

## Part 13 Prostitution

### **76-10-1301 Definitions.**

As used in this part:

- (1) "Child" is an individual younger than 18 years old.
- (2) "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.
- (3) "Prostitute" or "prostituted individual" means an individual engaged in an activity described in Subsection 76-10-1302(1) or 76-10-1313(1)(a), (c), (d), or (f).
- (4) "Public place" means a place to which the public or any substantial group of the public has access.
- (5) "Sexual activity" means, regardless of the gender of either participant:
  - (a) an act of masturbation, sexual intercourse, or any sexual act involving the genitals of one individual and the mouth or anus of another individual; or
  - (b) the touching of 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 124, 2022 General Session

### **76-10-1302 Prostitution.**

- (1) An actor, except for a child under Section 76-10-1315, is guilty of prostitution if the actor engages in sexual activity with another individual for a fee, or the functional equivalent of a fee.
- (2)
  - (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, a violation of Subsection (1) is a class B misdemeanor.
  - (b) Except as provided in Section 76-10-1309, an actor 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 under Section 76-10-1307, is guilty of a class A misdemeanor.
- (3) A prosecutor may not prosecute an actor for a violation of Subsection (1) if the actor engages in a violation of Subsection (1) at or near the time the actor witnesses or is a victim of any of the following offenses, or an attempt to commit any of the following offenses, and the actor reports the offense or attempt to law enforcement in good faith:
  - (a) assault, Section 76-5-102;
  - (b) aggravated assault, Section 76-5-103;
  - (c) mayhem, Section 76-5-105;
  - (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault under Chapter 5, Part 2, Criminal Homicide;
  - (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
  - (f) rape, Section 76-5-402;
  - (g) rape of a child, Section 76-5-402.1;
  - (h) object rape, Section 76-5-402.2;
  - (i) object rape of a child, Section 76-5-402.3;
  - (j) forcible sodomy, Section 76-5-403;

- (k) sodomy on a child, Section 76-5-403.1;
- (l) forcible sexual abuse, Section 76-5-404;
- (m) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;
- (n) aggravated sexual assault, Section 76-5-405;
- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- (q) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (r) aggravated burglary or burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;
- (s) aggravated robbery or robbery under Chapter 6, Part 3, Robbery; or
- (t) theft by extortion under Subsection 76-6-406(2)(a) or (b).

Amended by Chapter 124, 2022 General Session

Amended by Chapter 181, 2022 General Session

Amended by Chapter 185, 2022 General Session

**76-10-1303 Patronizing a prostitute.**

- (1) An actor is guilty of patronizing a prostitute if the actor:
  - (a) pays or offers or agrees to pay a prostituted individual, or an individual the actor believes to be a prostituted individual, 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) or Section 76-10-1309.
- (3) A violation of this section that is preceded by a conviction under this section or a conviction under a 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)
  - (a) Except as provided in Subsection (5)(d), 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 second degree felony.
  - (b) In accordance with Subsection 76-2-304.5(5)(a), it is not a defense to a prosecution under Subsection (5)(a) that the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age.
  - (c) An actor's belief that the individual was under 18 years old at the time of the offense, even if the individual was 18 years old or older, is a violation of Subsection (5)(a).
  - (d) If the act committed under Subsection (5)(a) amounts to an offense that is subject to a greater penalty under another provision of state law than is provided under Subsection (5)(a), this Subsection (5) does not prohibit prosecution and sentencing for the more serious offense.
- (6) Upon a conviction for a violation of this section, the court shall order:
  - (a) the maximum fine amount and may not waive or suspend the fine; and
  - (b) the defendant to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.

Amended by Chapter 124, 2022 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, 76-5-308.1, 76-5-308.3, or 76-5-308.5.
- (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 181, 2022 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 except for a child under Section 76-10-1315 is guilty of sexual solicitation if 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;
  - (c) takes steps to arrange a meeting through any form of advertising or agreement to meet, and meets at an arranged place for the purpose of being hired to engage in sexual activity in exchange for a fee or the functional equivalent of a fee;
  - (d) loiters in or within view of a public place for the purpose of being hired to engage in sexual activity in exchange for a fee, or the functional equivalent of a fee;

- (e) with intent to pay another individual to commit any sexual activity for a fee or the functional equivalent of a fee, requests or directs the other individual 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; or
- (f) with intent to engage in sexual activity for a fee, or the functional equivalent of a fee, engages in or offers or agrees to engage in an act described in Subsection (1)(e)(i) through (iv).
- (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) (e) or (f) under the totality of the existing circumstances.
- (3) Except as provided in Section 76-10-1309 and Subsections (4) and (5), a violation of Subsection (1)(a), (c), (d), or (f) or under a local ordinance adopted in compliance with Section 76-10-1307 is:
  - (a) a class B misdemeanor on a first or second violation; and
  - (b) a class A misdemeanor on a third or subsequent violation.
- (4) Except as provided in Section 76-10-1309 and Subsections (5) and (8), a violation of Subsection (1)(b) or (e) or a local ordinance adopted under Section 76-10-1307 is:
  - (a) a class A misdemeanor on the first or second violation; and
  - (b) a third degree felony on a third or subsequent violation.
- (5) If an individual commits an act of sexual solicitation in violation of Subsection (1) and the individual solicited is a child, the offense is a second degree felony if the solicitation does not amount to a violation of:
  - (a) Section 76-5-308, 76-5-308.1, or 76-5-308.5, human trafficking or Section 76-5-308.3, human smuggling; or
  - (b) Section 76-5-310, aggravated human trafficking or Section 76-5-310.1, aggravated human smuggling.
- (6)
  - (a) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall follow the procedure described in Subsection 76-10-1315(2).
  - (b) A child engaged in commercial sex or sexual solicitation shall be referred to the Division of Child and Family Services for services and may not be subjected to delinquency proceedings.
- (7) A prosecutor may not prosecute an individual for a violation of Subsection (1) if the individual engages in a violation of Subsection (1) at or near the time the individual witnesses or is a victim of any of the offenses or an attempt to commit any of the offenses described in Subsection 76-10-1302(3), and the individual reports the offense or attempt to law enforcement in good faith.
- (8)
  - (a) As part of a sentence imposed under Subsection (3), the court may lower, waive, or suspend a fine if the defendant completes a court-approved program that provides information or services intended to help an individual no longer engage in prostitution.
  - (b) As part of a sentence imposed under Subsection (4), the court shall order the defendant to pay for and complete a court-approved educational program about the negative effects on an individual involved with prostitution or human trafficking.

Amended by Chapter 124, 2022 General Session  
Amended by Chapter 124, 2022 General Session, (Coordination Clause)  
Amended by Chapter 181, 2022 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

**76-10-1315 Safe harbor for children as victims in commercial sex or sexual solicitation.**

- (1) As used in this section:
  - (a) "Child engaged in commercial sex" means a child who:
    - (i) engages, offers, or agrees to engage in any sexual activity with another individual for a fee, or the functional equivalent of a fee;
    - (ii) 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
    - (iii) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.
  - (b) "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), (c), (d), or (f).
  - (c) "Division" means the Division of Child and Family Services created in Section 80-2-201.
  - (d) "Juvenile receiving center" means the same as that term is defined in Section 80-1-102.
- (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall:
  - (a) conduct an investigation regarding possible human trafficking of the child pursuant to Sections 76-5-308, 76-5-308.1, and 76-5-308.5;
  - (b) refer the child to the division;
  - (c) bring the child to a juvenile receiving center, if available; and
  - (d) contact the child's parent or guardian, if practicable.
- (3) When law enforcement refers a child to the division under Subsection (2)(b) the division shall provide services to the child under Title 80, Chapter 2, Child Welfare Services, and Title 80, Chapter 2a, Removal and Protective Custody of a Child.



(4) A child may not be subjected to delinquency proceedings for prostitution under Section 76-10-1302, or sexual solicitation under Section 76-10-1313.

Amended by Chapter 124, 2022 General Session

Amended by Chapter 181, 2022 General Session

Amended by Chapter 335, 2022 General Session