

LEGISLATIVE SUMMARY

2019

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GENERAL SESSION



Contributing Authors

Craig Barlow, Jeff
Buhman, Will Carlson,
Darcy Goddard, Jeff
Gray, Will Hains,
Karen Klucknik,
Amanda Montague,
Reed Richards, Tyson
Skeen, David
Sonnenreich, Dan
Strong, Steve
Wuthrich

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This publication constitutes summaries of legislation passed during the 2019 General Session of the Utah Legislature relating to criminal law and criminal procedure and to county and city government.

The publication contains summaries only, not the full text of bills. There is no substitute for reading the actual legislative language. Enrolled copies of bills passed during the 2019 General Legislative Session can be obtained by going to the Utah Legislature's web site: <http://le.utah.gov>. Please note that each bill number in this document is hyperlinked so the enrolled copy may be accessed by clicking on the bill number.

UPC expresses thanks and gratitude to all those contributing authors who helped summarize this year's bills. Without their help, this publication would not be possible.

**UNLESS OTHERWISE INDICATED, LEGISLATION PASSED DURING
THE 2019 GENERAL LEGISLATIVE SESSION
BECOMES EFFECTIVE ON MAY 14, 2019**

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HOUSE BILLS

Victim Rights Amendments

[HB15](#)

Rep. Steve Eliason

Enacts: UCA 11-63-101,

This bill allows an individual who is a victim of a first degree felony, or who is a family member of a missing person or homicide victim, to request review of a criminal investigation by the head of the investigating agency, if:

- (a) the incident was reported for investigation to a law enforcement agency with jurisdiction to investigate the incident;
- (b) at least one year has passed from the date the incident was first reported for investigation to a law enforcement agency with jurisdiction to investigate the incident; and
- (c) the law enforcement agency investigating the incident has not submitted the investigation results to be screened for criminal charges by the county or district attorney in the jurisdiction in which the incident occurred.

If charges are not filed within a specified time the victim or victim's family member may request that the County or District Attorney review the case for prosecution and if still no charges are filed, the case may be referred to the Attorney General for a final review for possible criminal charges. The victim or family member must be notified of the findings of the investigative agency head, the county attorney or the Attorney General within a specified time period.

Fraudulent Drug Testing Amendments

[HB 16](#)

Rep. Steve Eliason

Enacts: UCA §76-10-2203

This bill aims at trying to cheat drug and alcohol pee tests. It prohibits the use and distribution of synthetic urine, the distribution of adulterants intended to beat an alcohol or drug test, and intentionally trying to defeat a test (including with one's pre-collected urine). It does not apply to those under supervision, circumstances which would qualify as evidence tampering, or education and research. A whiz engaged in this activity commits an infraction.

Firearm Violence And Suicide Prevention Amendments

HB17

Rep. Steve Eliason

Amends: UCA 53-5-707, 62A-15-103, 62A-15-1101, 63I-1-262, 63I-1-276, 63I-2-262, 76-10-526

Enacts: UCA 53-5-707.6, 62A-15-103.1

This is a fairly lengthy bill that only tangentially affects civil or criminal attorneys. It requires the Division of Substance Abuse and Mental Health, in consultation with the Bureau of Criminal Identification, to implement and manage a firearm safety program and a suicide prevention education course by (1) producing a firearm safety brochure and firearm safety packet; (2) procuring cable-style gun locks; (3) distributing firearm safety packets; (4) administering a program in which a Utah resident who has filed an application for a concealed firearm permit receives a redeemable coupon toward the purchase of a firearm safe and receives a firearm safety brochure; and (5) creating a suicide prevention education course.

Pretrial Release Amendments

HB 19

Rep. Angela Romero

Amends UCA 77-20-1, 77-20-3.5, 77-36-1, 77-36-2.7

This bill rewords and clarifies terms related to bail in domestic violence cases, jail release agreements and jail release court orders for qualifying offences and addresses conditions for release after an arrest for domestic violence and other qualifying offenses. The bill also amends provisions related to dismissal of certain offenses, addresses contents of pretrial protective orders, repeals language regarding privileged communications and makes technical and conforming changes. For the most part, the bill just rewords and clarifies existing law.

Human Trafficking Amendments

HB 20

Rep. Angela Romero

Amends: UCA 76-1-301, 76-5-305, 76-5-309, 76-10-1302, 77-38-15, 76-5-311

This bill creates a first degree felony offense for Human Trafficking of a Vulnerable Adult. It also incorporates the Human Trafficking of a Child statute, passed in 2015, into places in the criminal code where similar sex offenses are found, such as exempting it from the statute of limitations and mistake of age statutes.

“Vulnerable adult” in this context has the same definition as in the abuse of a vulnerable adult statute. Any adult over 65 years old qualifies as vulnerable, as does any adult who has a physical or mental impairment that makes it difficult for them to understand consequences or care for themselves.

As with human trafficking a child, no force, fraud, or coercion is required to prove trafficking of a vulnerable adult. For solicitors or purchasers to be culpable, the state must prove that they “knew or should have known” of the victim’s vulnerability. There is no such mens rea limitation for harboring, transporting, obtaining, or recruiting a vulnerable adult victim, although the general recklessness standard would apply.

Offender Supervision Amendments

HB 21

Rep. Paul Ray

Amends: UCA 64-13-20, 64-13-21

This bill changes qualifications to prepare a presentence investigation report. Any Department of Corrections employee who is trained to make the reports may prepare one for the courts, the Board of Pardons and Parole, or the Department of Corrections. POST certification is no longer a requirement to make a report.

Presentence Investigation And Probation Report Amendments

[HB22](#)

Rep. Eric Hutchings

Amends: UCA 77-18-1

This bill makes two changes. First, it permits the use of an “unsworn written declaration executed in substantial compliance with Section 78B-5-705” in lieu of an affidavit when a party is attempting to establish probable cause to believe that the court should revoke, modify, or extend probation. 78B-5-705 was repealed in 2017. What the bill intended was the unsworn written declaration comply with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act

Gambling Amendments

[HB23](#)

Rep. Michael McKell

Amends: UCA 76-10-1102 –
1105

While the bill contains a variety of housekeeping changes, the principal amendments are directed towards expanding the definition of a fringe gambling device, make “fringe gambling” a violation under all the gambling statutes, (Gambling, UCA § 76-10-1102; Gambling Fraud, UCA § 76-10-1103; Gambling Promotion, UCA § 76-10-1104; and Possession of a Gambling Device, UCA § 76-10-1105) and narrow the exceptions to fringe gambling. The definitions make it clear that a device’s “preview or pre-reveal feature” do not defeat the element of “chance” under Utah’s gaming statutes. Specifically excluded from the definition of fringe gambling device is one that provides a user the chance to play a game, sweepstakes or contest “in exchange for only the user’s name, birthdate or contact information”.

The exception to fringe gambling for a “promotional activity that is clearly ancillary to the primary activity of the business” was completely revamped, and now requires that the purported promotional activity be (a) for a limited time, (b) related to the good or service of the primary business, (c) not require purchase in order to participate, and (d) promote the good or service of the primary business on terms that are commercially reasonable.

Overall, the amendments should enhance the ability of prosecutors to pursue charges against the gaming devices integrated into convenience stores, laundromats and bars under the guise of being a promotional activity to the business.

Bureau of Criminal Identification Reporting Amendments

[HB 36](#)

Rep. Ray Ward

Amends: UCA 53-10-102, 53-10-208, 53-10-208.1, 78B-7-106

Enacts: UCA 53-10-213

This bill clarifies that incompetent to stand trial always also means incompetent to buy a gun. A person obtains the status of “mental defective” if a court finds the person has marked subnormal intelligence, mental illness, incompetency, a condition, or a disease and, as a result, is incompetent, not guilty by reason of insanity, lacks the capacity to handle their affairs, or is a danger to self or others. If a court adjudicates someone as a “mental defective,” the court shall report that finding to the Bureau of Criminal Identification (BCI) as well as an agency record identifier and the “mental defective’s” identifying information. BCI, in turn, must promptly report this information to the National Instant Criminal Background Check System (NCIC). The bill also clarifies that respondents to protective orders protecting intimate partners also must be reported to the NCIC.

Amendments to Criminal Provisions

[HB 40](#)

Rep. Paul Ray

UCA 26-2-18.5, 31A-22-726, 32B-4-505, 34-40-204, 53G-6-707, 62A-15-602, 76-3-406, 76-5-403, 76-5-404, 76-5-406, 76-5-407, 76-6-412, 76-7-302, 76-7-305, 76-10-1206, 76-10-1302, 76-10-1313, 77-41-107

This bill reclassifies several crimes. Rendering a dead body unavailable for post-mortem investigation increased from a class B misdemeanor to a third-degree felony. Obstructing an investigation by the Division of Alcoholic Beverage Control is decreased from a second-degree felony to a class A misdemeanor. Repeat violations of the Minimum Wage Act now escalate so that rather than always being an infraction, the second violation is a class C misdemeanor and the third and subsequent violations are class B misdemeanors. Consensual sodomy is no longer a crime. The existing definition of consent for sex offenses that prohibits health professionals from engaging in sexual conduct under the guise of treatment has been extended to include athletic trainers. Theft of livestock is no longer automatically a second-degree felony but now depends on the value of the animal(s). The lifetime felony enhancement for theft with a prior felony conviction shrinks to a ten-year lookback. Sexting with a sixteen or seventeen-year-old has been reduced from a third-degree felony to a class A misdemeanor if the adult is less than seven years older than the minor. There is now a safe harbor prohibiting the prosecution of prostitution or sex solicitation when the suspect reports a violent crime to law enforcement in good faith. The mandatory minimum jail time for failure to register as a sex offender decreases from 90 to 30 days. Finally, adultery is no longer a crime.

Support Animals Amendments

[HB 43](#)

Rep. Jim Dunnigan

Amends: UCA 62A-5b-101, 62A-5b-102, 62A-5b-103, 62A-5b-104, 62A-5b-105, 62A-5b-106

This bill makes a few revisions to state law regarding support and service animals. Significant changes for law enforcement and prosecution are the decreased penalty for intentionally and knowingly falsely representing an animal as a service animal or misrepresenting a material fact to healthcare provider to get an animal designated a service animal designation (decreased from a class B misdemeanor to a class C), the addition of class C misdemeanor penalties for misrepresentations of support animals, and the criminalization of using an animal to gain treatment or benefits only provided for an individual with a disability.

Victim Communications Amendments

[HB 53](#) and [HJR 3](#)

Rep. Lowry Snow

Amends: UCA 78B-1-137, 77-38-401 – 405

May 14, 2019 is the effective date for the bill. However, the resolution (court rule) takes effect on **July 31, 2019** unless the Utah Supreme Court adopts a rule of privilege for victim communications on or before July 30, 2019, if so the resolution does not take effect.

The original intent of this bill and resolution (court rule) was to make communications between crime victims and victim advocates confidential and privileged. However, since many victim advocates work for police and prosecuting agencies, constitutional mandates require that disclosures that are exculpatory or may be used for impeachment must be disclosed to the defense. Therefore, this court rule and bill separate government advocates and non-government advocates. Communications to nongovernment advocates are confidential and privileged while communications to government (system) advocates must be disclosed to the prosecutor and after review and approval by the judge, disclosed to the defense. A victim advocate, as defined by the bill, may not, without the written consent of the victim, or the victim's guardian or conservator if the guardian or conservator is not the accused, be examined in a civil or criminal proceeding as to a confidential communication, as defined, unless the victim advocate is a criminal justice system victim advocate, as defined,, and is examined in camera by a court to determine whether the confidential communication is privileged. There are several other exceptions to the privilege as outlined in the resolution (rule.)

Electronic Information or Data Privacy

[HB 57](#)

Rep. Craig Hall

Amends: UCA 77-23c-101.2 (renumbered from 77-23c-101), 77-23c-102, 77-23c-103, 77-23c-101.1, 77-23c-104, 77-23c-105

The “Electronic Information or Data Privacy Act” imposes restrictions on law enforcement’s access to electronic information or data in connection with a criminal investigation or prosecution.

Law enforcement must secure a search warrant to obtain the stored and transmitted data of a person’s electronic device, and the data transmitted to a remote computing service provider. Law enforcement must likewise secure a warrant to obtain the location information of an electronic device using a tracking device. There are exceptions. The Act also includes certain notice requirements, and it provides that information obtained in violation of the Act is subject to exclusion at trial.

The Act imposes requirements on law enforcement's access to information and data of (1) electronic communication service (ECS) providers (e.g., email services), and (2) remote computing service (RCS) providers (e.g., electronic storage services). To obtain "subscriber records" of ECS and RCS providers, law enforcement must secure a judicially-authorized investigative subpoena under Title 77, Chapter 22. To obtain any other record relating to customers of an ECS or RCS provider, law enforcement must secure a warrant.

There are exceptions to these requirements, including cases where the customer "voluntarily discloses the record in a manner that is publicly accessible." Also, the Act does not affect (1) the disclosure of public records under GRAMA; (2) the statutory and administrative rights of an employer; or (3) the ability to access information under section 77-22-2.5 for investigations into stalking and sexual or kidnapping offenses against a minor.

Correctional And Peace Officer Amendments

[HB 62](#)

Rep. Paul Ray

Amends: UCA 76-5-102.6

This bill makes one change to the "propelling object or substance at a correctional or peace officer" statute. It is now a third degree felony if the object or substance propelled "causes substantial bodily injury," regardless what the substance is (it no longer has to be blood, urine, fecal matter, an infectious agent, etc.).

Sex Offender Registry Amendments

HB 75

Rep. Ken Ivory

Amends: UCA 76-5-401, 77-41-102

This bill adds a mitigating factor (to be proved by the defendant by a preponderance of the evidence) that reduces the level of Unlawful Sexual Activity with a Minor from a third degree felony to a Class A misdemeanor when the defendant was younger than 21 years old at the time of the offense.

The bill also expands the scope of convictions for “Unlawful Sexual Activity with a Minor” that are registerable.

Previously, only a felony violation was registerable (as was a Class A or felony Attempted Unlawful Sexual Activity with a Minor). Now, all Unlawful Sexual Activity with a Minor is registerable unless the conviction is under 76-5-401(3)(b) or (c). Subsection (3)(b) is when the offender is less than four years older than the victim. Subsection (3)(c) is when the defendant was under 21 at the time of the offense.

PRACTICE TIP:

Specify the subsection that is the basis for the conviction (this is an important tip for all registerable offenses. There are other sex, kidnap, and child abuse offenses where some subsections are registerable and others are not). And remember the burden is on the defendant to prove his or her age and the age of the victim when seeking to reduce the offense from a third degree felony.

Aggravated Kidnapping Amendments

HB 82

Rep. Lowry Snow

Amends: UCA 76-5-302, 76-5-304

This bill creates two levels of penalties for aggravated kidnapping. Aggravated kidnapping as an enhancement to kidnapping remains a first degree felony. Aggravated kidnapping as an enhancement to unlawful detention is now a third degree felony. You can no longer get from two class B misdemeanors to a first degree felony by combining a grab and a slap. **PRACTICE TIP:** The most frequently identified distinction between unlawful detention and kidnapping is whether the detention/restraint is "for any substantial period of time." 76-5-301(1)(a). Per State v. Couch, this is a highly fact-dependent term. In Couch, driving between

Wanship and Evanston (47 miles) qualified. In *State v. Graham*, locking the victim in a closet and taking the only key qualified. At preliminary hearings and trial, focus on any available evidence of a timespan for the detention beyond the initial act itself.

Weapons Restrictions Amendments

[HB 94](#)

Rep. Norm Thurston

Amends: UCA 76-10-523, 76-10-528

This bill initially made substantial changes to 76-10-523 “Persons exempt from weapon laws.” The police and sheriffs were able to persuade the sponsor to make changes, but were not able to persuade him to abandon the bill. Now the bill does the following:

Section 76-10-528, “Carrying a dangerous weapon while under influence of alcohol or drug unlawful,” now applies to law enforcement personnel, federal or state, to judges, and to non-law enforcement federal officials required to carry a firearm, *unless* that person’s agency “has adopted a policy or rule regarding the use of dangerous weapons.” In effect, so long as the person’s agency has adopted rules regarding the use of weapons, he or she will not be in violation of 76-10-528 if they drink to intoxication and carry a firearm (they may be in violation of agency policy, but would not be subject to prosecution simply for carrying while intoxicated). Further, 76-10-528 will now apply without exception to “a common carrier while engaged in the regular and ordinary transport of firearms as merchandise.”

The bill initially also made additional and substantial changes to 76-10-528. Again, police and prosecutors were able to persuade the sponsor to make some changes, but not abandon the bill. HB 94 makes the following changes to 76-10-528: First, it clarifies that the standard for “under the influence” for alcohol is the same as the DUI standard. Problematically, however, it specifically omitted to describe what “under the influence” is for someone using a controlled substance. This is an omission that will likely need to be fixed next year. Second, it indicates that someone may carry while intoxicated if (1) the weapon is securely encased as defined in 76-10-501 or “not within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person; (2) the person is lawfully using the weapon in self-defense pursuant to 76-2-402 “Force in

defense of person;" or (3) the person is carrying in the person's residence or in the residence of another with the consent of the person in lawful possession of the residence.

Sexual Violence Protective Orders

HB 100

Rep. Lowry Snow

EFFECTIVE DATE: 7/1/2019

Amends: UCA 53-10-208,
208.1, 78B-7-201

Enacts: UCA 78B-7-501 - 509

This bill creates a sexual violence protective order and an ex parte sexual violence protective order to protect victims subjected to sexual violence but not covered by cohabitant or dating partner protective order provisions. The requirements and provisions are similar to other protective orders "Sexual violence" means the commission or the attempt to commit:

(a) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or

Title 76, Chapter 5b, Part 2, Sexual Exploitation;

(b) human trafficking for forced sexual exploitation under Section 76-5-308; or

(c) aggravated human trafficking for forced sexual exploitation under Section 76-5-310

The new law establishes procedures for applying for and granting sexual violence protective orders, modification of the orders, and for service and enforcement of the orders.

The law also outlines the protections that may be included in a protective order and requires that a sexual violence protective order be placed on the statewide warrant system.

Autonomous Vehicle Regulations

HB 101

Rep. Robert Spendlove

Amends: UCA 13-51-102; 13-51-103; 41-1a-102; 41-1a-201; 41-1a-202; 41-1a-1503; 41-6a-102; 41-6a-1641; 53-3-102; 53-3-104; 53-3-202

Enacts: 41-26-102.1; 41-26-103-108

Amends traffic laws regarding the operation of autonomous vehicles. There is quite a bit of change and new language to allow for the testing, implementation and regulation of autonomous vehicles in the state. One particular change of note is to the definition of "operate" under the code. The amendment includes the engagement or testing of an automated driving system.

Human Trafficking Revisions

HB 108

Rep. Angela Romero

Amends: UCA 76-4-401, 76-10-1313, 76-10-1602

Enacts: 78A-6-1114

This bill clarifies that children engaged in commercial sex should be treated as victims. It strengthens language clarifying that children engaged in commercial sex cannot be subject to delinquency proceedings for prostitution or sex solicitation. It requires law enforcement to investigate cases of children engaged in commercial sex for human trafficking of a child. Finally, it creates a pathway for individuals who were wrongly adjudicated guilty for juvenile offenses they engaged in as a result of trafficking victimization to seek vacatur of those convictions.

The vacatur process for juvenile adjudications largely mirrors that of expungement, although the rationales are different. Petitioners seeking vacatur must show by a preponderance of the evidence that they were subject to force, fraud, or coercion when committing the original offense. If the original offense was for prostitution or sex solicitation, however, the court should presumptively grant vacatur (since it is now not lawful to adjudicate children under those statutes). The vacatur process is likely too complicated for pro se petitioners. It would be a good avenue for pro bono work for attorneys.

Self-defense Amendments

HB 114

Rep. Cory Maloy

Amends: UCA 76-2-402, 76-10-506

Self-defense Amendments

This bill is an exclamation point to Utah's longstanding stand your ground policy. Current law states "a person does not have a duty to retreat from the force or threatened force described...in a place where that person has lawfully entered or remained." This bill adds the following sentence: "the failure of an individual to retreat under the provisions of [this subsection] is not a relevant factor in determining whether the individual who used or threatened force acted reasonably."

Student and School Safety Assessment

HB 120

Rep. Ray Ward

Amends: UCA 15A-5-202.5,
3-1-106, 53G-8-702, 62A-15-
103

Enacts: UCA 53G-8-801,
53G-8-802

This bill assigns a law enforcement officer to the State Board of Education to help train SROs, create model policies and MOUs with local law enforcement agencies, and improve inter-agency cooperation. Directs the state board to work with the Department of Public Safety and the Commission on Criminal and Juvenile Justice to develop policies and procedures governing SROs. This bill also creates the state safety and support program which will build model student safety and support policies, provide training, conduct research on school safety concerns, disseminate information about safety initiatives, help implement initiatives, and create a model school climate survey.

Abortion Amendments

HB 136

Rep. Cheryl Acton

Amends: UCA 76-7-301, 76-
7-302, 76-7-313, 76-7-314

Enacts: UCA 76-7-302.5

This bill allows abortion when the unborn child “has a severe brain abnormality that is uniformly diagnosable” and defines that severe brain abnormality as “a malformation or defect that causes an individual to live in a mentally vegetative state.” However, the definition of “severe brain abnormality” specifically excludes down syndrome, spina bifida, cerebral palsy, or any other defect that does not cause the yet-to-be-born child to live in a mentally vegetative state.

The more controversial part of HB 136 is it changes the time frame for when a physician may perform an abortion. Previously, an abortion could be performed prior to when the unborn child was “viable,” meaning “has reached a stage of fetal development when the unborn child is potentially able to live outside the womb.” HB 136 now prohibits an abortion (except in limited circumstances) after the unborn child reaches 18 weeks gestational age, which is defined as “the age of an unborn child as calculated from the first day of the last menstrual period of the pregnant woman.” This new prohibition is in place even if the child is not viable. A violation of this prohibition is a second degree felony.

Domestic Violence Enhancement Amendments

[HB 137](#)

Rep. Stephanie Pitcher

Amends: UCA 77-36-1.1

This bill increases the domestic violence enhancement window from five years to ten years (except criminal mischief DV, which remains enhanceable for five years).

Motor Vehicle Emission Amendments

[HB 139](#)

Rep. Angela Romero

Amend: UCA 41-6a-110; 41-6a-706.5; 41-6a-1626

This bill amends provisions to vehicle emissions and reporting requirements by the courts and county health departments for some repeat violators. Additionally, it adds a prohibited act for drivers when operating a vehicle near vulnerable users regarding amounts of excessive exhaust. It is now a violation for a motor vehicle to emit an excessive amount of exhaust in a manner that distracts or endangers a vulnerable user of a highway. We've all seen when the diesel truck emits a large exhaust to smoke out a pedestrian or cyclist. This is now a specifically prohibited act.

Traffic Code Amendments

[HB 149](#)

Rep. Walt Brooks

Amends: UCA 41-6a-102; 41-6a-704; 41-6a-710; 63I-1-241

This bill creates a definition of "lane filtering" and allows for it in specified situations. Lane filtering is when a motorcycle overtakes other vehicles in the same lane and same direction of travel that are stopped. This practice is restricted to only when all of the following are present: The person must be operating a motorcycle; the roadway must be divided into two or more adjacent lanes in the same direction of travel; the speed limit on the roadway must be 45 mph or less; the vehicle(s) being overtaken must be stopped; the motorcycle is traveling at a speed of 15 mph or less; and the movement may be made safely. This bill is not like in California where they have legal lane splitting and you have motorcycles whizzing by you on the freeway in rush hour traffic. This is only available in a limited amount of areas throughout the state based upon the restrictions in place. There is an automatic sunset provision on this new practice of lane filtering, however the legislature has removed the sunset

clause in subsequent sessions on other traffic related provisions in the past.

Voluntary Commitment of a Firearm Amendments

[HB 152](#)

Rep. Cory Maloy

Amends: UCA 53-5c-201

This provision allows a cohabitant to voluntarily commit a firearm to a law enforcement agency for safekeeping if the cohabitant believes that the cohabitant or another cohabitant with access to the firearm is an immediate threat to: (i) himself or herself; (ii) the owner cohabitant; or (iii) any other person. The firearm should be returned after 60 days or upon request of the owner.

"Cohabitant" means any individual 18 years of age or older residing in the home who:

- (a) is living as if a spouse of the owner cohabitant;
- (b) is related by blood or marriage to the owner cohabitant;
- (c) has one or more children in common with the owner cohabitant; or
- (d) has an interest in the safety and wellbeing of the owner cohabitant.

Search Amendments

[HB 156](#)

Rep. Kim Coleman

Amends: UCA 77-7-17.5

This bill started as an attempt to codify, at least partially, what is already the law pertaining to body cavity searches (as derived from many federal appellate cases). What it ended up doing is the following: First, it defines what is and is not a "body cavity" and a "physical body cavity search." And second, it requires each county jail to adopt policies meeting the minimum standards that will be established by a model policy developed by a CCJJ subcommittee (the subcommittee established in 63-M-7-211, "Inmate health care study"). Those standards will specify when a search can take place, who can authorize it, who can conduct it, how the search will be conducted, and how the search will be documented. It also specifies that a jail's policy will be public record.

Note that in HB 398, each county jail is required to submit to CCJJ before June 15, 2019 its policies, procedures and protocols for a body cavity search of an arrestee or inmate.

CCJJ, through its Inmate Health Care Study Subcommittee, is required to conduct a survey of the jails' policies, procedures and protocols, and then report to the Legislature by November 30, 2019 the results of the Subcommittee's survey and its recommendations, including a model policy. Sometime thereafter (date not specified) each county jail will need to develop or revise its policy to meet the model policy's minimum standards.

Offenses Against the Administration of Government Amendments

HB 163

Rep. Craig Hall

Effective Date: 7/1/2019

Amends: 11-57-104, 53B-7-106, 63A-3-110, 76-1-601, 76-5-413, 76-6-513, 76-8-101, 76-8-402, 76-8-404, 77-23a-8

Repeals: UCA 76-8-401

This bill explicitly adds "public property" to the offense of misusing public money. It is a third degree felony for a public servant to, without authority of law, 1) appropriate public property for one's own use or the use of another, 2) loan or transfer public property, or 3) fail to keep public property in possession until disbursed. If the value of the use of the property exceeds \$5,000, it is a second degree felony.

There are two situations where personal use is not a criminal offense. First, incidental personal use is not a crime under this statute when 1) neither the public entity nor some other law prohibits the use, and 2) the value provided to the public entity by the public servant's use or possession of the property for a public purpose substantially outweighs the personal benefit received by the employee from the incidental personal use.

Second, personal use is not a crime when 1) a public entity authorizes a public servant to use or possess the property for a public purpose; 2) the primary purpose for the public servant using or possessing the public property is to fulfill his or her duties as a public servant; 3) at the time of the personal use, the public entity has a written policy in effect that authorizes personal use in addition to public use; and 4) the public servant's personal use is consistent with the written policy and not otherwise unlawful.

Public servants are defined as public officials (elected officials, judges, members of the Board of Pardons & Parole); appointed officials; and employees, consultants, and independent contractors of public entities. Public entities are defined as the State and its instrumentalities, the State's political subdivisions and its instrumentalities, and any other

entity that performs a public function and is authorized to hold, spend, transfer, disburse, use, or receive public money.

PRACTICE TIPS: If you are advising counties or municipalities (or your own employees) on what this statute means for public entities and public servants, look carefully at the definitions and operative provisions in sections 76-1-601, 76-8-101, 76-8-402, and 76-8-404. (The many other sections affected by this bill simply add “public property” to various code sections that refer to the offense of misusing public money.)

This bill has a delayed effective date of July 1, 2019, specifically to allow public entities to adopt written policies governing use of public property if they wish to do so. The bill explicitly states that a retroactive written policy cannot shield a public servant from criminal liability.

Statute of Limitations Amendments

[HB 192](#)

Rep. Patrice Arent

Amends: UCA §76-1-302

If a violent felony offender's identity is unknown, DNA is collected, and the statute of limitations has otherwise run, current law provides a one-year statute of limitations extension after identification of the perpetrator. This bill stretches that timeframe to four years, which does not start until confirmation of the identity of the perpetrator

Expungement Changes

[HB 212](#)

Rep. Stewart Barlow

Amends: UCA 34-52-102, 34-52-201

Enacts: UCA §34-52-301

This bill prohibits public employers from inquiring into an applicant's expunged criminal history. It also allows an applicant to answer questions from any employer as if an expunged conviction never occurred

Office for Victims of Crimes Amendments

[HB 214](#)

Rep. Kyle Anderson

Amends: UCA 63M-7-502

This bill adds bigamy to crimes for which a victim may be awarded reparations by the Office for Victims of Crime. It allows payment of reparations for psychological injury of a person resulting from living in a setting that involves a bigamous (polygamy) relationship.

Unlawful Installation of a Tracking Device

[HB 223](#)

Rep. Marie Poulson

Enacts: UCA §76-9-408

This bill creates a class A misdemeanor for a person to knowingly install a tracking device on a vehicle without permission of the owner/lessee. Licensed private investigators are exempt if they connect the tracking device for a business purpose and the owner/lessee isn't under the protection of a protective order.

Domestic Violence Modifications

[HB 243](#)

Rep. Christine Watkins

Amends: UCA 76-10-523

This bill makes it so that a person may carry a concealed firearm without a permit for 120 days after receiving either a domestic violence protective order issued upon notice (under 78B-7-106(1)(b)) or a dating violence protective order issued upon notice (under 78B-7-404(1)(b)). Under those circumstances, the person cannot be guilty of carrying a loaded firearm in a vehicle or on a street (76-10-505), or of a class A or B misdemeanor of carrying a concealed firearm (76-10-504(1) or (2)).

The felony provisions of the concealed carry statute still apply, so this bill does not exempt the recipient of a protective order from the penalties for being a party to an offense when his or her concealed firearm is used in the commission of a violent felony. Nor does it allow him or her to unlawfully possess a short barreled shotgun or a short barreled rifle. Further, this bill does not apply to Category I restricted persons.

Misdemeanor Sentencing Timeline Clarifications

[HB 244](#)

Rep. Eric Hutchings

Amends: UCA 76-3-204, 76-3-208

Class A misdemeanors now have a maximum sentence of 364 days. The only exception is when someone is serving a felony prison sentence, in which case the sentence for a class A misdemeanor is for up to one year with credit for one day. This bill was aimed to mitigate some immigration consequences since under immigration law an "aggravated felony" includes some offenses with a sentence of one year or more. PRACTICE TIP: Bad news for those who hoped this might exempt class A misdemeanors from preliminary hearings. In *State v. Hernandez* the Utah Supreme Court said prelims are required for "crimes punishable by imprisonment of more than six months."

Drug Diversion Reporting Requirements

[HB 251](#)

Rep. Steve Eliason

Enacts: UCA 76-10-2203

Makes it a class B misdemeanor to knowingly fail to report known or suspected drug diversion to law enforcement, unless reporting would violate HIPAA. This new crime makes it a Class B misdemeanor for anyone to fail to report a medical professional or employee of a medical office who is involved in the transfer of a "significant amount" (defined as 500 morphine milligram equivalents or more) of Schedule II or Schedule III drugs to another for an unlawful purpose.

Sexually Oriented Business License Amendments

[HB 258](#)

Rep. Jeffrey Stenquist

Amends: UCA 10-8-41.5

This bill amends the penalty for people that are violating provisions to sexually oriented business licenses. If a municipality requires a sexually oriented business license, it is now a class A misdemeanor to operate without the license. This provision only applies to people 18 years or older. A person charged under this section may not also be charged for prostitution under Section 76-10-1302.

Criminal Code Amendments

[HB 270](#)

Rep. Mike McKell

Amends: UCA 76-5-407, 76-5-416, 76-5b-203

This bill accomplishes three things. First, it adds the following offenses to the list of crimes where "touching" includes through clothing: sexual abuse of a minor, unlawful sexual conduct with a 16 or 17-year-old, forcible sexual abuse, custodial sexual relations, and custodial sexual relations or misconduct with youth receiving state services. Second, the definition of "indecent liberties" has been expanded so it no longer only includes touching specific parts of the actor's body, but also when the actor touches those parts of the victim's body. Third, the intent element of the offense of distribution of an intimate image has changed. Rather than needing evidence of intent to cause emotional distress or harm, it is now enough to have evidence the actor "knows or should know that the distribution would cause a reasonable person to suffer emotional distress or harm." There is a new exception to this offense when the "intimate image is related to a matter of public concern or interest."

Prosecution Review Amendments

[HB 281](#)

Rep. Karianne Lisonbee

Amends: UCA 67-5-1

This bill gives the Attorney General's Office authority, under limited circumstances, to review investigation results de novo and file charges when a county or district attorney declines to file charges or fails to screen the case. First, the authority is limited to cases involving a first degree felony. Second, the county or district attorney of the jurisdiction where the offense occurred must either fail to screen the case for criminal charges within six months of receiving the investigation results from a law enforcement agency, or decline to prosecute. Third, the Attorney General's Office must consult with the county or district attorney and reasonably determine that any action by its office would not interfere with any ongoing investigation or prosecution by the county or district attorney of the jurisdiction where the incident occurred.

Sex Offense Amendments

HB 287

Rep. Ken Ivory

Amends: UCA 76-5-404.1, 76-5-406

For purposes of determining consent in sexual offenses against minors (under 18 years of age), this provision adds to the definition of “position of special trust” in UCA 76-5-404.1 “an instructor, professor, or teaching assistant at a public or private institution of higher education.”

This change was felt to be necessary because of the high number of students under 18 years of age that are attending institutions of higher education.

Offender Registry Amendments

HB 298

Rep. Jim Dunnigan

Amends: UCA 53-3-105, 53-3-205, 53-3-216, 53-3-413, 53-3-804, 53-3-807, 76-5b-201, 76-10-1206, 77-22-2.5, 77-41-104, 77-41-105, 77-41-112

This bill eliminates the annual expiration of a sex offender's driver license but directs the driver license division to share information with the sex offender registry and requires sex offenders to obtain a new physical license or identification card within thirty days after moving. Sexual exploitation of a minor now includes a first degree felony for knowingly producing child pornography that involves conduct that constitutes rape of a child, object rape of a child, sodomy on a child, aggravated sex abuse of a child, or physical abuse. Sexting with a sixteen or seventeen-year-old has been reduced from a third-degree felony to a class A misdemeanor if the adult is less than seven years older than the minor. A sex offender may change their name as long as it is not contrary to the public interest. Both the former and new names will be listed on the registry. This bill adds offenses for which a petition for removal from the registry may be file.

Board of Pardons and Parole Amendments

HB 301

Rep. Erik Hutchings

Amends: UCA 77-27-5

Amendments provide that for any hearing conducted by the Board of Pardons and Parole, notice (time and location) must be given to 1) the offender, 2) the county or district attorney responsible for prosecution of the case, 3) the sentencing court, and 4) the law enforcement officials responsible for the offender’s arrest. For notice to the prosecutor, court, and law enforcement, posting notice on the Board website satisfies the Board's obligation.

Whenever possible, the Board must notify the victim or the victim's representative of "original hearings," and any other hearings "if notification is requested and current contact information has been provided to the board." Notice to the victim or the victim representative shall include the information in Section 77-27-9.5 (which enumerates hearings the victim can attend and certain rights the victim has regarding the hearings).

PRACTICE TIP: Make sure your victim coordinators let victims know that they need to provide the Board with current contact information and that the victims must specifically request notice from the Board of all review hearings if that is desired.

Traffic Code Amendments

[HB 302](#)

Rep. Eric Hutchings

Amends: UCA 41-6a-401; 41-6a-601

This bill makes two changes or clarifications to existing law. It first clarifies that a driver that has been involved in a crash or accident may move the vehicle out of the roadway or onto a different road where they would not obstruct traffic. It also adds a provision to the speeding statute where if one's speed causes the person to fail to maintain control of the vehicle or stay within a single lane of travel.

Hit and Run Amendments

[HB 313](#)

Rep. Steve Eliason

Amends: UCA 41-6a-401

This bill amends the penalty for hit and run offenses. Previously if a person had only "reason to believe" they were involved in an accident and did not meet the statutory duties of giving notice, they were guilty of a class C misdemeanor. If the person had "knowledge" they were involved in the accident, that would enhance to a class B misdemeanor. Now all hit and run offenses under this section are class B misdemeanors

Inmate Restrictions Standards Amendments

HB 318

Rep. Stephane Pitcher

Amends: UCA 17-22-8, 64-13-45, 64-13-46

Colloquially known during the Session as the "anti-shackling bill," HB318 enacts provisions to ensure that pregnant inmates will not be subject to physical restraints, absent good cause, while incarcerated and that, if restraints are used, those restraints will be the least restrictive option available. This includes an individualized review of an inmate's condition and the jail's/hospital's security concerns during labor, delivery, and post-partum recovery; if restraints are used, written record of the jail's determination must be maintained and available for public inspection (redacted as needed for inmate privacy). In no event may shackles, leg restraints, or waist restraints be used. Correctional staff present during labor and delivery must be stationed in the least intrusive position in the room and should, if possible, be female. The bill also adds to Title 17 a requirement that correctional facilities submit an annual report to CCJJ listing each inmate who gave delivered while restrained, the type of restraint used, and the rationale behind the use of restraints during delivery.

Tobacco Age Amendments

HB 324

Rep. Steve Eliason

Effective Date: **7/1/2020**

Amends: UCA 10-8-47, 26-62-205, 26-62-304, 26-62-305, 51-9-203, 53-3-207, 53-3-806, 59-14-03, 76-10-103, 76-10-104, 76-10-104.1, 76-10-105, 76-10-105.1, 77-39-101

This bill raises the lawful tobacco age as follows: Beginning July 1, 2020 and ending June 30, 2021, to 20 years old; beginning July 1, 2021, to 21 years old.

Active duty personnel and their spouse or dependent--so long as they are 18 years of age or older--are exempted from the new tobacco age requirements.

Domestic Violence -- Weapons Amendments

[HB 325](#)

Rep. Brian King

Amends: UCA §76-10-526

When the Bureau of Criminal Identification finds out a person attempting to purchase a firearm is a restricted person, BCI is statutorily required to notify the law enforcement agency where the person lives. This bill directs the law enforcement agencies that receive these notifications to provide an annual report to BCI who will then compile them into one report for the Law Enforcement and Criminal Justice Interim Committee. The contents of the report are: the number of cases that involve a person restricted because of domestic violence and, of those, the number of investigations and how many resulted in criminal charges.

Juvenile Justice Competency Revisions

[HB 330](#)

Rep. Jon Hawkins

Amends: UCA 62A-4a-201, 62A-4a-711, 78A-6-105, 78A-6-302, 78A-6-312, 78A-6-1301, 78A-6-1302, 78A-6-1303

For juveniles, motions alleging incompetency must be based on mental illness, an intellectual disability or related condition, or now “developmental immaturity.” This bill updates the definitions of mental illness and intellectual disability. ““Developmental immaturity” means incomplete development in one or more domains which manifests as a functional limitation in the minor’s present ability to consult with counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings.” The timeline for evaluators to provide their reports has been decreased to align with the adult competency statute. The maximum timeline for competency restoration of a juvenile is still one year, but there is a new hearing at six months where the judge must determine there is a “substantial likelihood” the minor will attain competency within the year.

PRACTICE TIP: If a minor is found incompetent and unrestorable in the foreseeable future or the time for restoration has run out, the court must dismiss the charges without prejudice and release the minor from any related custody order unless the prosecutor informs the court civil commitment proceedings will be commenced and initiates

them within seven days. Civil commitment has its problems and is unlikely to address the needs of most minors, but this is the only available path to avoid dismissal of charges for incompetent unrestorable minors.

Modifications to Governmental Immunity Provisions

[HB 391](#)

Rep. Ken Ivory

Amends: UCA 63G-7-201,
63G-7-301

HB 391 waives governmental immunity for elementary, secondary and higher education institutions for certain sexual violations committed by employees of the institution against students of the institution unless the institution has policies approved by its governing board prohibiting sexual contact and sexual messaging between employees and students and the violating employee has been trained on the institution's policies.

Pawnshop and Second Hand Amendments

[HB 394](#)

Rep. Eric Hutchings

Amends: Numerous, see
summary

Enacts: UCA 13-32a-103.1,
13-32a-112.1

Repeals: UCA 13-32a-107,
13-32a-117

This Bill is a substantial rewrite of the Administrative Code concerning pawn shops and secondhand merchants (UCA § 12-22a-101 et. seq) with additional revisions to the Receiving stolen property criminal statute (UCA § 76-6-408) and the theft punishment provision (UCA § 76-6-412)

Numerous definitions have changed, including Antique Shop (UCA § 13-32a-102 (3)), Collectible Paper Money (UCA § 13-32a-102(10)), Consignment Shop (UCA § 13-32a-102(12)), Gift Card (UCA 13-32a-102(15)), Identification (UCA 13-32a-102(16)), Indicia of being new (UCA § 13-32a-102 (17)), Pawn Transaction (UCA § 13-32a-102(22)), Pawnbroker (UCA § 13-32a-102(23)), Property (UCA § 13-32a-102(26)), Second Hand merchandise Dealer (UCA § 13-32a-102(29)).

Purchase of gift cards by a pawn or second-hand merchandise business is prohibited. (UCA § 13-32a-103.1)

Requires both pawn and second hand merchandise businesses, as well as coin dealers, to maintain transaction tickets and all but coin dealers to upload same to the central database (UCA § 13-32a-104-104.5), including the individuals name, residence and phone number, legible fingerprint, the store employee involved , and all brand names, serial numbers, model numbers, and identifying information as to

the property (UCA § 13-32a-104), and in the case of jewelry or watches, a color digital photograph (after Jan. 1, 2020) with any engravings or identifying marks depicted in the photograph.

From and after 2020 the database shall provide individuals pawn history for the past thirty days (UCA § 13-32a-106) and the holding period is clarified to be 15 calendar days for property to be disposed of by the pawnshop or second hand merchandise business, (UCA § 13-32a-109) unless said business has received a notice of seizure by law enforcement (UCA § 13-32a-109.5)

The Pawnshop and Secondhand Merchandise Board is modified down to seven members from the present thirteen, (UCA § 13-32a-112) and caps the annual fee at \$500.00 (UCA § 13-32a-111).

Finally, Utah's Receiving Stolen Property Statute has been modified to make it clear that a pawnbroker or second-hand merchandise business who has not completely and accurately documented all information required under the code is rebuttably presumed to have knowledge the property was stolen (UCA § 76-6-408 (3) (c), and (4).

Lewdness Statute Modification

[HB 396](#)

Rep. Walt Brooks

Amends: UCA §76-9-702.5

This bill amends "lewdness involving a child" so that it is no longer an act committed "to, or in the presence of" the child, only "in the presence of." Presence has been expanded to include within visual contact through an electronic device.

Substance Use and Health Care Amendments

[HB398](#)

Rep. Brad Daw

Amends: UCA 17-22-32, 58-17b-309.7, 63I-1-263, 63M-7-211, 64-13-45

HB398 began with the best of intentions--to improve and make more available statewide quality mental health and substance use assessments in county jails--but much of it was stripped away due to a ginormous™ fiscal note. In the end, the version of HB398 that passed increased the jail reporting requirements imposed in 2018's SB205 and expanded the

tasks assigned to the existing work group relating in inmate deaths while housed in correctional facilities. The work group will now be asked to review policies and protocols relating to screenings and assessments of inmates, which will be submitted by jails statewide. (The proposed development by the work group of model policies for use, or not, by the jails--on a purely voluntary basis--was scrapped as too expensive.) Added to that review will be policies for birth control and body cavity searches. Last, the bill exempts from certain licensure requirements treatment providers dispensing methadone at an opioid treatment program.

Murder Mitigation Amendments

[HB 400](#)

Rep. Andrew Stoddard

Amends: UCA 76-5-205.5, 77-14-4, 77-16a-106, 77-16a-301

Special mitigation based on extreme emotional distress (EED) reduces aggravated murder to murder, or murder to manslaughter (or attempt of any of those), if the defendant proves by a preponderance that he acted under extreme emotional distress. Utah courts have read this statute to extend well beyond the common-law rule—permitting a claim to go to the jury even when there is no immediately preceding, highly provoking act by the victim that causes the EED.

This bill restores many of the time-tested rules of the common-law:

- the defendant's extreme emotional distress must be "predominantly caused by the victim's highly provoking act immediately preceding the defendant's actions"
- the provoking act cannot be words alone
- the distress that results from the highly provoking act must be such that it "would cause an objectively reasonable person to be incapable of reflection and restraint"
- the defendant must actually be incapable of reflection and restraint when he kills or attempts to kill -special mitigation is not available if:
 - there was a sufficient cooling off period between the provoking act and the killing or attempt
 - the defendant tortured or inflicted serious or substantial bodily injury over a prolonged period

- if the jury does not unanimously find EED, defendant is convicted of the greatest crime proved.

PRACTICE TIP:

This bill makes significant substantive changes to EED special mitigation. Rely on the new statute instead of prior case law when deciding whether a defendant is entitled to the defense AND when drafting jury instructions.

Juvenile Justice Reform Amendments

[HB 404](#)

Rep. Lowry Snow

Amends: UCA 62A-7-101, 62A-7-112, 62A-7-113, 78A-6-117, 78A-6-117.5, 78A-6-119, 78A-6-604, 78A-6-1101

This bill creates a restricted account and modifies the custody commitment and jurisdiction relating to a minor in juvenile court.

Investigation Protocols for Peace Officer Use of Force

[HB0406](#)

Rep. Marc Roberts

Amends: UCA 76-2-408

HB0406 clarifies when in-custody deaths will be investigateord as an OICI. It also expands the use of external reviews, by OICI protocol teams or another independent agency, when an officer uses deadly force (which is now defined) or when an officer's actions resulted in death or serious bodily injury (as the latter term is defined in the criminal code).

Drug Paraphernalia Penalty Amendments

[HB 410](#)

Rep. Stephanie Pitcher

Amends: UCA §58-37-8

This bill addresses an oversight from the Justice Reinvestment Initiative of 2015. After JRI, drug-free zone enhancements applied to distribution, but not simple possession of a controlled substance. Drug paraphernalia was inadvertently still included as an enhanceable offense. This bill removed drug paraphernalia from drug-free zone enhancement eligibility.

Restitution Reporting

HB414

Rep. Stephane Pitcher

Amends: UCA 17-22-32.2, 17-22-32.3, 63I-2-217

Restitution Reporting

Oh, look; another new reporting requirement! HB0414 adds to jails'/counties' annual reporting requirements (to CCJJ, natch) mandated reporting on pay-to-stay programs. The details required in the report are voluminous, but if you work for a county that utilizes pay-to-stay, you will want to look at them closely to ensure compliance.

Bail Bond Amendments

HB 428

Rep. Karianne Lisonbee

Effective: 10/1/2019

Amends: UCA 77-20-1, 77-20-4

This bill is another attempt to curtail the practice in some courts where the judge gives the defendant the option of posting a bond or posting cash in the amount normally required to purchase the bond, e.g., "\$1,000 cash or a \$10,000 bond." This bill changes the language in 77-20-4 so that the judge "shall set bail at a single amount per case or charge" and the "defendant may choose to post the . . . [bail] amount" by cash, bond, sureties or credit card.

The bill does provide for a few limited exceptions. It states that the judge "may limit a defendant to a specific method of posting bail" (i.e., cash, bond, etc.) under certain circumstances: If the defendant failed to appear on a bond and the case involves a violent offense; to allow voluntary forfeiture of bail on a non-mandatory offense; the defendant failed to appear on a citation or summons on a non-mandatory offense; a warrant was issued solely for failure to pay the fine/surcharge or restitution; or the court entered a judgement of bail forfeiture.

Prohibition of Genital Mutilation

HB 430

Rep. Ken Ivory

Enacts: UCA 76-5-701, 76-5-702, 76-5-703, 76-5-704

This bill defines female genital mutilation and makes performing or facilitating female genital mutilation on a minor a second degree felony. There are exceptions for when it is medically advisable, necessary for the health of the patient, or requested for sex reassignment surgery. Religion and custom are not exceptions. A new public education

campaign about the health risks and emotional trauma of FGM is created.

Expungement Act Amendments

[HB 431](#)

Rep. Eric Hutchings

Amends: UCA 77-40-102, §77-40-103, 77-40-104, 77-40-104.1, 77-40-105, 77-40-107, 77-40-108, 77-40-108.5, 77-40-109, 77-40-110, 77-40-111

Enacts: UCA 77-40-114, 77-40-115, 77-40-116

This bill creates a process for automatic expungement of three types of cases: acquittals, dismissals with prejudice (not including dismissed pleas in abeyance), and "clean slate eligible cases." Courts are directed to issue expungement orders, without a petition, for cases dismissed with prejudice and those resulting in the acquittal of all charges. The court will issue a copy of the order to the Bureau of Criminal Identification and the prosecuting entity. BCI is responsible for notifying identified law enforcement agencies. A "clean slate eligible case" means a case resulting in convictions or a successfully dismissed plea in abeyance where each offense is either a misdemeanor possession of a controlled substance, a class B or C misdemeanor or an infraction. Cases with the following offenses are disqualified: felonies, registerable sex offenses or child abuse offenses, a person offense under Title 76 Chapter 5, a weapons offense under Title 76 Chapter 10 part 5, sexual battery, lewdness, a DUI/Reckless offense under Title 41 Chapter 6a Part 5, a domestic violence offense, interruption of communication device, or any class A misdemeanor other than simple possession of a controlled substance. Individuals with unpaid restitution orders, pending criminal cases, and too many Utah convictions to qualify for a certificate of eligibility for expungement are disqualified from having a clean slate eligible case. A clean slate eligible case will become eligible based on the most serious offense level: five years after adjudication for a class C misdemeanor or infraction, six years for a class B misdemeanor, and seven years for a class A possession offense. Each month prosecuting entities will receive a list of clean slate eligible cases. A prosecutor can object within 35 days for one of three reasons: the prosecutor doesn't believe the case meets the statutory definition of a clean slate eligible case, the individual has not paid court-ordered restitution, or the prosecutor has a reasonable belief that the individual is continuing to engage in criminal activity either in or out of the state. If the prosecutor objects, the court may not proceed with an

automatic expungement. A defendant who is ineligible for an automatic expungement may still file a petition for an expungement through the pre-existing process.

PRACTICE TIP: The definition of a clean slate eligible case excludes an “offense classified in the Utah Code as a felony or class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance...” With this language, 402 reductions of felonies and class A misdemeanors do not qualify for automatic expungements. Reductions under 402 and plea deals are the most likely ways an ineligible case may slip through the court’s filter. The aim for automatic expungements is to clear up the low-level offenses that nobody cares (or should care) about years down the road. If something that should be a class A or felony shows up on the list of clean slate eligible cases, be sure to object.

At-risk Government Employee Information Protection Amendments

[HB 444](#)

Rep. Lee Perry

Amends: 53-18-102, 53-18-103, 63G-2-303

HB444 conforms the anti-doxing statute with the at-risk government employee protections in GRAMA, and adds to the list of at-risk employees individuals who are not law enforcement officers, judges, or prosecutors, but who might be at risk of physical harm due to the nature of their work assignments or recent threats. It requires certification by the elected official or "top" supervisor of an employee's form requesting protection of personal information and allows the form to expire after four years or if rescinded by the employee (or the employee's estate if deceased).

Controlled Substances Amendments

[HB 449](#)

Rep. Paul Ray

Amends: UCA 58-37-4
UCA 58-37f-203

Reschedules Tramadol from Schedule V to Schedule IV, and creates a reporting requirement for pharmacists for certain noncontrolled substances.

Tramadol is a mild analgesic/sedative used to treat chronic pain. The move from Schedule V to Schedule IV does not appear to affect any criminal penalties under 58-37-8.

Alcohol Amendments

HB 453

Rep. Timothy Hawkes

Amends: UCA 32B-1-102, 32B-1-305, 32B-1-607, 32B-2-202, 32B-2-204, 32B-2-304, 32B-2-605, 32B-5-102, 32B-5-207, 32B-5-301, 32B-5-303, 32B-5-304, 32B-5-306, 32B-5-308, 32B-5-310, 32B-6-203, 32B-6-205, 32B-6-205.2, 32B-6-206, 32B-6-303, 32B-6-305, 32B-6-603, 32B-6-60

Repeals: 32B-5-401

There is a significant amount of changes related to alcohol policy in this bill. Of note for prosecutors and law enforcement are two newly created class A misdemeanors regarding the transportation of liquor. It is now a class A misdemeanor to for a person other than a retail licensee to pickup or deliver liquor to a retail licensee without obtaining a liquor transport license. It is now also a class A misdemeanor for a liquor transport licensee to deliver liquor to any person other than a retail licensee.

Background Check Amendments

HB 457

Rep. Lee Perry

Amends: UCA §53-10-108

This bill requires all background checks to be processed through the Bureau of Criminal Identification.

Criminal Information Amendments

HB 478

Rep. Paul Ray

Effective Date: 1/1/2020

Amends: UCA 77-7-5

Enacts: UCA 53-10-213

This bill places warrant reporting requirements on law enforcement agencies. When a warrant requires a person to appear in court, the law enforcement agency with jurisdiction over the offense must notify the court within 48 hours if the warrant is an extradition warrant. If the status of the warrant changes, the law enforcement agency is required to notify BCI.

The bill also places reporting requirements on BCI. After BCI obtains warrant reports from the courts, it must notify the National Crime Information Center within 48 hours of any non-extraditable warrants issued for violent felonies or for failure to register for a sexual offense.

SENATE BILLS

Identification Request Amendments

[SB10](#)

Sen. Karen Mayne

Amends: UCA 76-8-301.5, 77-7-15

This bill makes two simple changes. It authorizes a peace officer under 77-7-15 “Authority of peace officer to stop and question suspect—Grounds,” to demand not only an individual’s name and address, but now the officer can also demand the date of birth. Additionally, 76-8-301.5 makes it a class B misdemeanor if a person refuses or fails to disclose the information the officer demands under 77-7-15. This bill adds date of birth to the list of information the person must disclose to avoid that class B misdemeanor charge.

Indigent Defense Act Amendments

[SB32](#)

Sen. Todd Weiler

Amends, Enacts, Renumbers and Amends, Repeals: too many to list

SB32 modifies basically everything. No, really, but much of it is simple clean up, but it does contain some new provisions of which county and city attorneys should be aware. For example, it redefines indigency to mean not only inability to pay, but also not having reached the age of majority and it requires automatic appointment of indigent defense counsel for minors charged with certain classes of crimes. It also modifies the "Parduhn" language governing when, if ever, privately retained defense counsel may access indigent defense resources (e.g., experts, investigators). Grants may be available to local governments struggling to hire and retain quality indigent defense counsel.

Criminal Provisions Modifications

[SB 43](#)

Sen. Karen Mayne

Amends: UCA §30-1-11, 58-37d-2, 58-37d-3, 58-37d-4, 58-37d-5, 58-37d-6, 76-7-04, 76-9-201, 77-22-2, 77-22-2.5

This bill modifies several offenses. Failure to return a marriage license decreased from a class B misdemeanor to an infraction. The Clandestine Drug Lab Act now applies to concentrated THC and counterfeit opioids. The intent to harass or frighten was restored to the electronic communication harassment statute. The right to issue subpoenas applies to both the attorney general and county attorneys, but also their deputies. Also, the bill repealed the crime of fornication.

Domestic Violence Revisions

[SB 45](#)

Sen. Al Christensen

UCA 77-36-1

This bill adds "aggravated cruelty to an animal with the intent to harass or threaten another cohabitant," to the list of offenses that qualify as a domestic violence offense.

Board of Pardons Amendments

[SB 54](#)

Sen. Daniel Thatcher

UCA 77-27-9

Amendments provide that the Board may rescind a prison release date prior to an inmate being released from custody, or an inmate's termination date from parole prior to the inmate being terminated from parole.

Kratom Consumer Protection Act

[SB 58](#)

Sen. Curt Bramble

Enacts: UCA 4-44-101 - 108

Kratom is derived from the leaves of a plant indigenous to Southeast Asia (*Mitragyna speciosa*). Oddly, in some of those countries like Malaysia, the plant is illegal to harvest or possess. Notwithstanding, kratom is used to produce herbal supplements legal in the US. While several warnings have been issued about those products, the DEA/FDA has not chosen to place kratom on the schedule of controlled substances. The industry has a reported history of many forms of adulterants (including heavy metals) being added to the product, resulting in injury or death.

This bill creates new Class C misdemeanors for anyone who distributes, sells, or offers for sale any kratom product that does not meet purity guidelines detailed in UCA 4-44-104. It also criminalizes sale of those products to person under the age of 18.

Child Welfare Worker Protections

[SB 59](#)

Sen. Evan Vickers

Enacts: UCA 76-8-318

This bill creates a separate crime for assaulting or threatening violence against a child welfare worker (i.e., a DCFS employee). To be guilty of the crime, the defendant must know the victim is child welfare worker and the victim must be acting within the scope of his or her authority at the time of the assault or threat of violence.

The following categories of people cannot commit the offense: a prisoner, a person detained on reasonable suspicion under section 77-7-15, or a minor receiving services from a division of the Department of Human Services (such as Juvenile Justice or DCFS).

The offense is a class A misdemeanor unless the defendant acts intentionally or knowingly and caused substantial bodily injury.

Domestic Violence Amendments

[SB 75](#)

Sen. Al Christensen

Amends: UCA 78B-7-115,
115.5

This bill modifies the reasons that would prevent dismissal of a domestic violence protective order. Currently the law prohibits dismissal of the DV protective order if the petitioner has a reasonable fear of future harm or abuse from the respondent. SB 75 adds reasonable fear of future “domestic violence” as a factor that would prevent the dismissal of the DV protective order.

Crime Victims Restitution Amendments

[SB 88](#)

Sen. Jani Iwamoto

Amends: UCA §77-38a-302

Under this bill, restitution may include reasonable expenses for security measures put in place by a victim in response to a criminal offense.

Victim Targeting Penalty Enhancements

[SB 103](#)

Sen. Dan Thatcher

Enacts: UCA §76-3-203.14

Colloquially referred to as hate crimes, this bill provides an opportunity to increase the classification of a misdemeanor or the minimum prison sentence of a felony offense. The prosecutor must prove beyond a reasonable doubt that the defendant intentionally selected the victim or property because the defendant's belief about the victim's personal attribute or relationship with someone with a personal attribute. Misdemeanors are increased by one level. A third or second degree felony is punishable by a prison sentence (not mandatory) of 1-5 years or 2-15 years. For a first degree felony, this is an aggravating factor to consider at sentencing. "Personal attribute" includes 18 characteristics: age, ancestry, disability, ethnicity, familial status, gender identity, homelessness, marital status, matriculation, national origin, political expression, race, religion, sex, sexual orientation, service in the armed forces, status as an emergency responder, or status as a peace officer. The enhancement doesn't apply if the offense is already increased under another provision of state law or the personal attribute is already an element of the crime. The court may still impose alternative sanctions as it finds appropriate.

Ignition Interlock Amendments

[SB 131](#)

Sen. Wayne Harper

UCA 41-6a-518.2

This bill specifically declares that those who are convicted of DUI that did not involve alcohol are not an interlock restricted driver. It also adds a provision that someone with an interlock restriction on the driver license may petition the Driver License Division for removal of the restriction if the offense did not involve alcohol. DLD may remove the restriction if it is able to establish that the offense did not involve alcohol.

Beer Amendments and Alcohol Amendments

[SB 132](#) and [HB 453](#)

Sen. Jerry Stevenson Rep. Timothy Hawkes

HB 453 AMENDS and ENACTS many of the sections in Title 32B

HB 453 AMENDS and ENACTS many of the sections in Title 32B.

These are combined because they cover much of the same ground and have coordinating clauses. Together these long bills modify much of Title 32B, the Alcoholic Beverage Control Act. Practitioners in this area should refer directly to bills' language for further information.

Some of the more pertinent or interesting changes are: (1) a hotel cannot maintain minibars in its rooms; (2) a minor who is 16 years old or older (was 18 years old), employed by a restaurant where alcohol is served, can be present in the dispensing area (basically to bus tables); (3) a performing arts facility may obtain a permit to serve alcohol, (4) a restaurant can sell beer for on-premises consumption in more than one container if the total amount of beer does not exceed 16 ounces, (5) a beer retailer can sell beer at a drive-through window; (6) the house bill enacts a liquor transport license process and provides a class A misdemeanor penalty for its violations; (7) the senate bill increases taxes on beer; and, in the part that generated the most attention, (8) the senate bill changed the permissible alcohol content for beer sold by retailers from 4% of volume to 5% of volume, or from 3.25% by weight to 4% by weight.

Note that the changes to the tax rates and the alcohol content in beer will not be in effect until November 1, 2019.

Corrections Officer Certification Amendments

[SB0162](#)

Sen. Jani Iwamoto

Effective: 7/1/2019

Amends: 53-6-203, 53-13-104, 63I-1-253

SB162 permits 19-year-olds to work as correctional officers in jail facilities.

Booking Photographs Amendments

[SB185](#)

Sen. Daniel Thatcher

Amends: 17-22-30

SB185 provides for a civil remedy, e.g., fines and attorney fees, when Utah residents request removal of their booking photos from certain for-profit websites, e.g., mugshots.com, and the websites do not respond in a timely manner.

Human Trafficking Prevention Training

[SB 198](#)

Sen. Todd Weiler

Amends: UCA 53G-9-207

This bill requires school districts and charter schools to provide biennial training regarding human trafficking prevention and awareness to school staff, parents/guardians, and students.

Vulnerable Adult Amendments

SB 202

Sen. Todd Weiler

Amends: 62A-3-301, 76-5-111

This bill makes important changes related to vulnerable adults and their abuse, neglect or exploitation.

It adds to the definition of “caretaker” under both 76-5-111 and 62A-3-301. It now includes a person who assumes responsibility for a vulnerable adult for pecuniary gain, by contract, through friendship, or anyone who is in a position of special trust, including relatives, household members, attorneys-in-fact, neighbors, a guardian, etc. It generally now includes anyone with caretaker responsibilities—whether assumed voluntarily, ordered by a court or done for pecuniary gain.

It adds a definition to 76-5-111 and to 62A-3-301, that of “dependent adult.” This new definition is pertinent because the existing definition of a “vulnerable adult” will include a “dependent adult.” A dependent adult is someone over 18 years or older “who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights” and also includes “an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.”

It modifies the definition in 76-5-111 and 62A-3-301 for “isolation,” which now includes preventing a vulnerable adult from “communicating, visiting, interacting, or initiating interaction with others.” The bill criminalizes the isolation of a vulnerable adult as a third degree felony.

Finally, it creates a crime of “personal dignity exploitation of a vulnerable adult,” which can be either a class A (intentional or knowing conduct) or B (reckless conduct) misdemeanor. This crime occurs when a caretaker “creates, transmits, or displays” photos or videos of a vulnerable adult that show nudity, are close-ups of private body parts, are demeaning or offensive, or show the vulnerable adult engaged in harmful or dangerous conduct. There is a defense if the images were taken with consent, but that consent is narrowly defined.

White Collar Crime Offender Registry Amendments

SB 234

Sen Curt Bramble

Amends: UCA 76-6-107

This bill amended the White Collar Crime Offender Registry. The main changes are:

- Clarification as to when (within 45 days of sentencing) a prosecutor is to report qualifying offenders to the Utah Attorney General's Office
- Clarification as to when (within 45 days of sentencing) an offender is to report to the Utah Attorney General's Office;
- Requiring the Department of Corrections to enable in-custody offenders to report to the Utah Attorney General's Office; and
- Making an offender's knowing failure to timely report to the Utah Attorney General's Office a class A misdemeanor, carrying a mandatory 30 day jail term.

The White Collar Crime Offender Registry can be found at www.utfraud.com. Prosecutors can use a portal on that website to report offenders, and offenders can also use the website to report. Instructions for prosecutors to use the prosecutor portal are attached. The offenders self-report directly on the website. Both prosecutors and offenders need to report, as we collect different information from each group.

If you have any questions with respect to the attached instructions or the use of the prosecutor portal, please contact the WCCOR Review Officer, paralegal Brian Blake, at bblake@agutah.gov. If you have any questions with respect to whether an offender qualifies for WCCOR listing, please contact the Registry Coordinator, Assistant Utah Attorney General Christy Matelis at cmatelis@agutah.gov. WCCOR is established by Utah Code sections 77-44-101, et. seq. Utah Administrative Code Rule R-105-3 governs the operation of WCCOR.

Graffiti Amendments

[SB 250](#)

Sen Wayne Harper

Amends: UCA 76-6-107

This bill restricts when a victim of graffiti may be cited for failing to clean the graffiti from his or her property. Some cities and counties require, by ordinance, that the owner of graffitied property remove the graffiti within a certain time frame, commonly 48 or 72 hours. Other entities treat graffiti more like a nuisance and provide the property owner longer time frames for its cleanup, but still maintain a mechanism to require a property owner to remove the graffiti or face penalties.

This bill puts into place certain requirements the government must meet before citing or fining a property owner for failing to remove graffiti. Among other things, it requires the government provide written notice to the property owner and it allows the property owner one week from the date of the written notice to remove the graffiti.

(Practice Note: Attorneys advising an entity with a graffiti ordinance will need to ensure its ordinance complies with this new time frame.) Additionally, the bill provides that if a property owner cannot remove the graffiti due to “significant hardship” the government may not cite or fine the owner and instead shall provide the assistance necessary to remove the graffiti.

Vandalism on Public Lands

[SB 270](#)

Sen. Kirk Cullimore

Amends: UCA 76-6-107

Enacts: UCA 76-6-107.5

This bill creates a separate crime for public-lands vandalism, distinguished from the crime of graffiti. The crime is limited to graffiti committed on (1) public lands—state- or federally-owned property that is held substantially in its natural state. The graffiti may be done on the land itself or on a state-owned object permanently located on public lands. Graffiti has the same definition as in the graffiti statute except that it is limited to defacing property owned by the state.

Public-lands vandalism is a class B misdemeanor, punishable by a fine and community service that, to the extent possible, benefits public lands. The service is 100 hours for a first offense, 200 for a second, and 300 for a third or subsequent offense. The “fine” is essentially restitution—up to the full

amount of the estimated cost to restore the damaged land to its original state.

Joint Resolution Amending Rules of Evidence - Victim Selection

[SJR 8](#)

Sen. Dan Thatcher

Utah Rules of Evidence Rule
417

This is a new rule of evidence to limit the admission of expressions and associations when attempting to enhance the penalty under Utah's new victim targeting law. Expressions and associations may be used for impeachment or if they specifically relate to the defendant's selection of the victim.