

Senator Chris H. Wilson proposes the following substitute bill:

SEXUAL ABUSE MATERIAL AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the reproduction and possession of sexual abuse material.

Highlighted Provisions:

This bill:

- ▶ changes the term "child pornography" to "child sexual abuse material" in the Utah Code;
- ▶ changes the term "vulnerable adult pornography" to "vulnerable adult sexual abuse material" in the Utah Code;
- ▶ prohibits the reproduction of child sexual abuse material evidence;
- ▶ allows a defendant's attorney or a defendant's expert to inspect child sexual abuse material evidence at a government facility before trial;
- ▶ allows a victim, the victim's attorney, or the victim's expert to inspect child sexual abuse material evidence at a government facility before trial upon a showing of good cause; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

9-7-215, as last amended by Laws of Utah 2017, Chapter 208

24-1-102, as last amended by Laws of Utah 2022, Chapter 179

62A-1-122, as last amended by Laws of Utah 2021, Chapter 344

63G-2-103, as last amended by Laws of Utah 2021, Chapters 211, 283

67-5-21, as enacted by Laws of Utah 2006, Chapter 350

76-5b-103, as last amended by Laws of Utah 2022, Chapter 181

76-5b-201, as last amended by Laws of Utah 2022, Chapters 181, 185

76-5b-201.1, as enacted by Laws of Utah 2022, Chapter 185 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 185

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

76-10-1204.5, as enacted by Laws of Utah 2016, Chapter 313

ENACTS:

77-4-201, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

77-4-101, (Renumbered from 77-4-1, as enacted by Laws of Utah 1980, Chapter 15)

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

Section 1. Section **9-7-215** is amended to read:

9-7-215. Internet and online access policy required.

(1) As used in this section:

(a) ~~["Child pornography" is as]~~ "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

(b) "Harmful to minors" ~~[is as]~~ means the same as that term is defined in Section 76-10-1201.

(c) "Obscene" ~~[is as]~~ means the same as that term is defined in 20 U.S.C. Sec. 9101.

(d) "Technology protection measure" means a technology that blocks or filters Internet access to visual depictions.

(2) State funds may not be provided to any public library that provides public access to

the Internet unless the library:

(a) (i) has in place a policy of Internet safety for minors, including the operation of a technology protection measure:

(A) with respect to any computer or other device while connected to the Internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are:

(I) child ~~[pornography]~~ sexual abuse material;

(II) harmful to minors; or

(III) obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(a)(i) during any use by a minor of a computer or other device that is connected to the Internet through a network provided by the library, including a wireless network; and

(b) (i) has in place a policy of Internet safety, including the operation of a technology protection measure:

(A) with respect to any computer or other device while connected to the Internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are:

(I) child ~~[pornography]~~ sexual abuse material; or

(II) obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(b)(i) during any use of a computer or other device that is connected to the Internet through a network provided by the library, including a wireless network.

(3) This section does not prohibit a public library from limiting Internet access or otherwise protecting against materials other than the materials specified in this section.

(4) An administrator, supervisor, or other representative of a public library may disable a technology protection measure described in Subsection (2):

(a) at the request of a library patron who is not a minor; and

(b) to enable access for research or other lawful purposes.

Section 2. Section **24-1-102** is amended to read:

24-1-102. Definitions.

As used in this title:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-4-116.

(2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.

(b) "Acquitted" does not include:

(i) a verdict of guilty on a lesser or reduced charge;

(ii) a plea of guilty to a lesser or reduced charge; or

(iii) dismissal of a charge as a result of a negotiated plea agreement.

(3) (a) "Agency" means an agency of this state or a political subdivision of this state.

(b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

(4) "Claimant" means:

(a) an owner of property as defined in this section;

(b) an interest holder as defined in this section; or

(c) an individual or entity who asserts a claim to any property seized for forfeiture under this title.

(5) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(6) "Complaint" means a civil or criminal complaint seeking the forfeiture of any real or personal property under this title.

(7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions.

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

(c) "Computer" does not mean a computer server of an Internet or electronic service provider, or the service provider's employee, if used to comply with the requirements under 18 U.S.C. Sec. 2258A.

(8) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and an agency posts the property with a notice of intent to seek forfeiture.

(9) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) "Contraband" includes:

(i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(ii) a computer that:

(A) contains or houses child ~~[pornography]~~ sexual abuse material, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child ~~[pornography]~~ sexual abuse material; or

(B) contains the personal identifying information of another individual, as defined in Subsection 76-6-1102(1), whether that individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

(10) "Forfeit" means to divest a claimant of an ownership interest in property seized under this title.

(11) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time of the commission of an offense subjecting the property to forfeiture under this title, and:

(i) did not have actual knowledge of the offense subjecting the property to forfeiture; or

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the use of the property in the commission of the offense; or

(b) acquired an ownership interest in the property and had no knowledge that the commission of the offense subjecting the property to forfeiture under this title had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was an individual, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person:

(i) who holds property for the benefit of or as an agent or nominee for another person;
or

(ii) who is not in substantial compliance with any statute requiring an interest in property to be:

(A) recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value; or

(B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for value.

(13) "Known address" means any address provided by a claimant to the peace officer or agency at the time the property is seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.

(14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

(15) "Legislative body" means:

(a) (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

(16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of individuals who are employed by or acting under the authority of different governmental entities, including federal, state, county, or municipal governments, or any combination of federal, state, county, or municipal agencies.

(17) "Owner" means an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

(18) "Peace officer" means an employee:

(a) of an agency;

(b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and

(c) who is authorized by the agency to seize property under this title.

(19) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection (19)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection (19)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property to forfeiture.

(20) "Program" means the State Asset Forfeiture Grant Program created in Section 24-4-117.

(21) (a) "Property" means all property, whether real or personal, tangible or intangible.

(b) "Property" does not include contraband.

(22) "Prosecuting attorney" means:

(a) the attorney general and an assistant attorney general;

(b) a district attorney or deputy district attorney;

(c) a county attorney or assistant county attorney; and

(d) an attorney authorized to commence an action on behalf of the state under this title.

(23) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

(24) "Real property" means land, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 3. Section **62A-1-122** is amended to read:

62A-1-122. Child sexual abuse material.

(1) As used in this section:

(a) [~~"Child pornography"~~] "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.

(b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or transfer of an image.

(2) The department or a division within the department may not retain child [pornography] sexual abuse material longer than is necessary to comply with the requirements of this section.

(3) When the department or a division within the department obtains child [pornography] sexual abuse material as a result of an employee unlawfully viewing child [pornography] sexual abuse material, the department or division shall consult with and follow the guidance of the Division of Human Resource Management regarding personnel action and local law enforcement regarding retention of the child [pornography] sexual abuse material.

(4) When the department or a division within the department obtains child [pornography] sexual abuse material as a result of a report or an investigation, the department or division shall immediately secure the child [pornography] sexual abuse material, or the electronic device if the child [pornography] sexual abuse material is digital, and contact the law enforcement office that has jurisdiction over the area where the division's case is located.

Section 4. Section **63G-2-103** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a

record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

274 (a) commonly used or intended for the purpose of producing an explosion; and
275 (b) that contains oxidizing or combustive units or other ingredients in proportions,
276 quantities, or packing so that:

277 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
278 compound or mixture may cause a sudden generation of highly heated gases; and
279 (ii) the resultant gaseous pressures are capable of:

280 (A) producing destructive effects on contiguous objects; or
281 (B) causing death or serious bodily injury.

282 (10) "Government audit agency" means any governmental entity that conducts an audit.
283 (11) (a) "Governmental entity" means:

284 (i) executive department agencies of the state, the offices of the governor, lieutenant
285 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
286 the Board of Examiners, the National Guard, the Career Service Review Office, the State
287 Board of Education, the Utah Board of Higher Education, and the State Archives;

288 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
289 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
290 committees, except any political party, group, caucus, or rules or sifting committee of the
291 Legislature;

292 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
293 administrative units in the judicial branch;

294 (iv) any state-funded institution of higher education or public education; or
295 (v) any political subdivision of the state, but, if a political subdivision has adopted an
296 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
297 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
298 as specified in any other section of this chapter that specifically refers to political subdivisions.

299 (b) "Governmental entity" also means:

300 (i) every office, agency, board, bureau, committee, department, advisory board, or
301 commission of an entity listed in Subsection (11)(a) that is funded or established by the
302 government to carry out the public's business;

303 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
304 undertaking;

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

(iv) an association as defined in Section 53G-7-1101;

(v) the Utah Independent Redistricting Commission; and

(vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(c) Initial contact reports do not include accident reports, as that term is described in Title 41, Chapter 6a, Part 4, Accident Responsibilities.

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with an order of the State Records Committee.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section [63G-2-302](#).

(20) "Protected record" means a record that is classified protected as provided by Section [63G-2-305](#).

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity;

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or

prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

(xiv) information that an owner of unimproved property provides to a local entity as

provided in Section 11-42-205;

(xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;

(xvi) child [~~pornography~~] sexual abuse material, as defined by Section 76-5b-103;

(xvii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:

(A) a Senate or House Ethics Committee;

(B) the Independent Legislative Ethics Commission;

(C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or

(D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201; or

(xviii) confidential communication described in Section 58-60-102, 58-61-102, or 58-61-702.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(25) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(26) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section 53B-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(27) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(28) "State archivist" means the director of the state archives.

(29) "State Records Committee" means the State Records Committee created in Section 63G-2-501.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 5. Section 67-5-21 is amended to read:

67-5-21. Internet Crimes Against Children (ICAC) unit creation -- Duties -- Employment of staff.

(1) There is created within the Office of the Attorney General the Internet Crimes Against Children (ICAC) unit to investigate and prosecute cases involving child ~~[pornography]~~ sexual abuse material and cases involving enticing minors over the Internet into illegal sexual acts.

(2) The attorney general may employ investigators, prosecutors, and necessary support staff for the unit created under Subsection (1).

Section 6. Section 76-5b-103 is amended to read:

76-5b-103. Definitions.

As used in this chapter:

(1) ~~["Child pornography"]~~ "Child sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an

identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child ~~[pornography]~~ sexual abuse material or vulnerable adult ~~[pornography]~~ sexual abuse material with or without consideration.

(3) "Identifiable minor" means a person:

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

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

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

(4) "Identifiable vulnerable adult" means a person:

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

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

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

(5) "Lacks capacity to consent" is as defined in Section 76-5-111.4.

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

(7) "Minor" means a person younger than 18 years old.

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

(9) "Produce" means:

(a) the photographing, filming, taping, directing, producing, creating, designing, or composing of child ~~[pornography]~~ sexual abuse material or vulnerable adult ~~[pornography]~~ sexual abuse material; or

(b) the securing or hiring of persons to engage in the photographing, filming, taping,

directing, producing, creating, designing, or composing of child [~~pornography~~] sexual abuse material or vulnerable adult [~~pornography~~] sexual abuse material.

(10) "Sexually explicit conduct" means actual or simulated:

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

(b) masturbation;

(c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

(g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(h) the explicit representation of the defecation or urination functions.

(11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

(13) "Vulnerable adult [~~pornography~~] sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a vulnerable adult engaging in sexually explicit conduct;

(b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Section 7. Section 76-5b-201 is amended to read:

76-5b-201. Sexual exploitation of a minor -- Offenses.

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

(2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child [pornography] sexual abuse material.

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

(b) It is a separate offense under this section:

(i) for each minor depicted in the child [pornography] sexual abuse material; and

(ii) for each time the same minor is depicted in different child [pornography] sexual abuse material.

(4) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(b) For a charge of violating this section, it is an affirmative defense that:

(i) the defendant:

(A) did not solicit the child [pornography] sexual abuse material from the minor depicted in the child [pornography] sexual abuse material;

(B) is not more than two years older than the minor depicted in the child [pornography] sexual abuse material; and

(C) upon request of a law enforcement agent or the minor depicted in the child [pornography] sexual abuse material, removes from an electronic device or destroys the child pornography and all copies of the child [pornography] sexual abuse material in the defendant's possession; and

(ii) the child [pornography] sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses.

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

(6) ~~[This section may not be construed to impose criminal or civil liability on]~~ The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:

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

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

(ii) implementing a policy of attempting to prevent the presence of child [pornography]

sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child [pornography] sexual abuse material on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child [pornography] sexual abuse material during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child [pornography] sexual abuse material during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child [pornography] sexual abuse material during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Human Services who is required to view child [pornography] sexual abuse material within the scope of the employee's employment; or

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

Section 8. Section **76-5b-201.1** is amended to read:

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

(1) As used in this section:

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

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

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

(a) intentionally distributes child [pornography] sexual abuse material;

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

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

(3) (a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a first degree felony.

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

(c) A violation of Subsection (2)(a) is a second degree felony if the child [pornography]

sexual abuse material depicts an individual who is:

(i) 14 years old or older; or

(ii) pubescent.

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

(a) for each minor depicted in the child [pornography] sexual abuse material; and

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

(5) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

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

(6) ~~[This section may not be construed to impose criminal or civil liability on]~~ The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:

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

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

(ii) implementing a policy of attempting to prevent the presence of child [pornography] sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child [pornography] sexual abuse material on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child [pornography] sexual abuse material during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child [pornography] sexual abuse material during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child [pornography] sexual abuse material during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Health and Human Services who is required to view child [pornography] sexual abuse material within the scope of the employee's

employment; or

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

Section 9. Section **76-5b-202** is amended to read:

76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.

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

(2) An actor commits sexual exploitation of a vulnerable adult if the actor:

(a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute material that the actor knows is vulnerable adult ~~[pornography]~~ sexual abuse material; or

(B) intentionally distributes or views material that the actor knows is vulnerable adult ~~[pornography]~~ sexual abuse material; and

(ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult ~~[pornography]~~ sexual abuse material lacks capacity to consent to the conduct described in Subsection (2)(a); or

(b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the vulnerable adult to be, sexually exploited as described in Subsection (2)(a).

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

(b) It is a separate offense under this section:

(i) for each vulnerable adult depicted in the vulnerable adult ~~[pornography]~~ sexual abuse material; and

(ii) for each time the same vulnerable adult is depicted in different vulnerable adult ~~[pornography]~~ sexual abuse material.

(4) It is an affirmative defense to a charge of violating this section that no vulnerable adult was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

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

(6) This section may not be construed to impose criminal or civil liability on:

(a) any entity or an employee, director, officer, or agent of an entity, when acting

646 within the scope of employment, for the good faith performance of:

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

648 (ii) implementing a policy of attempting to prevent the presence of vulnerable adult

649 ~~[pornography]~~ sexual abuse material on any tangible or intangible property, or of detecting and

650 reporting the presence of vulnerable adult ~~[pornography]~~ sexual abuse material on the property;

651 or

652 (b) any law enforcement officer acting within the scope of a criminal investigation.

653 Section 10. Section **76-10-1204.5** is amended to read:

654 **76-10-1204.5. Reporting of child sexual abuse material by a computer technician.**

655 (1) As used in this section:

656 (a) ~~["Child pornography"]~~ "Child sexual abuse material" means the same as that term
657 is defined in Section **76-5b-103**.

658 (b) "Computer technician" or "technician" means an individual who in the course and
659 scope of the individual's employment for compensation installs, maintains, troubleshoots,
660 upgrades, or repairs computer hardware, software, personal computer networks, or peripheral
661 equipment.

662 (c) "Image" means an image of child ~~[pornography]~~ sexual abuse material or an image
663 that a computer technician reasonably believes is child ~~[pornography]~~ sexual abuse material.

664 (2) (a) A computer technician who in the course of employment for compensation
665 views an image on a computer or other electronic device that is or appears to be child
666 ~~[pornography]~~ sexual abuse material shall immediately report the finding of the image to:

667 (i) a state or local law enforcement agency, or the Cyber Tip Line at the National
668 Center for Missing and Exploited Children; or

669 (ii) an employee designated by the employer of the computer technician in accordance
670 with Subsection (3).

671 (b) A computer technician who willfully does not report an image as required under
672 Subsection (2)(a) is guilty of a class B misdemeanor.

673 (c) The identity of the computer technician who reports an image shall be confidential,
674 except as necessary for the criminal investigation and the judicial process.

675 (d) (i) If the computer technician makes or does not make a report under this section in
676 good faith, the technician is immune from any criminal or civil liability related to reporting or

not reporting the image.

(ii) In this Subsection (2)(d), good faith may be presumed from an employee's or employer's previous course of conduct when the employee or employer has made appropriate reports.

(e) It is a defense to prosecution under this section that the computer technician did not report the image because the technician reasonably believed the image did not depict a person younger than 18 years ~~[of age]~~ old.

(3) (a) An employer of a computer technician may implement a procedure that requires:

(i) the computer technician report an image as is required under Subsection (2)(a) to an employee designated by the employer to receive the report of the image; and

(ii) the designated employee to immediately forward the report provided by the computer technician to an agency under Subsection (2)(a)(i).

(b) Compliance by the computer technician and the designated employee with the reporting process under Subsection (3)(a) is compliance with the reporting requirement of this section and establishes immunity under Subsection (2)(d).

(4) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if the provider reports the image in compliance with 18 U.S.C. 2258A or a successor federal statute that requires reporting by a provider of an image of child ~~[pornography]~~ sexual abuse material.

Section 11. Section ~~77-4-101~~, which is renumbered from Section 77-4-1 is renumbered and amended to read:

CHAPTER 4. PLEADINGS AND PROCEEDINGS BEFORE TRIAL

Part 1. Suppression of Resistance to Service of Process

~~[77-4-1]~~. **77-4-101. Force by officer -- Arrest.**

A public officer authorized to execute process issued by any court may use such force as is reasonable and necessary to execute service of process. If necessary, he may seize, arrest, and confine persons resisting or aiding and abetting resistance to his service of process.

Section 12. Section **77-4-201** is enacted to read:

Part 2. Evidence

77-4-201. Reproduction of child sexual abuse material -- Prohibition.

(1) As used in this section:

(a) "Child sexual abuse material" means the same as that term is defined in Section [76-5b-103](#).

(b) "Law enforcement agency" means the same as that term is defined in Section [53-1-102](#).

(c) "Victim" means the same as that term is defined in Section [77-37-2](#).

(2) In a proceeding involving child sexual abuse material, the child sexual abuse material shall remain in the care, custody, and control of:

(a) a law enforcement agency; or

(b) a court.

(3) (a) In a proceeding involving child sexual abuse material, a court shall deny a request by a defendant to copy, photograph, duplicate, or otherwise reproduce the child sexual abuse material if the court or a law enforcement agency provides the defendant's attorney or an individual the defendant may seek to qualify as an expert an adequate opportunity to view and examine the child sexual abuse material.

(b) An individual described in Subsection (3)(a) may view or examine the child sexual abuse material only at the law enforcement agency or court that has custody and control of the child sexual abuse material.

(c) A defendant who is self represented:

(i) may not inspect the child sexual abuse material; and

(ii) may request that the court appoint counsel for the purpose of inspecting the child sexual abuse material on behalf of the defendant.

(4) (a) In a proceeding involving child sexual abuse material, a victim, the victim's attorney, or an individual the victim may, upon a showing of good cause, seek to qualify as an expert, may view and examine the child sexual abuse material that depicts the victim upon a showing of good cause.

(b) An individual described in Subsection (4)(a) may not copy, photograph, duplicate, or otherwise reproduce the child sexual abuse material.

739 (c) An individual described in Subsection (4)(a) may view or examine the child sexual
740 abuse material only at the law enforcement agency or court that has custody and control of the
741 child sexual abuse material.

742 (d) The court or law enforcement agency may redact the child sexual abuse material
743 described in this Subsection (4) to protect the privacy of a third party.