

## HB0254S01 compared with HB0254

~~deleted text~~ shows text that was in HB0254 but was deleted in HB0254S01.

inserted text shows text that was not in HB0254 but was inserted into HB0254S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

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#### LONG TITLE

##### General Description:

This bill amends and enacts provisions ~~of Title 79, Chapter 10, Part 13, Prostitution~~ 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 ~~has been referred~~ 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

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### 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:

77-38-15, Utah Code Annotated 1953

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

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

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

- (1) The division shall:
  - (a) administer services to minors and families, including:
    - (i) child welfare services;
    - (ii) domestic violence services; and
    - (iii) all other responsibilities that the Legislature or the executive director may assign to the division;
  - (b) provide the following services:
    - (i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;
    - (ii) non-custodial and in-home preventative services, including:
      - (A) services designed to prevent family break-up; and
      - (B) family preservation services;
    - (iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996;
    - (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;
    - (v) shelter care in accordance with the requirements of this chapter and Title 78A,

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Chapter 6, Juvenile Court Act of 1996;

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

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

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

(ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250; and

(x) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and

(x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

(i) contract providers of out-of-home care for minors and families;

(ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and

(iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);

(d) have authority to:

(i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;

(e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

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

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

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

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

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

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

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

(i) have a permanency goal of adoption; or

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

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

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

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

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

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

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

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall

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order the individual to pay all costs of the tests unless:

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

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

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

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

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

Section ~~76-10-1301~~2. Section **76-10-1302** is amended to read:

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

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

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

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

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

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

(b) ~~[An]~~ Except as provided in Section 76-10-1309, an individual who is convicted ~~of~~ 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~~[, except as provided in Section 76-10-1309]~~.

(3) ~~[A child is not subject to a delinquency proceeding for prostitution unless the child has been referred to]~~ (a) As used in this Subsection (3):

(i) "Child" is as 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 under Subsections 76-10-1313(1)(a) or (c).

(iv) "Division" means the Division of Child and Family Services created in Section

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### 62A-4a-103.

(v) "Receiving center" is as 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) If a law enforcement officer refers a child to the division under Subsection (3)(b)(ii), the division shall:

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

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

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

(e) If law enforcement has referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion ~~for an alleged act of prostitution.~~

### Legislative Review Note

— as of 1-3-14 2:12 PM

~~Office of Legislative Research and General Counsel~~ the child may be subject to delinquency proceedings under Title 62A, Chapter 7 and Section 78A-6-601 through Section 78A-6-704.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A victim may bring an action described in this section in any court of competent jurisdiction, where:

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

(b) the victim resides; or

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

(8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or a court appointee

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

(9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.