

HUMAN TRAFFICKING VICTIM AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill amends and enacts provisions related to human trafficking and prostitution.

Highlighted Provisions:

This bill:

- ▶ provides that a child is not subject to a delinquency proceeding for engaging in prostitution unless a law enforcement officer has referred the child to the Division of Child and Family Services on at least one prior occasion for an alleged act of prostitution or sexual solicitation; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **62A-4a-105**, as last amended by Laws of Utah 2013, Chapter 416

32 **76-10-1302**, as last amended by Laws of Utah 1993, Chapter 179

33 ENACTS:

34 **77-38-15**, Utah Code Annotated 1953



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

37 Section 1. Section **62A-4a-105** is amended to read:

38 **62A-4a-105. Division responsibilities.**

39 (1) The division shall:

40 (a) administer services to minors and families, including:

41 (i) child welfare services;

42 (ii) domestic violence services; and

43 (iii) all other responsibilities that the Legislature or the executive director may assign

44 to the division;

45 (b) provide the following services:

46 (i) financial and other assistance to an individual adopting a child with special needs

47 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the

48 child as a legal ward of the state;

49 (ii) non-custodial and in-home preventative services, including:

50 (A) services designed to prevent family break-up; and

51 (B) family preservation services;

52 (iii) reunification services to families whose children are in substitute care in

53 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act

54 of 1996;

55 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse

56 or neglect of a child in that family;

- 57 (v) shelter care in accordance with the requirements of this chapter and Title 78A,
58 Chapter 6, Juvenile Court Act of 1996;
- 59 (vi) domestic violence services, in accordance with the requirements of federal law;
- 60 (vii) protective services to victims of domestic violence, as defined in Section [77-36-1](#),
61 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,
62 Part 3, Abuse, Neglect, and Dependency Proceedings;
- 63 (viii) substitute care for dependent, abused, neglected, and delinquent children;
- 64 (ix) programs and services for minors who have been placed in the custody of the
65 division for reasons other than abuse or neglect, under Section [62A-4a-250](#); ~~and~~
- 66 (x) services for minors who are victims of human trafficking or human smuggling as
67 described in Sections [76-5-308](#) through [76-5-310](#) or who have engaged in prostitution or sexual
68 solicitation as defined in Section [76-10-1302](#); and
- 69 ~~[(x)]~~ (xi) training for staff and providers involved in the administration and delivery of
70 services offered by the division in accordance with this chapter;
- 71 (c) establish standards for all:
- 72 (i) contract providers of out-of-home care for minors and families;
- 73 (ii) facilities that provide substitute care for dependent, abused, neglected, and
74 delinquent children placed in the custody of the division; and
- 75 (iii) direct or contract providers of domestic violence services described in Subsection
76 (1)(b)(vi);
- 77 (d) have authority to:
- 78 (i) contract with a private, nonprofit organization to recruit and train foster care
79 families and child welfare volunteers in accordance with Section [62A-4a-107.5](#); and
- 80 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
81 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
82 custody of the division;
- 83 (e) cooperate with the federal government in the administration of child welfare and
84 domestic violence programs and other human service activities assigned by the department;

85 (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws
86 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
87 runaway children, and status offenders, in accordance with the requirements of this chapter,
88 unless administration is expressly vested in another division or department of the state;

89 (g) cooperate with the Employment Development Division in the Department of
90 Workforce Services in meeting the social and economic needs of an individual who is eligible
91 for public assistance;

92 (h) compile relevant information, statistics, and reports on child and family service
93 matters in the state;

94 (i) prepare and submit to the department, the governor, and the Legislature reports of
95 the operation and administration of the division in accordance with the requirements of
96 Sections 62A-4a-117 and 62A-4a-118;

97 (j) provide social studies and reports for the juvenile court in accordance with Section
98 78A-6-605;

99 (k) within appropriations from the Legislature, provide or contract for a variety of
100 domestic violence services and treatment methods;

101 (l) ensure regular, periodic publication, including electronic publication, regarding the
102 number of children in the custody of the division who:

103 (i) have a permanency goal of adoption; or

104 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,
105 and promote adoption of those children;

106 (m) subject to Subsection (2)(b), refer an individual receiving services from the
107 division to the local substance abuse authority or other private or public resource for a
108 court-ordered drug screening test; and

109 (n) perform other duties and functions required by law.

110 (2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

111 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
112 with all public and private licensed child welfare agencies and institutions, to develop and

113 administer a broad range of services and support;

114 (ii) take the initiative in all matters involving the protection of abused or neglected
115 children, if adequate provisions have not been made or are not likely to be made; and

116 (iii) make expenditures necessary for the care and protection of the children described
117 in this Subsection (2)(a), within the division's budget.

118 (b) When an individual is referred to a local substance abuse authority or other private
119 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall
120 order the individual to pay all costs of the tests unless:

121 (i) the cost of the drug screening is specifically funded or provided for by other federal
122 or state programs;

123 (ii) the individual is a participant in a drug court; or

124 (iii) the court finds that the individual is impecunious.

125 (3) Except to the extent provided by rule, the division is not responsible for
126 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

127 (4) The division may not require a parent who has a child in the custody of the division
128 to pay for some or all of the cost of any drug testing the parent is required to undergo.

129 Section 2. Section 76-10-1302 is amended to read:

130 **76-10-1302. Prostitution.**

131 (1) ~~[A person]~~ An individual is guilty of prostitution when the individual:

132 (a) ~~[he]~~ engages in any sexual activity with another ~~[person]~~ individual for a fee;

133 (b) is an inmate of a house of prostitution; or

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

136 (2) ~~[Prostitution]~~ (a) Except as provided in Subsection (2)(b) or Section 76-10-1309,
137 prostitution is a class B misdemeanor. ~~[However, any person]~~

138 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
139 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
140 section or under a local ordinance adopted in compliance with Section 76-10-1307₂, is guilty of

141 a class A misdemeanor~~[, except as provided in Section 76-10-1309]~~.

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

143 (i) "Child" is as defined in Section 76-10-1301.

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

146 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
147 commit or engage in any sexual activity with another person for a fee under Subsection
148 76-10-1313(1)(a) or (c).

149 (iv) "Division" means the Division of Child and Family Services created in Section
150 62A-4a-103.

151 (v) "Receiving center" is as defined in Section 62A-7-101.

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

154 (i) conduct an investigation;

155 (ii) refer the child to the division;

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

157 (iv) contact the child's parent or guardian, if practicable.

158 (c) If a law enforcement officer refers a child to the division under Subsection
159 (3)(b)(ii), the division shall:

160 (i) check the division's records to verify whether law enforcement referred the child to
161 the division under Subsection (3)(b)(ii) on a prior occasion; and

162 (ii) provide the information described in Subsection (3)(c)(i) to the law enforcement
163 officer.

164 (d) If law enforcement has not referred the child to the division under Subsection
165 (3)(b)(ii) on at least one prior occasion, the division shall provide services to the child under
166 Title 62A, Chapter 4a, Child and Family Services.

167 (e) If law enforcement has referred the child to the division under Subsection (3)(b)(ii)
168 on at least one prior occasion the child may be subject to delinquency proceedings under Title

169 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

170 Section 3. Section **77-38-15** is enacted to read:

171 **77-38-15. Civil action against human traffickers and human smugglers.**

172 (1) A victim of a person that commits the offense of human trafficking or human
173 smuggling under Section 76-5-308, or aggravated human trafficking or aggravated human
174 smuggling under Section 76-5-310, may bring a civil action against that person.

175 (2) (a) The court may award actual damages, compensatory damages, punitive
176 damages, injunctive relief, or any other appropriate relief.

177 (b) The court may award treble damages on proof of actual damages if the court finds
178 that the person's acts were willful and malicious.

179 (3) In an action under this section, the court shall award a prevailing victim reasonable
180 attorney fees and costs.

181 (4) An action under this section shall be commenced no later than 10 years after the
182 later of:

183 (a) the day on which the victim was freed from the human trafficking or human
184 smuggling situation;

185 (b) the day on which the victim attains 18 years of age; or

186 (c) if the victim was unable to bring an action due to a disability, the day on which the
187 victim's disability ends.

188 (5) The time period described in Subsection (4) is tolled during a period of time when
189 the victim fails to bring an action due to the person:

190 (a) inducing the victim to delay filing the action;

191 (b) preventing the victim from filing the action; or

192 (c) threatening and causing duress upon the victim in order to prevent the victim from
193 filing the action.

194 (6) The court shall offset damages awarded to the victim under this section by any
195 restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.

196 (7) A victim may bring an action described in this section in any court of competent

197 jurisdiction where:

198 (a) a violation described in Subsection (1) occurred;

199 (b) the victim resides; or

200 (c) the person that commits the offense resides or has a place of business.

201 (8) If the victim is deceased or otherwise unable to represent the victim's own interests

202 in court, a legal guardian, family member, representative of the victim, or court appointee may

203 bring an action under this section on behalf of the victim.

204 (9) This section does not preclude any other remedy available to the victim under the

205 laws of this state or under federal law.