individual commits forcible sexual abuse if the victim is 14 years of age or
342 older and, under circumstances not amounting to rape, object rape, forcible sodomy, or
343 attempted rape or forcible sodomy, the actor touches the anus, buttocks, pubic area, or any part
344 of the genitals of another, or touches the breast of a female, or otherwise takes indecent
345 liberties with another, with intent to cause substantial emotional or bodily pain to any
346 individual or with the intent to arouse or gratify the sexual desire of any individual, without the
347 consent of the other, regardless of the sex of any participant.

348 (2) Forcible sexual abuse is:

349 (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable
350 by a term of imprisonment of not less than one year nor more than 15 years; or

351 (b) except as provided in Subsection (3), a felony of the first degree, punishable by a
352 term of imprisonment for 15 years and which may be for life, if the trier of fact finds that
353 during the course of the commission of the forcible sexual abuse the defendant caused serious
354 bodily injury to another.

355 (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser
356 term than the term described in Subsection (2)(b) is in the interests of justice and states the
357 reasons for this finding on the record, the court may impose a term of imprisonment of not less
358 than:

359 (a) 10 years and which may be for life; or

360 (b) six years and which may be for life.

361 (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with
362 Section 76-3-406.

363 Section 10. Section 76-5-406 is amended to read:

364 **76-5-406. Sexual offenses against the victim without consent of victim --**
365 **Circumstances.**

366 (1) As used in this section:

367 (a) "Health professional" means an individual who is licensed or who holds the
368 individual out to be licensed, or who otherwise provides professional physical or mental health
369 services, diagnosis, treatment, or counseling, including an athletic trainer, physician,
370 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,
371 social service worker, clinical social worker, certified social worker, marriage and family
372 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
373 specialist, or substance abuse counselor.

374 (b) "Religious counselor" means a minister, priest, rabbi, bishop, or other recognized
375 member of the clergy.

376 (c) "To retaliate" includes threats of physical force, kidnapping, or extortion.

377 (2) An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of
378 a child, object rape, attempted object rape, object rape of a child, attempted object rape of a
379 child, [~~sodomy, attempted sodomy,~~] forcible sodomy, attempted forcible sodomy, sodomy on a
380 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
381 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
382 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
383 victim under any of the following circumstances:

384 [~~1~~] (a) the victim expresses lack of consent through words or conduct;

385 [~~2~~] (b) the actor overcomes the victim through the actual application of physical force
386 or violence;

387 [~~3~~] (c) the actor is able to overcome the victim through concealment or by the
388 element of surprise;

389 [~~4~~]-~~(a)~~-~~(i)~~ (d) (i) the actor coerces the victim to submit by threatening to retaliate in
390 the immediate future against the victim or any other person, and the victim perceives at the
391 time that the actor has the ability to execute this threat; or

392 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
393 against the victim or any other person, and the victim believes at the time that the actor has the

394 ability to execute this threat;

395 ~~[(b) as used in this Subsection (4), "to retaliate" includes threats of physical force,~~
 396 ~~kidnapping, or extortion;]~~

397 ~~[(5)]~~ (e) the actor knows the victim is unconscious, unaware that the act is occurring, or
 398 physically unable to resist;

399 ~~[(6)]~~ (f) the actor knows or reasonably should know that the victim has a mental
 400 disease or defect, which renders the victim unable to:

401 ~~[(a)]~~ (i) appraise the nature of the act;

402 ~~[(b)]~~ (ii) resist the act;

403 ~~[(c)]~~ (iii) understand the possible consequences to the victim's health or safety; or

404 ~~[(d)]~~ (iv) appraise the nature of the relationship between the actor and the victim[-];

405 ~~[(7)]~~ (g) the actor knows that the victim submits or participates because the victim
 406 erroneously believes that the actor is the victim's spouse;

407 ~~[(8)]~~ (h) the actor intentionally impaired the power of the victim to appraise or control
 408 his or her conduct by administering any substance without the victim's knowledge;

409 ~~[(9)]~~ (i) the victim is younger than 14 years of age;

410 ~~[(10)]~~ (j) the victim is younger than 18 years of age and at the time of the offense the
 411 actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a
 412 position of special trust in relation to the victim as defined in Section [76-5-404.1](#);

413 ~~[(11)]~~ (k) the victim is 14 years of age or older, but younger than 18 years of age, and
 414 the actor is more than three years older than the victim and entices or coerces the victim to
 415 submit or participate, under circumstances not amounting to the force or threat required under
 416 Subsection ~~[(2) or (4)]~~ (2)(b) or (d); or

417 ~~[(12)]~~ (l) the actor is a health professional or religious counselor, ~~[as those terms are~~
 418 ~~defined in this Subsection (12);]~~ the act is committed under the guise of providing professional
 419 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
 420 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
 421 to the extent that resistance by the victim could not reasonably be expected to have been

422 manifested[; for purposes of this Subsection (12):]

423 ~~[(a) "health professional" means an individual who is licensed or who holds himself or~~
424 ~~herself out to be licensed, or who otherwise provides professional physical or mental health~~
425 ~~services, diagnosis, treatment, or counseling including, but not limited to, a physician,~~
426 ~~osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,~~
427 ~~social service worker, clinical social worker, certified social worker, marriage and family~~
428 ~~therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse~~
429 ~~specialist, or substance abuse counselor; and]~~

430 ~~[(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized~~
431 ~~member of the clergy].~~

432 Section 11. Section ~~76-5-407~~ is amended to read:

433 **76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to**
434 **constitute offense.**

435 (1) The provisions of this part do not apply to consensual conduct between [persons]
436 individuals married to each other.

437 (2) In any prosecution for:

438 (a) the following offenses, any sexual penetration, however slight, is sufficient to
439 constitute the relevant element of the offense:

440 (i) unlawful sexual activity with a minor, a violation of Section ~~76-5-401~~, involving
441 sexual intercourse;

442 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section
443 ~~76-5-401.2~~, involving sexual intercourse; or

444 (iii) rape, a violation of Section ~~76-5-402~~; or

445 (b) the following offenses, any touching, however slight, is sufficient to constitute the
446 relevant element of the offense:

447 (i) unlawful sexual activity with a minor, a violation of Section ~~76-5-401~~, involving
448 acts of sodomy;

449 (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section

450 76-5-401.2, involving acts of sodomy;

451 [~~(iii)~~] sodomy, a violation of Subsection ~~76-5-403(1)~~;

452 [~~(iv)~~] (iii) forcible sodomy, a violation of Subsection 76-5-403(2);

453 [~~(v)~~] (iv) rape of a child, a violation of Section 76-5-402.1; or

454 [~~(vi)~~] (v) object rape of a child, a violation of Section 76-5-402.3.

455 (3) In any prosecution for the following offenses, any touching, even if accomplished
456 through clothing, is sufficient to constitute the relevant element of the offense:

457 (a) sodomy on a child, a violation of Section 76-5-403.1; or

458 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section
459 76-5-404.1.

460 Section 12. Section ~~76-6-412~~ is amended to read:

461 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

462 (1) Theft of property and services as provided in this chapter is punishable:

463 (a) as a second degree felony if the:

464 (i) value of the property or services is or exceeds \$5,000;

465 (ii) property stolen is a firearm or an operable motor vehicle; or

466 (iii) property is stolen from the person of another;

467 (b) as a third degree felony if:

468 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

469 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice
470 before convicted of any of the following offenses, if each prior offense was committed within

471 10 years [~~of~~] before the date of the current conviction or the date of the offense upon which the
472 current conviction is based and at least one of those convictions is for a class A misdemeanor:

473 (A) any theft, any robbery, or any burglary with intent to commit theft;

474 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

475 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

476 [~~(iii) in a case not amounting to a second degree felony, the property taken is a stallion,
477 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,~~

478 ~~poultry, or a fur-bearing animal raised for commercial purposes; or]~~

479 ~~[(iv)]~~ (iii) (A) the value of property or services is or exceeds \$500 but is less than
480 \$1,500;

481 (B) the theft occurs on a property where the offender has committed any theft within
482 the past five years; and

483 (C) the offender has received written notice from the merchant prohibiting the offender
484 from entering the property pursuant to Subsection 78B-3-108(4);

485 ~~[(v)]~~ (iv) the actor has been previously convicted of a felony violation of any of the
486 offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was
487 committed within 10 years before the date of the current conviction or the date of the offense
488 upon which the current conviction is based;

489 (c) as a class A misdemeanor if:

490 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

491 (ii) (A) the value of property or services is less than \$500;

492 (B) the theft occurs on a property where the offender has committed any theft within
493 the past five years; and

494 (C) the offender has received written notice from the merchant prohibiting the offender
495 from entering the property pursuant to Subsection 78B-3-108(4); or

496 (iii) the actor has been twice before convicted of any of the offenses listed in
497 Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10
498 years ~~[of]~~ before the date of the current conviction or the date of the offense upon which the
499 current conviction is based; or

500 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and
501 the theft is not an offense under Subsection (1)(c).

502 (2) Any individual who violates Subsection 76-6-408(1) or Subsection 76-6-413(1), or
503 commits theft of ~~[property described in Subsection 76-6-412(1)(b)(iii)]~~ a stallion, mare, colt,
504 gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a
505 fur-bearing animal raised for commercial purposes, is civilly liable for three times the amount

506 of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney
507 fees.

508 Section 13. Section **76-7-302** is amended to read:

509 **76-7-302. Circumstances under which abortion authorized.**

510 (1) As used in this section, "viable" means that the unborn child has reached a stage of
511 fetal development when the unborn child is potentially able to live outside the womb, as
512 determined by the attending physician to a reasonable degree of medical certainty.

513 (2) An abortion may be performed in this state only by a physician.

514 (3) An abortion may be performed in this state only under the following circumstances:

515 (a) the unborn child is not viable; or

516 (b) the unborn child is viable, if:

517 (i) the abortion is necessary to avert:

518 (A) the death of the woman on whom the abortion is performed; or

519 (B) a serious risk of substantial and irreversible impairment of a major bodily function
520 of the woman on whom the abortion is performed;

521 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
522 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly
523 lethal; or

524 (iii) (A) the woman is pregnant as a result of:

525 (I) rape, as described in Section [76-5-402](#);

526 (II) rape of a child, as described in Section [76-5-402.1](#); or

527 (III) incest, as described in Subsection [76-5-406](#)~~[(10)]~~ [\(2\)\(j\)](#) or Section [76-7-102](#); and

528 (B) before the abortion is performed, the physician who performs the abortion:

529 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
530 law enforcement; and

531 (II) complies with the requirements of Section [62A-4a-403](#).

532 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
533 necessary to perform the abortion in another location due to a medical emergency.

534 Section 14. Section **76-7-305** is amended to read:

535 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
536 **-- Exceptions.**

537 (1) A person may not perform an abortion, unless, before performing the abortion, the
538 physician who will perform the abortion obtains a voluntary and informed written consent from
539 the woman on whom the abortion is performed, that is consistent with:

540 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
541 Current Opinions; and

542 (b) the provisions of this section.

543 (2) Except as provided in Subsection (8), consent to an abortion is voluntary and
544 informed only if, at least 72 hours before the abortion:

545 (a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
546 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
547 physician's assistant presents the information module to the pregnant woman;

548 (b) the pregnant woman views the entire information module and presents evidence to
549 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
550 information module;

551 (c) after receiving the evidence described in Subsection (2)(b), the individual described
552 in Subsection (2)(a):

553 (i) documents that the pregnant woman viewed the entire information module;

554 (ii) gives the pregnant woman, upon her request, a copy of the documentation
555 described in Subsection (2)(c)(i); and

556 (iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
557 who is to perform the abortion, upon request of that physician or the pregnant woman;

558 (d) after the pregnant woman views the entire information module, the physician who
559 is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
560 practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
561 physician's assistant, in a face-to-face consultation in any location in the state, orally informs

562 the woman of:

563 (i) the nature of the proposed abortion procedure;

564 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

565 fetus;

566 (iii) the risks and alternatives to the abortion procedure or treatment;

567 (iv) the options and consequences of aborting a medication-induced abortion, if the

568 proposed abortion procedure is a medication-induced abortion;

569 (v) the probable gestational age and a description of the development of the unborn

570 child at the time the abortion would be performed;

571 (vi) the medical risks associated with carrying her child to term; and

572 (vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant

573 woman, upon her request; and

574 (e) after the pregnant woman views the entire information module, a staff member of

575 the abortion clinic or hospital provides to the pregnant woman:

576 (i) on a document that the pregnant woman may take home:

577 (A) the address for the department's website described in Section [76-7-305.5](#); and

578 (B) a statement that the woman may request, from a staff member of the abortion clinic

579 or hospital where the woman viewed the information module, a printed copy of the material on

580 the department's website; and

581 (ii) a printed copy of the material on the department's website described in Section

582 [76-7-305.5](#), if requested by the pregnant woman.

583 (3) Before performing an abortion, the physician who is to perform the abortion shall:

584 (a) in a face-to-face consultation, provide the information described in Subsection

585 (2)(d), unless the attending physician or referring physician is the individual who provided the

586 information required under Subsection (2)(d); and

587 (b) (i) obtain from the pregnant woman a written certification that the information

588 required to be provided under Subsection (2) and this Subsection (3) was provided in

589 accordance with the requirements of Subsection (2) and this Subsection (3); and

590 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

591 (4) When a serious medical emergency compels the performance of an abortion, the
592 physician shall inform the woman prior to the abortion, if possible, of the medical indications
593 supporting the physician's judgment that an abortion is necessary.

594 (5) If an ultrasound is performed on a woman before an abortion is performed, the
595 individual who performs the ultrasound, or another qualified individual, shall:

596 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
597 manner to permit her to:

598 (i) view the images, if she chooses to view the images; or

599 (ii) not view the images, if she chooses not to view the images;

600 (b) simultaneously display the ultrasound images in order to permit the woman to:

601 (i) view the images, if she chooses to view the images; or

602 (ii) not view the images, if she chooses not to view the images;

603 (c) inform the woman that, if she desires, the person performing the ultrasound, or
604 another qualified person shall provide a detailed description of the ultrasound images,
605 including:

606 (i) the dimensions of the unborn child;

607 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

608 (iii) the presence of external body parts or internal organs, if present and viewable; and

609 (d) provide the detailed description described in Subsection ~~[(6)]~~ (5)(c), if the woman
610 requests it.

611 (6) The information described in Subsections (2), (3), and (5) is not required to be
612 provided to a pregnant woman under this section if the abortion is performed for a reason
613 described in:

614 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
615 concur, in writing, that the abortion is necessary to avert:

616 (i) the death of the woman on whom the abortion is performed; or

617 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

618 of the woman on whom the abortion is performed; or

619 (b) Subsection 76-7-302(3)(b)(ii).

620 (7) In addition to the criminal penalties described in this part, a physician who violates
621 the provisions of this section:

622 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;
623 and

624 (b) shall be subject to:

625 (i) suspension or revocation of the physician's license for the practice of medicine and
626 surgery in accordance with Section 58-67-401 or 58-68-401; and

627 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

628 (8) A physician is not guilty of violating this section for failure to furnish any of the
629 information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

630 (a) the physician can demonstrate by a preponderance of the evidence that the
631 physician reasonably believed that furnishing the information would have resulted in a severely
632 adverse effect on the physical or mental health of the pregnant woman;

633 (b) in the physician's professional judgment, the abortion was necessary to avert:

634 (i) the death of the woman on whom the abortion is performed; or

635 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
636 of the woman on whom the abortion is performed;

637 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
638 76-5-402 and 76-5-402.1;

639 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406~~(10)~~
640 (2)(j) and Section 76-7-102; or

641 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

642 (9) A physician who complies with the provisions of this section and Section
643 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
644 informed consent under Section 78B-3-406.

645 (10) (a) The department shall provide an ultrasound, in accordance with the provisions

646 of Subsection (5)(b), at no expense to the pregnant woman.

647 (b) A local health department shall refer a pregnant woman who requests an ultrasound
648 described in Subsection (10)(a) to the department.

649 (11) A physician is not guilty of violating this section if:

650 (a) the information described in Subsection (2) is provided less than 72 hours before
651 the physician performs the abortion; and

652 (b) in the physician's professional judgment, the abortion was necessary in a case
653 where:

654 (i) a ruptured membrane, documented by the attending or referring physician, will
655 cause a serious infection; or

656 (ii) a serious infection, documented by the attending or referring physician, will cause a
657 ruptured membrane.

658 Section 15. Section **76-10-1206** is amended to read:

659 **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for**
660 **internet service providers and hosting companies.**

661 (1) A person is guilty of dealing in material harmful to minors when, knowing or
662 believing that [~~a person~~] an individual is a minor, or having negligently failed to determine the
663 proper age of a minor, the person intentionally:

664 (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or [~~a~~
665 ~~person the actor~~] an individual whom the person believes to be a minor, any material harmful
666 to minors;

667 (b) produces, performs, or directs any performance, before a minor or [~~a person the~~
668 ~~actor~~] an individual whom the person believes to be a minor, that is harmful to minors; or

669 (c) participates in any performance, before a minor or [~~a person the actor~~] an individual
670 whom the person believes to be a minor, that is harmful to minors.

671 (2) (a) [~~Each~~] Except as provided in Subsection (2)(b), each separate offense under this
672 section committed by a person 18 years of age or older is a third degree felony punishable by:

673 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article

674 exhibited up to the maximum allowed by law; and

675 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

676 (b) Each separate offense under this section committed by a person 18 years of age or
677 older against a minor 16 years of age or older, but younger than 18 years of age, is a class A
678 misdemeanor if the person is less than seven years older than the minor at the time of the
679 offense.

680 [~~b~~] (c) Each separate offense under this section committed by a person 16 or 17 years
681 of age is a class A misdemeanor.

682 [~~c~~] (d) Each separate offense under this section committed by a person younger than
683 16 years of age is a class B misdemeanor.

684 [~~d~~] (e) Subsection (2)(a) supersedes Section 77-18-1.

685 (3) (a) [~~f~~] Except for a defendant described in Subsection (2)(b), if a defendant 18
686 years of age or older has been previously convicted or adjudicated to be under the jurisdiction
687 of the juvenile court under this section, each separate subsequent offense is a second degree
688 felony punishable by:

689 (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article
690 exhibited up to the maximum allowed by law; and

691 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

692 (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years
693 of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile
694 court under this section, each separate subsequent offense is a third degree felony.

695 (c) Subsection (3)(a) supersedes Section 77-18-1.

696 (d) (i) This section does not apply to an Internet service provider, as defined in Section
697 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec.
698 2510, a telecommunications service, information service, or mobile service as defined in 47
699 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or
700 a cable operator as defined in 47 U.S.C. Sec. 522, if:

701 (A) the distribution of pornographic material by the Internet service provider occurs

702 only incidentally through the provider's function of:

703 (I) transmitting or routing data from one person to another person; or

704 (II) providing a connection between one person and another person;

705 (B) the provider does not intentionally aid or abet in the distribution of the
706 pornographic material; and

707 (C) the provider does not knowingly receive from or through a person who distributes
708 the pornographic material a fee greater than the fee generally charged by the provider, as a
709 specific condition for permitting the person to distribute the pornographic material.

710 (ii) This section does not apply to a hosting company, as defined in Section
711 [76-10-1230](#), if:

712 (A) the distribution of pornographic material by the hosting company occurs only
713 incidentally through the hosting company's function of providing data storage space or data
714 caching to a person;

715 (B) the hosting company does not intentionally engage, aid, or abet in the distribution
716 of the pornographic material; and

717 (C) the hosting company does not knowingly receive from or through a person who
718 distributes the pornographic material a fee greater than the fee generally charged by the
719 provider, as a specific condition for permitting the person to distribute, store, or cache the
720 pornographic material.

721 (4) A service provider, as defined in Section [76-10-1230](#), is not negligent under this
722 section if it complies with Section [76-10-1231](#).

723 (5) A person 18 years of age or older who knowingly solicits, requests, commands,
724 encourages, or intentionally aids another person younger than 18 years of age to engage in
725 conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the
726 penalties under Subsection (2)(a).

727 Section 16. Section **76-10-1302** is amended to read:

728 **76-10-1302. Prostitution.**

729 (1) An individual is guilty of prostitution when the individual:

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

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

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

737 (2) (a) Except as provided in Subsection (2)(b) [~~or~~] and Section 76-10-1309,
738 prostitution is a class B misdemeanor.

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

743 (3) (a) As used in this Subsection (3):

744 (i) "Child" means the same as that term is defined in Section 76-10-1301.

745 (ii) "Child engaged in prostitution" means a child who engages in conduct described in
746 Subsection (1).

747 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
748 commit or engage in any sexual activity with another person for a fee or the functional
749 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

750 (iv) "Division" means the Division of Child and Family Services created in Section
751 62A-4a-103.

752 (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

753 (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law
754 enforcement officer shall:

755 (i) conduct an investigation;

756 (ii) refer the child to the division;

757 (iii) if an arrest is made, bring the child to a receiving center, if available; and

- 758 (iv) contact the child's parent or guardian, if practicable.
- 759 (c) When law enforcement has referred the child to the division under Subsection
- 760 (3)(b)(ii):
- 761 (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child
- 762 and Family Services; and
- 763 (ii) the child may not be subjected to delinquency proceedings under Title 62A,
- 764 Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.
- 765 (4) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
- 766 the individual engages in a violation of Subsection (1) at or near the time the individual
- 767 witnesses or is a victim of any of the following offenses, or an attempt to commit any of the
- 768 following offenses, and the individual reports the offense or attempt to law enforcement in
- 769 good faith:
- 770 (a) assault, Section 76-5-102;
- 771 (b) aggravated assault, Section 76-5-103;
- 772 (c) mayhem, Section 76-5-105;
- 773 (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse
- 774 homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 775 (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or
- 776 aggravated human trafficking, human smuggling or aggravated human smuggling, or human
- 777 trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and
- 778 Smuggling;
- 779 (f) rape, Section 76-5-402;
- 780 (g) rape of a child, Section 76-5-402.1;
- 781 (h) object rape, Section 76-5-402.2;
- 782 (i) object rape of a child, Section 76-5-402.3;
- 783 (j) forcible sodomy, Section 76-5-403;
- 784 (k) sodomy on a child, Section 76-5-403.1;
- 785 (l) forcible sexual abuse, Section 76-5-404;

786 (m) aggravated sexual abuse of a child or sexual abuse of a child, Section [76-5-404.1](#);

787 (n) aggravated sexual assault, Section [76-5-405](#);

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

789 (p) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);

790 (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2,

791 Burglary and Criminal Trespass;

792 (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or

793 (s) theft by extortion under Subsection [76-6-406\(2\)\(a\)](#) or (b).

794 Section 17. Section **76-10-1313** is amended to read:

795 **76-10-1313. Sexual solicitation -- Penalty.**

796 (1) An individual is guilty of sexual solicitation when the individual:

797 (a) offers or agrees to commit any sexual activity with another individual for a fee, or
798 the functional equivalent of a fee;

799 (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another
800 individual to commit any sexual activity; or

801 (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee
802 or to pay another individual to commit any sexual activity for a fee or the functional equivalent
803 of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any
804 of the following acts:

805 (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the
806 female breast below the top of the areola;

807 (ii) masturbation;

808 (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the
809 female breast; or

810 (iv) any act of lewdness.

811 (2) An intent to engage in sexual activity for a fee may be inferred from an individual's
812 engaging in, offering or agreeing to engage in, or requesting or directing another to engage in
813 any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

814 (3) ~~[(a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).]~~
 815 ~~[(b) An]~~ Except as provided in Section 76-10-1309 and Subsections (4) and (5), an
 816 individual who is convicted ~~[a second time]~~ of sexual solicitation under this section or under a
 817 local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A
 818 misdemeanor~~[, except as provided in Section 76-10-1309].~~

819 (4) An individual who is convicted a third time under this section or a local ordinance
 820 adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

821 (5) If an individual commits an act of sexual solicitation and the individual solicited is
 822 a child, the offense is a third degree felony if the solicitation does not amount to human
 823 trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human
 824 trafficking or aggravated human smuggling, a violation of Section 76-5-310.

825 (6) A prosecutor may not prosecute an individual for a violation of Subsection (1) if
 826 the individual engages in a violation of Subsection (1) at or near the time the individual
 827 witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses
 828 described in Subsection 76-10-1302(4), and the individual reports the offense or attempt to law
 829 enforcement in good faith.

830 Section 18. Section 77-41-107 is amended to read:

831 **77-41-107. Penalties.**

832 (1) An offender who knowingly fails to register under this chapter or provides false or
 833 incomplete information is guilty of:

834 (a) a third degree felony and shall be sentenced to serve a term of incarceration for not
 835 less than ~~[90]~~ 30 days and also at least one year of probation if:

836 (i) the offender is required to register for a felony conviction or adjudicated delinquent
 837 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
 838 77-41-102(9)(a) or (17)(a); or

839 (ii) the offender is required to register for the offender's lifetime under Subsection
 840 77-41-105(3)(c); or

841 (b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for

842 not fewer than [90] 30 days and also at least one year of probation if the offender is required to
843 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
844 misdemeanor if the juvenile were an adult of an offense listed in Subsection 77-41-102(9)(a) or
845 (17)(a).

846 (2) (a) Neither the court nor the Board of Pardons and Parole may release [~~a person~~] an
847 individual who violates this chapter from serving the term required under Subsection (1).

848 (b) This Subsection (2) supersedes any other provision of the law contrary to this
849 chapter.

850 (3) The offender shall register for an additional year for every year in which the
851 offender does not comply with the registration requirements of this chapter.

852 Section 19. **Repealer.**

853 This bill repeals:

854 Section **76-7-103, Adultery.**