

Part 13 Prostitution

76-10-1301 Definitions.

As used in this part:

- (1) "Child" is an individual younger than 18 years of age.
- (2) "Inmate" means an individual who engages in prostitution in or through the agency of a place of prostitution.
- (3) "Place of prostitution" means a place or business where prostitution or promotion of prostitution is arranged, regularly carried on, or attempted by one or more individuals under the control, management, or supervision of another.
- (4) "Prostitute" means an individual engaged in the activities described in Subsection 76-10-1302(1).
- (5) "Public place" means any place to which the public or any substantial group of the public has access.
- (6) "Sexual activity" means, regardless of the gender of either participant:
 - (a) acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one individual and the mouth or anus of another individual; or
 - (b) touching the genitals, female breast, or anus of one individual with any other body part of another individual with the intent to sexually arouse or gratify either individual.

Amended by Chapter 308, 2018 General Session

76-10-1302 Prostitution.

- (1) An individual is guilty of prostitution when the individual:
 - (a) engages, offers, or agrees to engage in any sexual activity with another individual for a fee, or the functional equivalent of a fee;
 - (b) takes steps in arranging a meeting through any form of advertising, agreeing to meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee or the functional equivalent of a fee; or
 - (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.
- (2)
 - (a) Except as provided in Subsection (2)(b) or Section 76-10-1309, prostitution is a class B misdemeanor.
 - (b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.
- (3)
 - (a) As used in this Subsection (3):
 - (i) "Child" means the same as that term is defined in Section 76-10-1301.
 - (ii) "Child engaged in prostitution" means a child who engages in conduct described in Subsection (1).
 - (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee or the functional equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

- (iv) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.
- (v) "Receiving center" means the same as that term is defined in Section 62A-7-101.
- (b) Upon encountering a child engaged in prostitution or sexual solicitation, a law enforcement officer shall:
 - (i) conduct an investigation;
 - (ii) refer the child to the division;
 - (iii) if an arrest is made, bring the child to a receiving center, if available; and
 - (iv) contact the child's parent or guardian, if practicable.
- (c) When law enforcement has referred the child to the division under Subsection (3)(b)(ii):
 - (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services; and
 - (ii) the child may not be subjected to delinquency proceedings under Title 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

Amended by Chapter 433, 2017 General Session

76-10-1303 Patronizing a prostitute.

- (1) An individual is guilty of patronizing a prostitute when the individual:
 - (a) pays or offers or agrees to pay a prostitute, or an individual the actor believes to be a prostitute, a fee, or the functional equivalent of a fee, for the purpose of engaging in an act of sexual activity; or
 - (b) enters or remains in a place of prostitution for the purpose of engaging in sexual activity.
- (2) Patronizing a prostitute is a class A misdemeanor, except as provided in Subsection (3), (4), or (5) and Section 76-10-1309.
- (3) A violation of this section that is preceded by a conviction under this section or a conviction under local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.
- (4) A third violation of this section or a local ordinance adopted under Section 76-10-1307 is a third degree felony.
- (5) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other individual, a violation of Subsection (1)(a) is a third degree felony.
- (6) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Amended by Chapter 308, 2018 General Session

76-10-1304 Aiding prostitution.

- (1) An individual is guilty of aiding prostitution if the individual:
 - (a)
 - (i) solicits an individual to patronize a prostitute, or to patronize an individual the actor believes to be a prostitute;
 - (ii) procures or attempts to procure a prostitute, or an individual the actor believes to be a prostitute, for a patron;
 - (iii) leases, operates, or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or
 - (iv) provides any service or commits any act that enables another individual to commit a violation of this Subsection (1)(a) or facilitates another individual's ability to commit any violation of this Subsection (1)(a); or

- (b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).
- (2) Aiding prostitution is a class A misdemeanor, except as provided in Subsection (3).
- (3) An individual who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.
- (4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Amended by Chapter 308, 2018 General Session

76-10-1305 Exploiting prostitution.

- (1) An individual is guilty of exploiting prostitution if the individual:
 - (a) procures an individual for a place of prostitution;
 - (b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;
 - (c) transports an individual into or within this state with a purpose to promote that individual's engaging in prostitution or procuring or paying for transportation with that purpose;
 - (d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute, or an individual the actor believes to be a prostitute, pursuant to their understanding that the actor is to share therein; or
 - (e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a place of prostitution or a business where prostitution occurs or is arranged, encouraged, supported, or promoted.
- (2) Exploiting prostitution is a felony of the third degree.
- (3) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Amended by Chapter 308, 2018 General Session

76-10-1306 Aggravated exploitation of prostitution.

- (1) A person is guilty of aggravated exploitation if:
 - (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305, the person uses any force, threat, or fear against any person;
 - (b) the person procured, transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor; or
 - (c) in the course of committing exploitation of prostitution, a violation of Section 76-10-1305, the person commits human trafficking or human smuggling, a violation of Section 76-5-308.
- (2) Aggravated exploitation of prostitution is a second degree felony, except under Subsection (3).
- (3) Aggravated exploitation of prostitution involving a child is a first degree felony.
- (4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Amended by Chapter 433, 2017 General Session

76-10-1307 Local ordinance consistent with code provisions.

An ordinance adopted by a local authority governing prostitution or aiding prostitution shall be consistent with the provisions of this part which govern those matters.

Enacted by Chapter 107, 1991 General Session

76-10-1308 Prosecution.

The following class A misdemeanors may be prosecuted by attorneys of cities and towns, as well as by prosecutors authorized elsewhere in this code to prosecute these alleged violations:

- (1) class A misdemeanor violations of Section 76-10-1302; and
- (2) class A misdemeanor violations of Section 76-10-1304.

Enacted by Chapter 107, 1991 General Session

76-10-1309 Enhanced penalties -- HIV positive offender.

A person who is convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV positive individual, and the person:

- (1) has actual knowledge of the fact; or
- (2) has previously been convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313.

Amended by Chapter 70, 2011 General Session

76-10-1310 Definitions.

- (1) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:
 - (a) presence of antibodies to HIV, verified by a positive confirmatory test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;
 - (b) presence of HIV antigen;
 - (c) isolation of HIV; or
 - (d) demonstration of HIV proviral DNA.
- (2) "HIV positive individual" means a person who has an HIV infection as determined under Subsection (1).
- (3) "Local law enforcement agency" means the agency responsible for investigation of the violations of Sections 76-10-1302, 76-10-1303, and 76-10-1313, the filing of charges which may lead to conviction, and the conducting of or obtaining the results of tests for HIV infection.
- (4) "Positive" means an indication of the HIV infection as defined in Subsection (1).
- (5) "Test" or "testing" means a test or tests for HIV infection in accordance with standards recommended by the Department of Health.

Amended by Chapter 70, 2011 General Session

76-10-1311 Mandatory testing -- Retention of offender medical file -- Civil liability.

- (1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

- (2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.
- (3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.
- (4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.
- (5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:
 - (a) the HIV infection test results;
 - (b) a copy of the written notice as provided in Section 76-10-1312;
 - (c) photographic identification; and
 - (d) fingerprint identification.
- (6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.
- (7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.
- (8)
 - (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.
 - (b) Each department or agency shall designate those officials by written policy.
 - (c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.
- (9)
 - (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202.
 - (b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63G-2-801.
- (10) When the medical file is released as provided in Section 63G-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Amended by Chapter 382, 2008 General Session

76-10-1312 Notice to offender of HIV positive test results.

- (1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person by:
 - (a) the local law enforcement agency;
 - (b) the Department of Corrections, for offenders confined in any state prison;
 - (c) the state Department of Health; or
 - (d) an authorized representative of any of the agencies listed in this Subsection (1).

- (2) The notice under Subsection (1) shall contain the signature of the HIV positive person, indicating the person's receipt of the notice, the name and signature of the person providing the notice, and:
 - (a) the date of the test;
 - (b) the positive test results;
 - (c) the name of the HIV positive individual; and
 - (d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and either had actual knowledge that the person is an HIV positive individual or the person has previously been convicted of any of the criminal offenses listed above is guilty of a third degree felony under Section 76-10-1309."
- (3) Failure to provide this notice, or to provide the notice in the manner or form prescribed under this section, does not create any civil liability and does not create a defense to any prosecution under this part.
- (4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 70, 2011 General Session

76-10-1313 Sexual solicitation -- Penalty.

- (1) An individual is guilty of sexual solicitation when the individual:
 - (a) offers or agrees to commit any sexual activity with another individual for a fee, or the functional equivalent of a fee;
 - (b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another individual to commit any sexual activity; or
 - (c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee or to pay another individual to commit any sexual activity for a fee or the functional equivalent of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:
 - (i) exposure of an individual's genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;
 - (ii) masturbation;
 - (iii) touching of an individual's genitals, the buttocks, the anus, the pubic area, or the female breast; or
 - (iv) any act of lewdness.
- (2) An intent to engage in sexual activity for a fee may be inferred from an individual's engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.
- (3)
 - (a) Sexual solicitation is a class A misdemeanor, except under Subsection (4).
 - (b) An individual who is convicted a second time under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.
- (4) An individual who is convicted a third time under this section or a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a third degree felony.

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

Amended by Chapter 308, 2018 General Session

76-10-1314 Examination of testing procedures and results in legal proceedings.

- (1) Employees of the laboratory who conduct laboratory analysis of blood samples for presence of antibody to HIV provided pursuant to a request by a law enforcement agency or the Department of Corrections under Section 76-10-1311, may be examined in a legal proceeding of any kind or character as to:
- (a) the nature of the testing;
 - (b) the validity of the testing;
 - (c) the results of the test;
 - (d) the HIV positivity or negativity of the person tested;
 - (e) the evidentiary chain of custody; and
 - (f) other factors relevant to the prosecution, subject to the court's ruling.
- (2) This section applies only to the criminal investigation and prosecution under Section 76-10-1309 which permits enhanced penalties upon a subsequent conviction for:
- (a) prostitution, Section 76-10-1302;
 - (b) patronizing a prostitute, Section 76-10-1303; or
 - (c) sexual solicitation, Section 76-10-1313.

Enacted by Chapter 179, 1993 General Session