

SEX TRAFFICKING - PENALTIES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the conviction of trafficking victims of prostitution offenses.

Highlighted Provisions:

This bill:

- ▶ provides the grounds and procedures for the judicial vacating of a conviction for a prostitution offense if the defendant is a victim of human trafficking and that situation resulted in the prostitution conviction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

76-5-311, Utah Code Annotated 1953

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

Section 1. Section **76-5-311** is enacted to read:

76-5-311. Motion to vacate prostitution convictions regarding sexual trafficking victims.



28 (1) As used in this section:

29 (a) "Conviction" means a conviction by plea or by verdict, including a plea of nolo
30 contendere or a plea of guilty that is held in abeyance under Title 77, Chapter 2a, Pleas in
31 Abeyance, regardless of whether the charge was, or is, subsequently reduced or dismissed in
32 accordance with the plea in abeyance agreement.

33 (b) "Human trafficking" means a violation of Section 76-8-309 or 76-5-310.

34 (2) A motion to vacate a conviction may be filed under this section at any time
35 following the entry of a verdict or a finding of guilty if:

36 (a) the defendant was younger than 18 years of age;

37 (b) the conviction was for a violation of:

38 (i) Section 76-10-1302, prostitution;

39 (ii) Section 76-10-1306, aggravated exploitation of prostitution; or

40 (iii) Section 76-10-1313, sexual solicitation; and

41 (c) the defendant alleges involvement in the offense was because the defendant was a
42 victim of human trafficking.

43 (3) The motion under Subsection (2) shall:

44 (a) be filed in the court that presided over the conviction of the defendant;

45 (b) state why the facts giving rise to this motion were not presented to the trial court;

46 (c) be made with due diligence, and after:

47 (i) the defendant is no longer a victim of any human trafficking offense; or

48 (ii) the defendant has sought services or assistance for victims of human trafficking;

49 (d) be subject to reasonable concerns for the safety of the defendant, family members
50 of the defendant, or other victims of the human trafficking who may be jeopardized by the
51 bringing of the motion; and

52 (e) be served upon the office of the prosecutor who brought charges under Subsection
53 (2) against the defendant.

54 (4) The court may grant the motion if the court determines the offense for which the
55 defendant was convicted was the result of the defendant having been a victim of human
56 trafficking. Evidence the court may consider includes:

57 (a) certified records of federal or state court proceedings that demonstrate that the
58 defendant was a victim of a trafficker charged with a human trafficking offense under

59 Subsection (1) or under 22 U.S.C. Chapter 78;

60 (b) certified records of "approval notices" or "law enforcement certifications" that are
61 generated from federal immigration proceedings and that are available to the defendant;

62 (c) a sworn statement from a trained professional staff member of a victim services
63 organization, an attorney, a member of the clergy, a medical professional, or other health care
64 professional from whom the defendant has sought assistance in addressing the emotional or
65 physical trauma caused by being a victim of human trafficking; and

66 (d) other evidence the court finds to be of sufficient credibility and probative value to
67 aid in determining if the defendant is a victim of human trafficking.

68 (5) If the court grants the motion to vacate under this section, the court conviction shall
69 be vacated as soon as reasonably possible.

Legislative Review Note
as of 1-26-12 7:12 PM

Office of Legislative Research and General Counsel