

Representative Jennifer M. Seelig proposes the following substitute bill:

HUMAN TRAFFICKING VICTIM AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: Lyle W. Hillyard

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

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:



26 [77-38-15](#), Utah Code Annotated 1953



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

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

30 **62A-4a-105. Division responsibilities.**

31 (1) The division shall:

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

33 (i) child welfare services;

34 (ii) domestic violence services; and

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

36 to the division;

37 (b) provide the following services:

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

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

40 child as a legal ward of the state;

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

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

43 (B) family preservation services;

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

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

46 of 1996;

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

48 or neglect of a child in that family;

49 (v) shelter care in accordance with the requirements of this chapter and Title 78A,

50 Chapter 6, Juvenile Court Act of 1996;

51 (vi) domestic violence services, in accordance with the requirements of federal law;

52 (vii) protective services to victims of domestic violence, as defined in Section [77-36-1](#),

53 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,

54 Part 3, Abuse, Neglect, and Dependency Proceedings;

55 (viii) substitute care for dependent, abused, neglected, and delinquent children;

56 (ix) programs and services for minors who have been placed in the custody of the

57 division for reasons other than abuse or neglect, under Section [62A-4a-250](#); ~~and~~
58 (x) services for minors who are victims of human trafficking or human smuggling as
59 described in Sections [76-5-308](#) through [76-5-310](#) or who have engaged in prostitution or sexual
60 solicitation as defined in Section [76-10-1302](#); and
61 (x) training for staff and providers involved in the administration and delivery of
62 services offered by the division in accordance with this chapter;
63 (c) establish standards for all:
64 (i) contract providers of out-of-home care for minors and families;
65 (ii) facilities that provide substitute care for dependent, abused, neglected, and
66 delinquent children placed in the custody of the division; and
67 (iii) direct or contract providers of domestic violence services described in Subsection
68 (1)(b)(vi);
69 (d) have authority to:
70 (i) contract with a private, nonprofit organization to recruit and train foster care
71 families and child welfare volunteers in accordance with Section [62A-4a-107.5](#); and
72 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
73 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
74 custody of the division;
75 (e) cooperate with the federal government in the administration of child welfare and
76 domestic violence programs and other human service activities assigned by the department;
77 (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws
78 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
79 runaway children, and status offenders, in accordance with the requirements of this chapter,
80 unless administration is expressly vested in another division or department of the state;
81 (g) cooperate with the Employment Development Division in the Department of
82 Workforce Services in meeting the social and economic needs of an individual who is eligible
83 for public assistance;
84 (h) compile relevant information, statistics, and reports on child and family service
85 matters in the state;
86 (i) prepare and submit to the department, the governor, and the Legislature reports of
87 the operation and administration of the division in accordance with the requirements of

88 Sections 62A-4a-117 and 62A-4a-118;

89 (j) provide social studies and reports for the juvenile court in accordance with Section
90 78A-6-605;

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

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

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

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

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

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

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

103 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
104 with all public and private licensed child welfare agencies and institutions, to develop and
105 administer a broad range of services and support;

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

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

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

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

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

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

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

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

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

122 **76-10-1302. Prostitution.**

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

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

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

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

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

130 (b) Except as provided in Section 76-10-1309, an individual who is convicted a second
131 time, and on all subsequent convictions, of a subsequent offense of prostitution under this
132 section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of
133 a class A misdemeanor~~[, except as provided in Section 76-10-1309].~~

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

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

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

138 (iii) "Child engaged in sexual solicitation" means a child who offers or agrees to
139 commit or engage in any sexual activity with another person for a fee under Subsections
140 76-10-1313(1)(a) or (c).

141 (iv) "Division" means the Division of Child and Family Services created in Section
142 62A-4a-103.

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

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

146 (i) conduct an investigation;

147 (ii) refer the child to the division;

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

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

- 150 (c) If a law enforcement officer refers a child to the division under Subsection
151 (3)(b)(ii), the division shall:
- 152 (i) check the division's records to verify whether law enforcement referred the child to
153 the division under Subsection (3)(b)(ii) on a prior occasion; and
- 154 (ii) provide the information described in Subsection (3)(c)(i) to the law enforcement
155 officer.
- 156 (d) If law enforcement has not referred the child to the division under Subsection
157 (3)(b)(ii) on at least one prior occasion, the division shall provide services to the child under
158 Title 62A, Chapter 4a.
- 159 (e) If law enforcement has referred the child to the division under Subsection (3)(b)(ii)
160 on at least one prior occasion the child may be subject to delinquency proceedings under Title
161 62A, Chapter 7 and Section [78A-6-601](#) through Section [78A-6-704](#).
- 162 Section 3. Section **77-38-15** is enacted to read:
- 163 **77-38-15. Civil action against human traffickers and human smugglers.**
- 164 (1) A victim of a person that commits the offense of human trafficking or human
165 smuggling under Section [76-5-308](#), or aggravated human trafficking or aggravated human
166 smuggling under Section [76-5-310](#), may bring a civil action against that person.
- 167 (2) (a) The court may award actual damages, compensatory damages, punitive
168 damages, injunctive relief, or any other appropriate relief.
- 169 (b) The court may award treble damages on proof of actual damages if the court finds
170 that the person's acts were willful and malicious.
- 171 (3) In an action under this section, the court shall award a prevailing victim reasonable
172 attorney fees and costs.
- 173 (4) An action under this section shall be commenced no later than 10 years after the
174 latter of:
- 175 (a) the day on which the victim was freed from the human trafficking or human
176 smuggling situation;
- 177 (b) the day on which the victim attains 18 years of age; or
- 178 (c) if the victim was unable to bring an action due to a disability, the day on which the
179 victim's disability ends.
- 180 (5) The time period described in Subsection (4) is tolled during a period of time when

181 the victim fails to bring an action due to the person:

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

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

184 (c) threatening and causing duress upon the victim in order to prevent the victim from

185 filing the action.

186 (6) The court shall offset damages awarded to the victim under this section by any

187 restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.

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

189 jurisdiction, where:

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

191 (b) the victim resides; or

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

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

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

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

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

197 laws of this state or under federal law.